United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156 WASHINGTON, THURSDAY, AUGUST 5, 2010 No. 118

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, August 9, 2010, at 7 p.m.

Senate

THURSDAY, AUGUST 5, 2010

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our Father in heaven, we give You thanks, for You alone are God, living and true, dwelling in light inaccessible from before time and forever.

Inspire our lawmakers this day to labor for peace and justice, to sacrifice for the needy, and to be faithful stewards of the gifts You have given them. Teach them to do Your will on Earth even as it is done in heaven. Lord, strengthen them to overcome evil with good, as You give them serenity amid the tensions of life.

We pray in Your wonderful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 5, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, following leader remarks, if any, there will be a period of morning business until 11 a.m., with the time equally divided and controlled between the two leaders or their designees.

At 11 a.m., the Senate will resume consideration of the House message on H.R. 1586, which is the legislative vehicle for the FMAP and teacher funding amendment. There will be 20 minutes for debate, equally divided and controlled between Senators BAUCUS and DeMint or their designees.

At approximately 11:20, the Senate will proceed to a series of up to three rollcall votes. Those votes will be in relation to two DeMint motions to suspend the rules and on a motion to concur with respect to H.R. 1586.

Upon disposition of the message on H.R. 1586, the Senate will resume debate on the nomination of Elena Kagan to be a Justice of the Supreme Court of the United States. I will work with the Republican leader, as we did yesterday, to set a time on the vote on the confirmation of the nomination and on other issues to come before the Senate today.

Will the Chair please announce the business of the Senate.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 11 a.m., with the time equally divided and controlled between the two leaders or their designees.

Mr. REID. Madam President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KAUFMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

IN PRAISE OF MICHAEL COPPS

Mr. KAUFMAN. Madam President, I rise once again to honor one of our Nation's great Federal employees.

The Federal employee I am recognizing this week—and this is my 89th since last May, and here they are on the chart—has made a name for himself as an advocate for sensible regulation of the communications industry.

At the Federal Communications Commission, Michael Copps has been a tireless fighter for the public interest and a steadfast campaigner for localism in broadcasting. In his position as one of the five Commissioners appointed by the President and confirmed by the Senate to oversee the regulation of our communications industry, Mike must work with the other Commissioners to come to agreement on key issues affecting broadcasting, the Internet, and other media. Whether they agree with him or not, I know they have to respect and admire his passion and energy in advocating for what he believes to be the best way to serve the American people.

I did not choose to honor Mike only because he is one of the FCC's Commissioners; he has had a distinguished public service career for three decades. His service as Commissioner is just his latest role in the Federal Government. Mike is currently in his second term, having been appointed twice by President George W. Bush.

Before his appointment to the FCC, Mike served at the Department of Commerce as the Assistant Secretary for Trade Development and Deputy Assistant Secretary for Basic Industries.

Prior to his service with the Commerce Department, Mike spent 12 years here in the Senate as chief of staff to former Senator Fritz Hollings of South Carolina. That is how I got to know Mike, when I was chief of staff for now-Vice President and then-Senator JOE BIDEN. I can say from personal experience that, as a chief of staff, Mike was truly first class. He earned the respect and admiration of his colleagues across the Senate on both sides of the aisle. Smart, exercising good judgment, and a very good listener, Mike embodied the skills and values that make someone a great chief of staff.

Before coming to Washington in 1970, he spent time working in the private sector for a Fortune 500 company, and he also taught as a history professor for some years at Loyola University of the South, in New Orleans. He holds a bachelor's degree from Wofford College in South Carolina and a Ph.D. from the University of North Carolina at Chapel Hill.

In his current role, Mike has been an untiring advocate for the public and has worked to push the FCC back toward its core mission: enforcing the regulations that maintain fair competition, protecting consumers, and ensuring that the communications industry serves the public interest. Particularly, he has been a crusader against control of the Internet by big corporations. His promotion of an open Internet is based on his belief that communications media should benefit all and foster the growth and development of communities.

Last week, I spoke from this desk about the dangers of regulatory capture. Over the past decade, many of our regulatory agencies have been caught up in a deregulatory mindset that viewed self-regulation as not only adequate but preferable. Michael Copps has long been a voice of reason against regulatory capture.

He is just one example of the many outstanding men and women at the Federal Communications Commission. They are all truly great Federal employees, and I hope my colleagues will join me in honoring their service to our Nation.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KAUFMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KAUFMAN. Madam President, I ask that the time of the quorum call be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KAUFMAN. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHANNS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF ELENA KAGAN

Mr. JOHANNS. Madam President, a Senator has an enormous duty when it comes to evaluating a Supreme Court nominee. The duty demands that Senators examine whether the person nominated to the highest Court in the land will uphold and defend the principles contained in the Constitution, refrain from judicial activism, and respect the rule of law.

Some have characterized this duty as one of the most important and far-reaching decisions that a Senator will make, and it is one of the most important decisions in their entire time in the Senate.

As the nomination process for Ms. Kagan began, I went into it with an open mind and a steadfast resolve to evaluate the nominee's qualifications without looking through a partisan lens. In fact, having gone through the confirmation process myself before being sworn in as Secretary of Agriculture, I know what an important process this is.

Senators have a strong duty to take it seriously. Considering Supreme Court judgeships are lifetime appointments, these nominations require even closer scrutiny. Thus, Senators must carefully review any Supreme Court nominee's record and their judicial philosophy.

After this careful review and closely monitoring the hearings before the Judiciary Committee, I came to the conclusion that I could not support this nomination.

The Court is not a place to create laws, and I was not convinced that Ms. Kagan understands this fundamental premise. Additionally, her long career as a political adviser and academic insufficiently prepares her for a lifetime appointment to the country's highest Court.

For example, prior to her position as Solicitor General, Ms. Kagan had never taken a case to trial. I find that remarkable. Since her time as Solicitor General, Ms. Kagan has only argued six cases before the Supreme Court.

Beyond that lack of experience, there are several other areas that concern me about this nomination. Ms. Kagan's view of the second amendment is disturbing to me. As a law clerk for U.S. Supreme Court Justice Thurgood Marshall, she wrote that she was ''not sympathetic''—''not sympathetic''—to the legal assertion that the DC gun ban violated citizens' constitutional right to bear arms.

Probably the most recent glimpse into Ms. Kagan's view of the second amendment is her failure to file a brief on behalf of the petitioner in the McDonald case regarding Chicago gun bans. The Supreme Court had already been clear on the DC gun ban, and Chicago's law clearly impacted a variety of Federal laws and programs.

Yet, as Solicitor General, she chose to sit quietly, tacitly casting aside a very important constitutional protection. Her not filing demonstrated the government's lack of interest or concern in protecting this important constitutional right.

Ms. Kagan's lack of action is viewed by many as a bias against the second amendment, as if she were picking and choosing which constitutional provisions she liked. Judges cannot selectively disregard the Constitution when it is convenient or in line with their point of view. So Ms. Kagan's record in this area is enormously troubling for someone who wants to sit on the Supreme Court.

Another very serious concern is her actions as an adviser to President Clinton were instrumental in keeping partial-birth abortion legal in the 1990s. During her time in the White House, the American College of Obstetricians

and Gynecologists privately briefed Ms. Kagan on the partial-birth abortion procedure. Their opinion was clear and lacing equivocation.

According to a memo Ms. Kagan wrote, the medical group said:

> In the vast majority of cases, selection of the partial birth procedure is not necessary to avert serious adverse consequences to a woman's health. There just aren't many circumstances where use of the partial-birth abortion is the least risky, let alone the necessary approach.

The group's public draft statement went on to say:

> A select panel convened by ACOG could identify no circumstances under which the partial birth procedure would be the only option to save the life or preserve the health of the woman.

Upon hearing this news, Kagan wrote in a memo that the statement would be ''a disaster.'' Then she edited the document and advised the medical group to include a much different sentence claiming partial-birth abortion ''may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman.''

The original sentence and Ms. Kagan's sentence are vastly different, almost complete opposites. Yet Ms. Kagan's language was copied verbatim into the medical organization's final statement.

While Ms. Kagan has no medical credentials whatsoever, she bullied her personal views into the opinion of these medical professionals.

Unfortunately, this assumed expert medical opinion was relied upon heavily in subsequent court cases, including the one that struck down Nebraska's partial-birth abortion ban—my State. U.S. District Court Judge Richard Kopf devoted more than 15 pages of his opinion to the policy statement that Kagan wrote.

Judge Kopf believed the statement was entitled to judicial deference because, ''Before and during the task force meeting, neither ACOG nor the task force members conversed with other individuals or organizations,'' he wrote in his opinion.

It is beyond belief and beyond unfortunate that no one was aware of Ms. Kagan's extensive involvement in drafting the supposedly independent policy statement; otherwise, this horrific procedure may have been banned 10 years earlier.

This type of extreme political policy engineering should give us all great pause and solid reason to question whether Ms. Kagan could serve as a truly neutral umpire on the bench.

My concerns do not stop there. My concerns extend further to her role as dean of the Harvard Law School. Ms. Kagan was confronted with the Solomon amendment, a Federal law that requires schools receiving Federal funds to give equal access to military recruiters. It was very straightforward. Yet she chose to ignore this law and denied military access to Harvard's on-campus recruiting program.

Even the Supreme Court unanimously ruled against Ms. Kagan in this matter. This is especially troubling that Ms. Kagan would openly defy Federal law, especially in a time of war.

Her judgment and her reading of the law was fundamentally flawed, and every one of her potential colleagues agreed she was wrong. That is not a good sign for things to come.

For these reasons and others, I do not have confidence that Ms. Kagan will be able to put aside her personal or political agenda before sitting on the bench.

As the National Right to Life Committee noted:

> We anticipate that Ms. Kagan often will treat the U.S. Constitution not as a body of basic law that truly constrains both legislators and judges, but rather as a cookbook in which may be found legal recipes that will allow the imposition of the policies that Ms. Kagan deems to be justified or advisable, or that are so regarded by whatever groups she sees as the enlightened elites on a given subject.

A lifetime appointment to the highest Court in the land is far too important a decision to have so many concerns. When the Senate votes on the nomination of Ms. Kagan, I will vote no. Doing otherwise would ignore the integrity of our Constitution and it would not be in the best interest of this great country.

Madam President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHANNS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JOHANNS. Madam President, I ask unanimous consent that the quorum calls during today's morning business be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JOHANNS. I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERTS. I ask unanimous consent that the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERTS. I ask unanimous consent to speak up to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERTS. Madam President, after careful consideration and assessment of the nominee's record and expressed views, I rise today to express my opposition to Solicitor General Elena Kagan's nomination to the U.S. Supreme Court.

In the nomination process, a telling and inciteful statement by another Senator is most applicable and pertinent. During the Senate's debate on the nomination of Chief Justice John Roberts, then Senator Barack Obama stated:

> . . . that while adherence to legal precedent and rules of statutory or constitutional construction will dispose of 95 percent of the cases that come before the court, so that both a Scalia or Ginsburg will arrive at the same place most of the time on those 95 percent of the cases—what matters on the Supreme Court is those 5 percent of cases that are truly difficult.
>
> In those cases, adherence to precedent and rules will only get you through the 25th mile of the marathon.
>
> That last mile can only be determined on the basis of 1) one's deepest values, 2) one's core concerns, 3) one's broader perspectives on how the world works, and 4) the depth and breadth of one's empathy.

I respectfully disagree with this rationale and find it troubling. Our judges must decide all cases in adherence to legal precedent and rules of statutory or constitutional construction.

The role of a judge is not to rule based on his or her own personal judgments or comply with one's empathy, how they think the world really works, concerns and values—deep or shallow—all subject to personal views, ideology and the winds of time and political change. No, the role of a judge should adhere to the laws as they are written.

An appointment to serve on the Supreme Court of the United States is a lifetime term. It was crafted by our Founders to protect and insulate the highest Court of our land from personal concern, empathy, individual values or how one thinks the world really works at some point of time, not to mention the threat of any influence of politics.

Nominations to the highest bench should therefore not be considered lightly. It is one of the most important votes a Senator has the privilege to cast.

And I would submit compared to the standard of legal precedent, statutory rules, constitutional construction, again personal values, concerns, how the world allegedly works and one's personal criteria of empathy represents a lesser standard—sort of a standard lite.

The qualifications of the nominee must be carefully considered. As U.S. Senators, we have an obligation to ensure that our courts are filled with qualified, impartial judges.

In light of that I must ask—who is Elena Kagan?

In reviewing Ms. Kagan's qualifications, I find her lack of judicial experience striking.

While others note that serving as a judge is not a requirement for a Supreme Court nomination, it has also been noted that every nominee in nearly 40 years to the Supreme Court has had extensive judicial experience, whether from the bench or as a litigator in the courtroom.

Ms. Kagan's litigation experience is limited, with the majority of her arguments being made during her brief tenure as the U.S. Solicitor General.

Given her obvious lack of experience in the court room, one must ask if this is the best position to receive on-the-job-training? Will the ''craft'' of judging come innately to Ms. Kagan or is it a skill honed by years of practice and judicial experience?

Some have argued in defense of such a thin judicial resume that nominees can bring a ''real world''—- whatever that is—- perspective to the bench. Nonetheless, much of the nominee's experience lies in the hallowed, Ivy League, halls of academia, indeed a world of its own.

While I do not question the merits of a strong university background, I question how that makes one more in tune with the ''real world.''

Additionally, the nominee's resume includes her positions as special counsel and policy advisor in the Clinton administration—a role in which she truly relished her job. During her tenure she advocated for policies involving the second amendment.

In response to a Supreme Court decision which struck down the Brady Act's requirement of background checks before gun sales, documents from the nominee's tenure suggested that the administration explore how to maneuver around the Court's decision by executive action.

The advice here goes beyond legal counsel and indicates a clear interest in achieving a policy goal by going around the Supreme Court's decision, while forgoing the jurisdiction of Congress.

When determining how Ms. Kagan may approach a seat on the Court, her position as a policy adviser is one of the few records available to review.

Does this type of maneuvering indicate how Ms. Kagan would use her position as a Supreme Court Justice to justify an agenda where a policy goal is the intended outcome?

I must also say that as dean of Harvard Law School, Ms. Kagan's effort to ban military recruiters from the main placement office on campus is deeply troubling.

The justification for violating the Solomon Amendment—named after Congressman Gerald Solomon—was to protest the military's don't ask, don't tell policy. This action was also consistent with her own expressed views.

It must be noted, blocking access to military recruiters is counter to Federal law.

Only when threatened with the loss of Federal funding, did Harvard comply. Ms. Kagan then used a stayed decision by an appellate court, which determined the Solomon Amendment was unconstitutional, to reinstitute the ban. Shortly thereafter, the Supreme Court overturned the appellate court's decision by an 8–0 ruling.

According to Chief Justice John Roberts, ''A military recruiter's mere presence on campus does not violate a law school's right to associate, regardless of how repugnant the law school considers the recruiter's message.''

I must say, I don't know of any recruiter who would stand up and debate students in the circumstance of a policy judgment—more to the point, in regard to a policy that is as controversial as don't ask, don't tell. They are there to recruit individual students or to answer questions they may have.

U.S. servicemembers deserve our unfettered support, as they face unimaginable danger on the front line in defense of our Nation. Their willingness to sacrifice their time away from home and loved ones while serving in harsh and dangerous places under difficult circumstances should be honored.

It seems to me we dishonor their sacrifices and service by hollow justifications of policy agendas. These efforts are a clear indication to me, as well as my fellow Kansans, that Ms. Kagan's agenda is at odds with her role as a dean and a future Supreme Court Justice, and is clearly out of step with the average American no matter how deep her concern, empathy, values or the real world she believed she could change.

It is clear from her time as a policy adviser during the Clinton administration—a job she truly relished—that she supports methods of enacting policy changes through administrative means and around the jurisdiction of the legislative branch.

This type of disregard for the jurisdiction of the elected branch of government is concerning.

Ms. Kagan's zeal and enthusiasm as a political advisor and an academic does not qualify her for a lifetime appointment to our Nation's highest Court.

Not only does she lack experience on the bench, but her record clearly demonstrates a propensity towards pursuing an activist agenda.

In her own words, Ms. Kagan confessed difficulty in ''taking off the advocate's hat [to] put on the judge's hat.'' This admission is at best worrisome; at worst, a clear indication of her intent to legislate from the bench.

We have a constitutional obligation to ensure that our judges are impartial and faithful to the law. During Chief Justice John Roberts' confirmation hearing, he noted that ''Judges and Justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire.'' They may go to criticize the umpire, but they do not go to see him.

I am not convinced that Ms. Kagan will limit herself to merely applying the rules.

Given the limited judicial background and a lack of forthrightness in queries as to her judicial philosophy during the nomination hearings, I am fearful that this nomination will serve as another tool in what we have witnessed in further encroachment of government into the everyday lives of the American people.

Kansans have made clear to me that they do not want activist judges on the Court and they do not want additional government intrusion into their daily lives and pocketbooks, especially coming from the bench.

Unfortunately, I think appointing Ms. Kagan to the Court will result in more of both. Therefore, I must oppose her nomination.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. BURR. The American people are worried about the direction of our country, and I absolutely share their concern. The public has witnessed Washington's growing disregard for the Constitution and its limits on government power. Too many of those powers see no limits to their authority, and that, to me, is frightening.

The size of government has exploded, spending is out of control, the national debt is soaring, and Congress has passed thousands of pages of legislation with little concern for the effects on the rights of everyday Americans and with no thought at all to the debt we saddle our children and our grandchildren with.

The Founding Fathers knew the dangers of expanding government power. The Founders knew what Barry Goldwater knew when he said: ''A government strong enough to give you what you want is strong enough to take it away.''

They established the judiciary branch in order to protect against an overly aggressive government. They envisioned it as a neutral arbiter of disputes based on the written law and as a check on government power grabs beyond the intended authority.

This is why the judiciary is so important and why the lifetime appointment of a Justice to the Supreme Court is one of the most serious actions any of us will consider. We must have judges who are committed to the job of holding us to the words of the Constitution and laws that are written.

We, in Congress, have proven again and again that we will not limit ourselves, and the executive branch continues to do the same. The American people knew this, and that is why they are concerned about President Obama's nomination of Elena Kagan to the U.S. Supreme Court. I am concerned that Ms. Kagan does not seem to recognize the limits the Constitution places on the Federal Government and does not understand or seem to understand the role of a Supreme Court Justice.

Ms. Kagan, of course, does not have a judicial record for us to base our decisions on. I do not think that alone should disqualify her, but it does make it difficult to discern how she will perform as a judge. Ms. Kagan has spent most of her career in political roles and

in the academic world. I do not think it is appropriate to cast my vote based only on her politics, but I do think her record shows she has been unable to separate her politics from her legal advice, even in her purely legal role in clerking for the Supreme Court. This is incredibly problematic.

I am concerned Ms. Kagan will only further the rapid expansion of the Federal Government, that her actions, particularly on issues such as military recruiting, second amendment rights, and abortion, show that her first allegiance is to her own political views. Her record and her testimony demonstrate that she is likely to limit the powers of the Federal Government only based on her personal political views and not based on the enumerated powers of the Constitution.

Our Founding Fathers established a Federal Government of limited power. They enumerated those powers and intended the list to be exclusive. In the 10th amendment, they specifically state: Powers not expressly granted to the Federal Government in the Constitution are reserved for the States. Everything not specifically named in the list of congressional powers was intended to be beyond Federal Government reach.

Unfortunately, legal progressives have sought to stretch that list far beyond its breaking point. Often they have chosen as their tool the commerce clause, which gives Congress the authority to regulate commerce amongst the States. Over the years, Congress has relied on the commerce clause to pass laws well beyond the scope of what our Founding Fathers intended, laws regulating matters totally unrelated to interstate commerce, such as how much wheat a farmer can grow on his own land for his own use or where a person might possess a firearm.

The Framers intended the limited nature of Congress's power as a method to protect the freedom of individual Americans to go about their lives without undue interference from government, but the limits the Constitution established matter only if our judges are willing to enforce them.

I am sad to say I do not believe Ms. Kagan will enforce those limitations. During her hearings, Senator COBURN asked Ms. Kagan a very basic question, but it is an important question that deserves a direct and straightforward answer. Senator COBURN asked this: ''If I wanted to sponsor a bill and it said, Americans, you have to eat three vegetables and three fruits every day, and I got it through Congress, and it is now the law of the land, does that violate the commerce clause?''

While Ms. Kagan acknowledged this would be a dumb law, she repeatedly stated the Court should give great deference to the will of Congress. She said: ''We can come up with sort of, you know, just ridiculous sounding laws and the principal protector against bad laws is the political branches themselves.''

I can certainly see why the American people are afraid, if the task of protecting against bad laws is left solely up to the political branch. Ms. Kagan had extreme difficulty in recognizing any limit at all on Federal powers. She simply refused to acknowledge that the Federal Government cannot pass a law telling American citizens what to eat.

Of course, I can see why the Obama administration supports her. The recently passed health care legislation is an exercise of unprecedented government power. The new health care law mandates—mandates—that Americans purchase health insurance.

By forcing Americans to purchase government-regulated insurance and by threatening them with IRS tax sanctions, the Obama administration is forcing its way into American lives in a way this country has never witnessed. Never before has the Federal Government forced Americans, under threat, to purchase a particular good or service.

I strongly disagree and most Americans disagree with this expansive view of the Federal Government's powers. We need Justices on the Supreme Court who are ready and willing to stand and defend the Constitution. We need Justices who recognize that there are, in fact, limits to the Federal Government's powers.

Not only must Supreme Court Justices recognize and enforce the limitations of the Federal Government, but they cannot owe any allegiance to advancing the political agendas of the President who appointed them. I do not believe Ms. Kagan fully appreciates this critical point. To the contrary, I believe that, if confirmed, she will be tied more to her own political agenda than to the Constitution of this great country.

Ms. Kagan's record is truly disconcerting to me. Throughout her career, her record reveals that she put politics above the law. Such a philosophy has no place in the Supreme Court. I oppose Ms. Kagan not because of her political views, I oppose her because she has not demonstrated an ability to leave those political views at the courthouse door. As such, she fails to meet the minimum requirement for any judicial appointment: impartial fidelity to the written law.

On military recruiting, Ms. Kagan has fought zealously to keep recruiters off our campuses during a time of war. As dean of Harvard Law School, she sent e-mails to the entire Harvard Law School community saying she abhors it, the military's don't ask, don't tell policy, and calling it a ''profound wrong,'' a ''moral injustice of the first order.''

The Obama administration has defended her actions against military recruiters saying these claims were overblown because she ultimately continued the practice of her predecessor in allowing the military to recruit through the school's veterans organization, which was primarily a social organization with fewer than 20 members.

Yet even this paltry action was only a way to continue to receive Federal funding for the school. A Federal law, known as the Solomon Amendment, denies Federal funding to any institution of higher education that has a policy or practice that either prohibits or, in effect, prevents the military from gaining access to the campus or access to students on campus for the purpose of military recruiting in a manner that is at least equal in quality and scope to the access to campus and to students that is provided by any other employer.

Even then she explains that doing so caused great distress. Ms. Kagan did everything she could to fight the Solomon Amendment, even signing on to an amicus brief in the Supreme Court in the case of Rumsfeld v. FAIR, with about 40 other law professors opposing the amendment. The Supreme Court unanimously rejected their argument. Not one Justice found it convincing—not Souter, not Breyer, not Ginsburg, not Stevens.

Ms. Kagan has demonstrated similarly poor judgment on the second amendment. When she was clerking for Supreme Court Justice Thurgood Marshall, she had the opportunity to consider Sandidge v. United States, a DC firearms case remarkably similar to the 2008 DC v. Heller case, in which the Court ultimately struck down the DC gun ban. In evaluating the case for Justice Marshall, she recommended that the Court not even consider the case.

Ms. Kagan wrote that the petitioner's ''sole contention is that the District of Columbia's firearms statutes violate his constitutional right to 'keep and bear arms,' '' and then said, ''I'm not sympathetic.'' That was her remark to Justice Thurgood Marshall.

Ms. Kagan also worked on several anti-second amendment initiatives in the Clinton administration. She worked on the Clinton administration's response to the Supreme Court's 1997 decision striking down parts of the Brady handbill law. The Court there said that Congress could not command State and local chief law enforcement officers to conduct Federal background checks on handgun purchasers. She considered such proposals as outlawing the sale of handguns where a chief law enforcement officer was unavailable or unwilling to conduct a background check, and also suggested that President Clinton issue an Executive Order to do the same.

She coauthored two policy memos advocating for events and gun control proposals, including legislation requiring background checks for all secondary market gun purchases, a ''gun tracing initiative,'' a new law holding adults liable for giving children easy access to guns, and a call for a new gun design ''that can be shot only by authorized adults.''

She drafted an Executive Order restricting the importation of dozens of

semiautomatic rifles that had been considered ''sporting'' and importable under the 1994 assault weapons ban. One of her colleagues in the White House described the plan by saying, ''We are taking the law and bending it as far as we can to capture a whole new class of guns.''

She also worked on an effort to allow background check information from lawful sales to be retained by law enforcement, and a member of her staff wrote, ''the longer we are able to keep records—even days, weeks—the more useful [it] will be as an overall law enforcement tool.

This, of course, is exactly what the gunners don't want.'' ''Gunners,'' a new word.

As Solicitor General, Ms. Kagan notably declined to submit a brief in support of the petitioner in the McDonald case—proably the biggest second amendment case in decades.

In working on the Volunteer Protection Act, Ms. Kagan expressed concern to the Department of Justice that ''Bad guy orgs'' like the NRA and the KKK might be included in a ''cumulative list'' of nonprofits whose volunteers would qualify for liability protection from lawsuits. To lump the NRA in with such a despicable organization is an insult to gun owners across America.

On partial-birth abortion and on taxpayer-funded abortions, Ms. Kagan also has a history of far-left advocacy on abortion issues, skewing even her legal judgments based upon personal politics.

When she was working for Justice Marshall, she urged him to vote to deny review of a lower court decision holding that prison inmates had a constitutional right to taxpayer-funded elective abortions, and even though she admitted that parts of the decision were ''ludicrous'' and that the facts showed no constitutional violations, she called it ''well-intentioned.'' She insisted the Court should deny review, and let this decision stand, because she was concerned that the Court might ''create some very bad law on abortion.''

Memos and handwritten notes during her time in the Clinton White House demonstrate that she pushed even the Clinton administration further to the left on the issue. President Clinton at the time had expressed a desire to ban all elective partial-birth abortions, to which, as she wrote in a handwritten note to the White House Counsel at the time, ''This is a problem. . . .'' She was the lead person working on a strategy to ensure that elective partial-birth abortions remained available without real restrictions. In one memo, she lays out her plan to support a ''ban'' that includes a ''general health exception'' that would make the ban largely meaningless.

Even when she heard that the American College of Obstetricians and Gynecologists was prepared to issue a statement stating that they ''could identify no circumstances under which [the partial-birth] procedure . . . would be the only option to save the life or preserve the health of the woman,'' she continued her fight.

In an internal White House memo, she notes that the medical statement ''would be a disaster'' for the White House's case against the partial-birth abortion ban. Documents show that she then drafted new language, hedging the original medical judgment, which the organization then published as their own, verbatim.

She then authored a memo to President Clinton arguing that his preferred approach, without the health exception, was unconstitutional, and that ''the groups will go crazy.'' Of course, in 2003, Congress passed, and President Bush signed, a law prohibiting partial-birth abortion, without such a health exception. The Supreme Court upheld that law.

Conclusion: I am afraid Ms. Kagan's record demonstrates that she substitutes her own political viewpoints for legal judgment. If confirmed, I believe Ms. Kagan will add to Washington's growing disregard for the Constitution of this country and its limits on government power, instead of protecting against intrusion and government actions, as the courts were designed to do.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. I am going to speak in support of Solicitor Elena Kagan for the Supreme Court in a minute, but just for a brief minute, I wish to speak about another very important issue, the legislation we are about to vote on, the legislation that will help teachers and police officers and firefighters and other workers retain their jobs.

I wish to thank my colleagues from Maine, Senator OLYMPIA SNOWE and Senator SUSAN COLLINS, for their courageous support of this measure. I would like to take a moment to talk about the critically important component of the legislation we will be voting on shortly.

That component is called the local share language that will send critical aid directly to county governments in any State. The counties in my State are always worried. When we send the money to Albany, they never see it or they see it much later and Albany takes a cut. But legislation that I have been able to put into the bill says: If the local area pays for part of Medicaid, then they should be reimbursed directly.

Anyone who is familiar with New York knows we have some of the highest property taxes in the Nation, way too high.

In fact, residents in West Chester County have the unfortunate distinction of having paid the most in property taxes in the entire country. Nassau County residents follow quickly. On the list of the top 20 counties with the highest property taxes, 5 are in New York. This provision, which will send a total of $530 million directly to local county governments, will have a tangible and important benefit for New Yorkers everywhere. Its No. 1 job is going to prevent counties from having to raise their already too high property taxes. County executives from one end of the State to the other—in Erie County, Nassau County, and others—have told me if they can get this money, this Medicaid relief—the Medicaid burden is so high—it will enable them to not raise property taxes. That is why I fought so hard to ensure this local share language was included in the first stimulus package and now in this bill. We know money sent to Albany far too often stays in Albany. The bill will not only provide property tax relief, it is an investment in our future. It will keep teachers in the classroom and cops on the beat and firefighters in the firehouses. A recession is no excuse to prevent the children from getting the best education they can get, no excuse for letting criminals get away from the dastardly crimes they commit.

Speaking of our children and their futures, I wish to mention one more important thing. We are making these investments without adding a dime to the Federal deficit. In fact, this bill, in addition to the benefits it contains, will reduce the deficit by over $1 billion. Congress should be focused like a laser on fighting unemployment and getting the economy humming on all cylinders again. This bill is part of that ongoing effort. For the good of the country, I implore my colleagues to support this sensible, important bill.

KAGAN NOMINATION

Madam President, later today, we will confirm an exceptionally well-qualified candidate to be an Associate Justice of the Supreme Court, and average Americans will be a step closer to once again having their voices heard in the highest Court in the land. This is because Solicitor General Elena Kagan brings both moderation and practical experience to a Court sorely in need of both.

Why, then, are so many fighting over General Kagan, a nominee who is mainstream through and through? Why are so many fighting? Our judicial system is at the tipping point. Of the six most conservative Justices in living memory, four are on the Court right now. Two of those four were confirmed within the last 5 years. It didn't happen by accident. Many conservatives decry what they call liberal judicial activism, but what they want is judicial activism of the right. Make no mistake about that. There can be activists on the left and on the right. Both seek to impose their views rather than follow the law.

The supposedly staunch opposition to judicial activism on the right has shown its true colors in this debate over a truly moderate and mainstream candidate. They themselves want rightwing judicial activism to pull this country into the past.

I have always said the far right is using the only unelected branch of government to do what it cannot do through the two elected branches—turn back history to a time when corporations and large special interests had more say in our courts than ordinary people. The right has created a kind of judicial activism that is as pernicious as the activism on the left. But they do not see it that way. Activism is their very ideology.

When George Bush was President and conservative majorities in the House and Senate still couldn't pull America back 100 years, they said: We need to do it by the Supreme Court. Hence, extremely conservative nominees were nominated and approved. As a result, our Court is on a collision course with precedent, with the other branches of government and, frankly, with the American people. General Kagan is exactly the antidote we need to put the Court back on the level, to put the bubble back on the plumb. General Kagan is a 6 or 7 on a scale of conservative to liberal, with 1 being the most conservative and the most liberal being 10. The President's nominees were ones, with an occasional two. They were way over to the far right. That is what independent, objective, not Democratic, not Republican analyses show. Again, four of the five most conservative Justices are on the Court right now.

The American people are reaping the bitter harvest from new laws that have been made and old precedents that have been overturned. Put simply, in decision after decision, this conservative, activist Court has bent the law to suit an ideology. At the top of the list, of course, is the Citizens United case where an activist majority of the Court overturned a century of well-understood law that regulated the amount of money special interests could spend to elect their own candidates to public office.

In the Ledbetter case, the Court upended decades of settled law and an agency interpretation to hold that a woman who received less pay than a male colleague is only discriminated against by the first paycheck, not by the last. There are many other examples, over and over—on the Clean Water Act, punitive damages against the Exxon Valdez, antitrust law where, again, favoring the special interests and turning back the law, this conservative majority has become the most activist Court certainly in decades. These truly activist decisions show little respect for Congress, for the executive branch, and for the well-settled understandings the American people commonly hold about our democracy. Yet somehow they label General Kagan as an activist, because she wants to follow precedent. That is not fair, and it is not true.

The record shows that General Kagan's record is replete with cases, articles, opinions, and discussion that shows and proves she is well within the judicial mainstream. First, in the course of her nomination hearing, she answered more than 700 questions. She answered them with a degree of candor and specificity we simply did not see when either Justices Alito or Roberts were before us, nominees who, I submit, actually had conservative agendas to hide from the American people, unlike General Kagan who has nothing to hide. When she was asked her views on interpreting the Constitution, she gave reasoned, detailed answers, the most reasoned, detailed answers I can remember from a nominee. She gave candid and detailed answers about her views of specific precedent governing the right to privacy, the commerce clause, freedom of the press, the second amendment, civil rights, cameras in the courtroom, even about her role as Solicitor General.

When Justice Alito was asked about his views of the takings clause, he gave an opaque answer about the value of owning private property, not even close to the specificity that General Kagan gave. But here we have Members on this side of the aisle saying they won't vote for Kagan because she is not specific enough, when they were in full support of Alito and Roberts who gave far less specific answers. Why? We know why. Again, the view on the right that they want their own brand of activism, judicial activism of the right to pull the Court and the country away from the mainstream.

My colleagues' continuing insistence that General Kagan is hiding and outside the mainstream agenda says more about their agenda than hers. It appears to me the only way to explain some of my colleagues' opposition to General Kagan is, they will vote for only ones and maybe a few twos on the Supreme Court, people way over to the right side. And if one believes in judicial activism of the far right, that is exactly what one would do.

A second sort of evidence of General Kagan's moderation is her stunningly broad bipartisan support. Each of the Solicitors General to serve under Democratic and Republican Presidents for the last 25 years has endorsed her. While at Harvard she got a standing ovation from, of all people, the Federalist Society, the training grounds for many of President Bush's conservative judicial nominees. She bridged the wide ideological divide between conservative and liberal faculty members. She brought together a faculty that had been fighting with one another. They came together under her thoughtful, pragmatic, and moderate decisions. As a result, to a Harvard faculty generally regarded as liberal, she bought in many conservative apppointments.

Why then does General Kagan not have more bipartisan support within this body? Why will she get fewer votes today than all but two Justices in the history of the Court, Justices Alito and Thomas? Again, one need look no further than the sheer amount of law that has been undone by the current Court in the last few years, law that protects ordinary Americans against special interests and corporate interests.

These are the wages of a war that the far right has mounted in order to remake the law. But General Kagan will not be a soldier in their fight and, hence, despite her moderation, does not get their vote.

Having studied the Court's decision in Citizens United, I am increasingly convinced that their war will not be won until we return to 1905, to what legal historians call the Lochner era of Supreme Court jurisprudence. In 1905, squarely in the age of the robber barons, big railroads and even bigger oil, a very conservative majority of Justices held that the people of New York, my State, could not pass laws that limited the legal workweek to 60 hours. This is because the Justices found, somewhere in the due process clause of the 14th amendment, that business had an inherent right to conduct itself without any government regulation, even if public safety was at stake. One hundred years later in Citizens United—same country, different setting, different rules—it does the same type of thing. Citizens United will go down as the 21st century example of 20th century Lochner. Allowing corporate and special interests, now because they have so much money, to pour that money into our political system without even disclosure, without even knowing who they are or what they are saying or why they are saying it, they are taking politics away, government away from the average person because of the influence of such large amounts of dollars.

Fortunately for Americans, General Kagan will be confirmed today, and gears of the time machine that is set to 1905 will be substantially slowed down. She will be confirmed with some bipartisan support, and I praise my colleagues on the other side who had the courage to break from the hard right. It takes courage to break from the extremes of either side. It is not easy. We all know that, no matter which party we are in. They have had the courage to do it. I salute them. She will be confirmed because she is mainstream, because enough of my colleagues recognize that her practical, real world experience will be a valuable asset to our judicial system and to our country.

And about practical experience, she has it in very real and tangible ways. She is an accomplished lawyer, first female dean of the Harvard Law School, a public servant who worked in all three branches of government. Yet some on the other side call her inexperienced. It is hard to believe. In fact, General Kagan's experience does measure up to her colleagues and predecessors. Like Justice Thomas and the late Justice Rehnquist, General Kagan held high-level political jobs in the executive branch. Like William O. Douglas and Felix Frankfurter, she spent much of her career in academia. And like 38 other Supreme Court Justices

before her, she does not have direct judicial experience, although like many of them, she clerked for a Supreme Court Justice.

Some of my colleagues have belittled General Kagan's experience as better suited to the backwaters of academia than a seat on the highest Court. I think this is wishful thinking on their part, perhaps because they know her real world experience will bring the Court back to the center.

And, in fact, it is clear that her experience at Harvard Law School demonstrates, rather than undermines, her qualifications.

Unlike every other current Justice on the Supreme Court, General Kagan ran a business. She understands much about how the real world functions that many of our current Justices simply do not.

She managed 500 employees and a budget of $160 million annually. Plus, this real world management experience was forged in an environment that was ideologically charged when she arrived.

But it was much less so when she left. Jack Goldsmith, whom Elena Kagan hired and who had been head of President Bush's Office of Legal Counsel, wrote of her:

> It might seem over the top to say that Kagan combines principle, pragmatism, and good judgment better than anyone I have ever met. But it is true.

General Kagan's skills as a consensus builder are sorely needed on a fractious Court that often struggles to find the moderate ground between its two wings. A recent study showed that last term, the Court issued ''conservative'' opinions 65 percent of the time—more than any term in living memory.

The fact that the pull to the right is so demonstrable suggests also that these decisions are often quite broad—as in the Citizens United case, where the issues that were decided had not initially been briefed. Someone as persuasive and perceptive as General Kagan could help to narrow these decisions, to put together 5 to 4 majorities that issue mainstream, modest opinions.

An important component of General Kagan's pragmatic experience is her gender. As difficult as managing an ideologically diverse law school faculty is for anyone, General Kagan did it as the first woman. I have heard it said that Ginger Rogers did everything Fred Astaire did, but backwards and in high heels.

The exact details obviously don't apply to General Kagan, but the sentiment does.

Serving as the first female dean of Harvard, and the first female Solicitor General, has surely broadened her views and deepened her understanding of how Americans work and relate to one another. Her role as a woman in each of these institutions enriches the practical experience that she will bring to the Court.

This is the candidate whom many of my colleagues have branded as an out-of-the-mainstream liberal activist.

At the end of the day, it is fine to disagree with General Kagan's views and ideology. But labeling such a mainstream candidate as a liberal ideologue sets a troubling precedent. It moves the center further and further to the right.

I am confident that General Kagan is the right candidate for the Supreme Court at the right time. I will proudly cast my vote for her.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 1586, which the clerk will report.

The legislative clerk read as follows:

> House message on H.R. 1586, motion to concur in the House amendment to the Senate amendment to H.R. 1586, an act to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes, with an amendment.

Pending:

> Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid amendment No. 4575 (to the House amendment to the Senate amendment to the bill), in the nature of a substitute.
>
> Reid amendment No. 4576 (to amendment No. 4575), to change the enactment date.

The ACTING PRESIDENT pro tempore. Under the previous order, all postcloture time is considered expired, except there will be 20 minutes of debate equally divided and controlled between the Senator from Montana, Mr. BAUCUS, and the Senator from South Carolina, Mr. DEMINT, or their designees.

The Senator from South Carolina.

Mr. DEMINT. Madam President, how long do I have to speak?

The ACTING PRESIDENT pro tempore. Five minutes.

Mr. DEMINT. Thank you, Madam President. I think I can do it in that time.

It seems we have time to do almost anything, but what we need to do is address the economy and jobs in this country. Just about every economist, from all across the political spectrum, says one of the most important things we can do right now is not to raise taxes. Yet taxes are scheduled to go up in 5 months on almost every American, including the businesses that create the jobs.

Of the two amendments I will offer here today, one amendment will stop the increase in income tax rates, and the second will stop the tax increases on small businesses that file as individuals.

Clearly, it makes no sense in the middle of a recession to raise taxes on individuals. An individual in South Carolina making $40,000 a year will pay $400 more next year in taxes if we do not act. A married couple with a combined income of $80,000 will see their taxes go up nearly $2,200. A married couple earning $160,000 combined could pay $5,500 in additional taxes.

The same thing will happen to small businesses that create the jobs. We will be taking money out of their accounts and putting it in our accounts. At a time when they need to keep the money to grow our economy and to hire workers, we do not need the money to continue to waste it on what we have been doing.

Consider the stimulus bill. A couple of my colleagues this week came out with a report showing where a lot of this stimulus money went: $62 million for a Pennsylvania tunnel that Governor Rendell said was a tragic mistake; $193,000 for voter perception of the stimulus bill. I could go on and on. This is not money we need to spend right now.

What we need to do is assure businesses and individuals that the tax rate this year will be the same next year so they can make good decisions that will move our economy forward.

MOTIONS TO SUSPEND

Madam President, in accordance with rule V of the Standing Rules of the Senate, I move to suspend rule XXII for the purpose of proposing and considering the following motion to commit, with instructions, H.R. 1586: I move to commit H.R. 1586 to the Committee on Finance with instructions to report the same back to the Senate with changes to include a permanent extension of the 2010 individual income tax rates, and to include provisions which decrease spending as appropriate to offset such permanent extension.

And, Madam President, in accordance with rule V of the Standing Rules of the Senate, I move to suspend rule XXII for the purpose of proposing and considering the following motion to commit, with instructions, H.R. 1586: I move to commit H.R. 1586 to the Committee on Finance with instructions to report the same back to the Senate with changes to include a permanent extension of current individual income tax rates on small businesses and provisions which decreases spending as appropriate to offset such permanent extension.

With that, Madam President, I reserve the remainder of my time and yield the floor.

The ACTING PRESIDENT pro tempore. The motions are pending.

The Senator from Montana.

Mr. BAUCUS. Madam President, this is a stunt. It is a gimmick. It is not serious, and it is very sad. We are in very difficult times. The economy is in recession, going out of recession. We are

facing the prospect of what to do about the so-called Bush tax cuts of 2001, 2003. Those are massive tax cuts that were put in place in 2001 and 2003. They expire at the end of this year. It is a big question: What should the Congress do, what should the country do about those tax cuts?

At the same time, we are facing terrific, unfortunately high deficits, very high deficits, almost as high as they were at the end of World War II—not quite but almost. The national debt now is approaching, as a percent of GDP, the levels that it was near the end of World War II—not quite. In fact, they were much higher at the end of World War II than they are today.

But the main point is, these are very serious questions. They require deliberate thought. They require Senators to work together to find solutions that help our country, help us decide: To what degree should these tax cuts be extended? Which ones make sense? Which ones do not?

We have several goals here. Clearly, people do not like paying taxes. But, clearly, Americans who are responsible know they must pay some taxes in order for our country to function. There are two extremes here. One is anarchy and the other States' outright total socialism. There is some balance in the middle for a civil society to function.

These questions are very big: How are we, as a society, going to properly function? To what degree should we begin and to what rate reduce the deficits and the debt? That is a very serious question. Other countries worldwide are facing these same questions, and we are interrelated, the United States, with other countries. That is a very serious question.

In addition, how much should the Bush tax cuts be extended? At what rate, what amount, et cetera? Should all rates be extended? Should some? Clearly, most Members of this body feel at least the so-called middle-income tax cuts should be extended permanently; that is, those whose incomes are $200,000 or lower or families with $250,000—at least. Then, there are other questions about what to do with the rest.

The motion offered by the junior Senator from South Carolina has this effect: He says all the tax cuts should be extended. First of all, we do not know what that means. Is that just individual rates? If it is, that is about $1.1 trillion it is going to cost over 10 years. Does he also want to include the alternative minimum tax for 10 years or does he also want to include dividend cap gains extended? I don't know. He doesn't say. But I assume he does. That is going to be about a $3 trillion cost—a $3 trillion cost—over 10 years. He wants that all replaced with spending cuts. I ask you, is that serious? That is not serious. I ask, is that a stunt? Yes, that is a stunt. Is it a gimmick? Yes, it is a gimmick. Is it serious? No, it is not serious.

These are serious times—very serious times—and we should not be engaged or even give comment to this kind of a stunt. I hate saying that. I don't like saying that. But I have to be candid. I have to be honest. If I am faulted for anything—and I am faulted for a lot—it is for being honest and candid. This is a stunt. I urge my colleagues not to fall for this.

Now, the $3 trillion—I asked: Where are we going to cut $3 trillion? Our total receipts, Federal receipts for the year, are about $2 trillion, a little over $2 trillion. That is pretty good. Well, OK, he wants to cut $3 trillion over 10. Now, where in the world? It can't be done. It cannot be done. Impossible. He knows that, but still he stands on the floor making this grand political statement. Does he say anything about small business? He doesn't say anything about small business. What is small business? I have no idea. It is kind of veiled a little bit under the cover of the top rates. He doesn't define it. We don't know what it is. I mean, it is just sad.

We don't have much time left to deal with these tax cuts. We don't have many legislative days left. We have to just do what Senators are supposed to do, do what most people in our States want us to do—be reasonable, be thoughtful, take on the hard issues. And they will give us a lot of slack if they think we are basically doing the right thing, if we are doing our best—it may not be perfect but doing our best, and that is what we should do. This amendment is not our best. It should be resoundingly defeated.

Madam President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. There is 4 minutes remaining.

Mr. BAUCUS. I yield my 4 minutes to the Senator from Louisiana.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I appreciate the chairman yielding me just a few minutes. I wish to associate myself strongly with his remarks and urge our colleagues on this side to vote against the DeMint amendment. The Senator from Montana is absolutely correct. It is a stunt, and it is a very sad stunt.

If the Senator from South Carolina is trying to wave the flag of small business to try to convince anybody to vote for his amendment, I wanted to put some things in the RECORD that might convince them otherwise. This is a recent report that came out from the Tax Policy Center, the Urban Institute, and the Brookings Institution—very well respected. It is dated August 3, 2010.

I quote:

If the objective—

Which would be the extension of all the Bush tax cuts—

is to help small business, continuing the Bush tax cuts on high-income taxpayers isn't the way to go [because] it would miss 98 percent of small business owners . . .

It would miss 98 percent of small business owners.

So I beg my colleagues, if you want to have this debate over tax cuts, we can have it at a different time. Please don't wave small business out here.

What the Senator from South Carolina will do—the effect of his amendment, according to this very reputable report—would completely miss 98 percent of small businesses in America. They are desperate for help. His amendment misses them by a mile. If we were in target practice today, he wouldn't pass. He wouldn't hit the target for a mile.

I have been on this floor for over 2 weeks with dozens of Members on this side begging the Republican Party on that side to do something before we leave to help small business. There is $12 billion of tax cuts directly to them. The Senator from South Carolina voted no.

We have $30 billion that will turn into a $300 billion lending program directly to small businesses. Small businesses are the only people who could get it and community banks are the only people who could access it. Did the Senator from South Carolina vote yes or no? He voted no.

This is a stunt, and it is a sad stunt. I tell my colleagues, there is a lot at stake. I know my 4 minutes is over, but I wanted to come and strongly urge my colleagues to follow the lead of the chairman and vote no on this sad stunt.

Mr. DEMINT. Madam President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 55 seconds remaining.

Mr. DEMINT. Madam President, I think it is a sad day in the Senate when keeping current tax rates the same and stopping the largest tax increase in history is called a stunt.

Over the last few weeks, the Democrats have voted to raise taxes on dividends and capital gains, affecting many senior citizens, and raised the death tax to over half of what people leave to their families. Now, today, they want to raise the marginal income tax rates. If we left the tax rates the same, it would do more to help small businesses and jobs in America than any of the bailout or targeted programs my colleagues are talking about.

My Democratic colleagues have had 4 years to address the coming tax increase and have done nothing. It is very important, but it is sad that they will not address it. They will do every kind of government program that comes to mind, but they won't leave the money in the hands of the American people so we can grow our economy.

I encourage my colleagues but also the American people to look in on what is happening today.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BAUCUS. Madam President, I would just like to correct the statement made by the Senator from South Carolina. He is saying this side has not

wanted to extend tax cuts. That is totally inaccurate. This side does want to extend tax cuts, and we will. Come September, the Senator from South Carolina is going to see that this side of the aisle very definitely wants to extend those Bush tax cuts, including the 2001 cuts, the 2003 cuts. The only question is how much to do on AMT and how much to do on Federal estate tax. But we do want to extend them.

I see he is walking off the floor because I think he knows I am right and he doesn't want to have to hear it, but the fact is, we are going to extend. We will do our level best. The real question is whether we will have 60 votes to get that passed. That remains to be seen. I hope that happens. I don't see any Senators on that side of the aisle right now, but I hope there are a few—at least one—so hopefully we will get 60 votes in September. But we will make very strong recommendations to extend these tax cuts—maybe not all, entirely, but the vast bulk of them—in an effort to help the American people.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. DEMINT. Madam President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 226 Leg.]

YEAS—42

Alexander	Crapo	Lincoln
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Brownback	Grassley	Nelson (NE)
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Coburn	Inhofe	Shelby
Cochran	Isakson	Snowe
Collins	Johanns	Thune
Corker	Kyl	Vitter
Cornyn	LeMieux	Wicker

NAYS—58

Akaka	Gillibrand	Nelson (FL)
Baucus	Goodwin	Pryor
Bayh	Hagan	Reed
Begich	Harkin	Reid
Bennet	Inouye	Rockefeller
Bingaman	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown (OH)	Kerry	Shaheen
Burris	Klobuchar	Specter
Cantwell	Kohl	Stabenow
Cardin	Landrieu	Tester
Carper	Lautenberg	Udall (CO)
Casey	Leahy	Udall (NM)
Conrad	Levin	Voinovich
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 42, the nays are 58. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that the next two votes be 10 minutes in duration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. The question is on the second motion to suspend.

The Senator from South Carolina.

Mr. DEMINT. Madam President, I think all of us know——

The ACTING PRESIDENT pro tempore. All debate time has expired.

Mr. DEMINT. Madam President, may I have 1 minute to explain the amendment?

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DEMINT. Madam President, we all know the economic engine in this country is small businesses. Most of our jobs come from small businesses. It makes no sense in the middle of a recession for us to take more money from small businesses and bring it here.

This amendment simply keeps current tax rates the same for those who file individually as part of their small businesses. It is a simple idea. I think we all agree on it. It is important that we do it before the break and let small businesses know they can plan for next year. They can hire people. They can help grow our economy. I encourage my colleagues to support it.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. Madam President, I ask for 1 minute.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I do not know anybody who can responsibly vote for this amendment because we do not know what it is. What is the definition of ''small business''? It could be anything. I think it is a thinly veiled attempt to address the top rates. We are only talking about the top rates in effect.

The other amendment was totally irresponsible. It required a $3 trillion cut in spending over 10 years; $3 trillion—not a ''b,'' a ''t.'' This one is in the same vein.

Also, I think it is irresponsible because these are problems we must address seriously when we come back, not take this lightly with message amendments but seriously address when we come back in September what we do with the tax cuts and what we do on the deficits.

I strongly urge my colleagues to vote against this motion.

The PRESIDING OFFICER (Mrs. HAGAN). The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 42, nays 58, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—42

Alexander	Crapo	Lincoln
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Brownback	Grassley	Nelson (NE)
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Coburn	Inhofe	Shelby
Cochran	Isakson	Snowe
Collins	Johanns	Thune
Corker	Kyl	Vitter
Cornyn	LeMieux	Wicker

NAYS—58

Akaka	Gillibrand	Nelson (FL)
Baucus	Goodwin	Pryor
Bayh	Hagan	Reed
Begich	Harkin	Reid
Bennet	Inouye	Rockefeller
Bingaman	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown (OH)	Kerry	Shaheen
Burris	Klobuchar	Specter
Cantwell	Kohl	Stabenow
Cardin	Landrieu	Tester
Carper	Lautenberg	Udall (CO)
Casey	Leahy	Udall (NM)
Conrad	Levin	Voinovich
Dodd	Lieberman	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

The PRESIDING OFFICER. On this vote, the yeas are 42, the nays are 58. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I understand there is a pay-go statement that needs to be read into the RECORD. I ask that be done at this point.

The PRESIDING OFFICER. The clerk will read the statement.

The legislative clerk read as follows:

Mr. Conrad submits this Statement of Budgetary Effects of PAYGO Legislation for H.R. 1586, as amended by Senate amendment No. 4575. Total Budgetary Effects of H.R. 1586 for the 5-year Statutory PAYGO Scorecard, net increase in the deficit of $19.767 billion; Total Budgetary Effects of H.R. 1586 for the 10-year Statutory PAYGO Scorecard, net increase in the deficit of $12.634 billion. Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional budgetary effects of this Act.

The table is as follows:

ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR SENATE AMENDMENT 4575, CONTAINING PROPOSALS RELATED TO EDUCATION, STATE FISCAL RELIEF, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, RESCISSIONS, AND REVENUE OFFSETS (AS INTRODUCED IN THE SENATE ON AUGUST 2, 2010—AEG10260)

[Millions of dollars, by fiscal year]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
Net Increase or Decrease (−) in the On-Budget Deficit													
Net Budgetary Impact	−13	22,364	803	−1,737	−4,963	−6,180	−4,267	−2,749	−1,863	−1,396	−1,368	10,273	−1,371
Less:													
Previously Designated as Emergency Requirements [1]	−13	−111	−216	−666	−3,731	−4,757	−2,781	−1,292	−438	0	0	−9,494	−14,005
Statutory Pay-As-You-Go Impact	0	22,475	1,019	−1,071	−1,232	−1,423	−1,486	−1,457	−1,425	−1,396	−1,368	19,767	12,634

Note: Components may not sum to totals because of rounding.
[1] Savings in Titles II and III that would result from changes to programs and rescissions of funds previously designated as emergency.
Sources: Congressional Budget Office and Joint Committee on Taxation.

Mr. LEVIN. Madam President, there can be no doubt of the need for this bill, which includes an extension of enhanced Medicaid funding to States and funding to help keep teachers in the classroom and out of the unemployment line. Failure to enact this extension would place services to those most in need at terrible risk, and it would place many States, including my own, in an untenable budget situation.

Failure to enact the continued enhancement of Federal assistance for Medicaid and other health care programs would leave a hole more than $300 million wide in the budget of my State. Other States would face similar shortfalls. Plugging that hole in the current economic environment would almost certainly require service cuts or tax increases above and beyond those suffered already by so many of our States.

There is also little doubt of the need for the funding included in this bill to preserve teaching jobs. In the current climate, we should be looking for ways to preserve jobs. But that is especially true when loss of the jobs at stake would harm not only workers and their families, but students depending on these teachers to help them prepare for the future. Failing to approve this funding would damage our nation now and in the future.

The excuses our colleagues on the Republican side of the aisle have used to prevent passage of important legislation in recent weeks do not apply here. This measure is fully paid for. I regret that some of the pay-fors are accomplished by borrowing from other important programs, and efforts are under way to correct that problem.

Mr. DURBIN. Madam President, I come to the Floor today to discuss something very important to Illinois and so many others states FMAP.

As part of the American Recovery and Reinvestment Act, we increased the Federal matching rate for Medicaid, FMAP.

This is smart policy in a recession, because not only does it help people in a time of need, it is also one of the most effective ways to stimulate the economy.

Temporarily increasing Medicaid costs allows States to sustain their programs, rather than cutting them when families need them most.

It also generates business activity, jobs and wages in States that they would not otherwise have seen.

But the temporary FMAP increase we passed is scheduled to end on December 31 right in the middle of most States' fiscal year.

For the 3rd consecutive year, States are facing vast revenue shortfalls. One estimate is that States will face deficits of over $350 billion over the next 30 months.

As a result, at least 30 States are proposing cuts to their Medicaid programs for fiscal year 2011—cuts that will harm people right when they need help most.

These include cuts to eligibility, fewer benefits, more cost-sharing, and lower payments to the medical providers who see Medicaid patients.

The measure we are considering today would extend and phase out increases in the Medicaid matching rate for 6 months, through June 30, 2011.

It will provide $16.1 billion to States to ensure that they continue to receive an increased FMAP rate through the end of most States' fiscal years.

Illinois would receive about $550 million in Federal funding to help keep the State's Medicaid program afloat.

The spending in this measure is fully offset. It will not add a dime to the Federal deficit.

My home State of Illinois is facing a budget shortfall of $13 billion in FY11.

This is at a time when the unemployment rate was 10.4 percent in June, and the State's revenues from sales tax and individual and corporate income taxes are down more than $3 billion since the fiscal year 08 peak.

The State doesn't expect to return to fiscal year 08 revenue levels based on the current tax rates until fiscal year 15.

Because of this deficit the State has already started making hard choices.

Just last week, the Governor announced that to save $18 million, 2,700 non-union State workers would be required to take 24 days off without pay.

That is just one measure to save money, and they will be forced to consider additional painful cuts if we do not extend the increased FMAP rate through the end of the State's fiscal year.

Today, the Medicaid program in Illinois covers 2.6 million low- and moderate-income people in the State, including children, pregnant women and people with developmental disabilities and mental illness.

Illinois saw its FMAP rate increase from 50 percent to 62 percent as a result of the Economic Recovery spending.

The state of Illinois assumed a 6-month FMAP extension in its fiscal year 2011 budget.

Without an extension, the State will be short an additional $750 million this year.

Illinois has reviewed its Medicaid program, and determined that without an extension of the increased Federal matching rate, it may be forced to consider eliminating services for: 168,000 children from families with incomes just above the Federal Poverty Level; 18,000 adults from families with incomes greater than 133 percent of the Federal Poverty level; 200,000 adults covered by Illinois Cares RX—a state program that helps low-income adults afford prescription drugs; 63,000 children covered by Allkids—a comprehensive State program to provide insurance to kids who would otherwise not have health insurance.

Illinois was not alone in planning for a 6-month FMAP extension in 2011.

In fact, 30 States assumed that an extension would be provided, and as of today, about half of those states do not yet have contingency plans for how to balance their budgets if an FMAP extension is not passed.

If Congress does not extend the funds, governors and legislatures will have to revisit those budgets and consider new cuts, which will hurt the Nation's most vulnerable residents and will affect a variety of services.

These will be on top of cuts that have already been made over the past few years.

The National Association of State Budget Officers estimates that even as the need for State-funded services rose, states cut funding for services by 4 percent for fiscal year 2009 and almost 5 percent for 2010.

That's why 47 governors—Democrats and Republicans alike—have signed a National Governor's Association letter urging Congress to extend the Recovery Act's additional Medicaid funding.

In these difficult economic times, we are trying to help Americans return to work AND take care of those who are between jobs.

These benefits include continued access to quality health care under the Medicaid program.

Extending and phasing down the increased FMAP rate for another 6 months is a win-win for all of us. It will protect the most vulnerable during this time of need and provide immediate relief to State and local economies.

MEDICAID PHARMACY REIMBURSEMENT

Mrs. LINCOLN. I ask to engage in a brief colloquy with the distinguished Senate majority leader and Senator MURRAY as it relates to the intent of a provision in this legislation regarding average manufacturer price—or AMP.

Do I understand that the provision in section 202 of this bill is solely intended to ensure that Medicaid rebates are collected from the manufacturers of the particular drugs specified in the bill, that is inhalation, infusion, instilled, implanted, or injectable drugs not generally sold at retail pharmacies?

Mr. REID. Yes, the intention of this provision is to ensure that rebate dollars are collected for those particular drugs. Drug rebate dollars have long helped support state Medicaid programs and the provision will ensure an accurate calculation of AMP for the purposes of these drug rebates.

Mrs. MURRAY. I thank the Senator for engaging in a colloquy with Senator LINCOLN and me and would also like to clarify that this provision is in no way intended to impact reimbursement to retail pharmacies participating in the Medicaid Program. Is that the Senator's understanding?

Mr. REID. The Senator is correct. The Secretary should direct drug manufacturers to calculate AMPs for these drugs to allow States to collect rebates. In order to maintain pharmacy reimbursement at appropriate levels for these drugs, the Secretary should use the discretion that is provided under the Patient Protection and Accountable Care Act to calculate a Federal upper limit, FUL, at an amount that is at least 175 percent of the weighted average AMP for those covered outpatient drugs.

Mrs. LINCOLN. We would like to thank the leader for his clarification and shared goal of protecting access to critical drug therapies for vulnerable populations at retail pharmacies.

Mrs. MURRAY. I agree.

Mr. REID. I agree with the Senators on the importance of protecting beneficiaries' access to these drug therapies and the retail pharmacies that faithfully serve them. I thank the Senators for their shared commitment to this goal.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I ask for the yeas on the motion to concur in the House amendment to the Senate amendment to H.R. 1586 with amendment No. 4575.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

Amendment No. 4576 is withdrawn.

The question is on agreeing to the motion to concur in the House amendment to H.R. 1586, with amendment No. 4575.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 228 Leg.]

YEAS—61

Akaka	Gillibrand	Nelson (NE)
Baucus	Goodwin	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown (OH)	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murray	

NAYS—39

Alexander	Crapo	LeMieux
Barrasso	DeMint	Lugar
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker

Mrs. MURRAY. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BENNET. Madam President, today I was proud to vote for final passage of the amendment offered by Senators MURRAY, HARKIN, SCHUMER and REID to the FAA authorization bill. This amendment brings long overdue good news to teachers and kids in Colorado and those worried about losing access to the health care they need. I was elated to see the Senate break through the usual gridlock and pass this important legislation.

The package will save thousands of jobs and protect health services for kids and vulnerable populations across Colorado and the country. During this savage economy that is hurting families all over our state and our country, as we work to get our ship righted, our kids and our schools should be at the top of our list of priorities.

If we are going to ensure that we leave more opportunity for our kids than we ourselves have had then we must remain committed to education—to set the table for our kids' futures; to prepare them for the competitive world that awaits them; and to enrich their lives with a better education than the one that was offered to us.

I have tried to be a leader in the fight for the Medicaid Federal Medical Assistance Percentage, FMAP, funding and saving teachers' jobs. I was an original cosponsor of the Keep Our Educators Working Act of 2010, introduced by Senator TOM HARKIN. In February, I also led a group of 43 of my Senate colleagues in submitting a letter urging the majority leader to provide States with an additional 6-month FMAP extension.

The Medicaid FMAP extension passed today by the Senate was crucial in the effort to keep public servants at work across the country. Without it, States would be forced to layoff tens of thousands of more teachers and other public employees, cut education funding even further, and further reduce payments to health care providers. More than 900,000 public and private sector jobs could be lost.

Colorado alone would lose more than $200 million if the FMAP extension fell victim to Washington politics. Cuts could include eliminating state aid for full-day kindergarten for 35,000 children, eliminating preschool aid for 21,000 children, and increasing overcrowding in juvenile detention facilities, according the Center on Budget and Policy Priorities. The education jobs funding would prevent the loss of between 2,000 and 3,000 teacher jobs in Colorado alone.

I am glad to see this package is paid for. However, I was very concerned about the House package which paid for teacher jobs in part by cutting education reform programs. I joined 15 of my colleagues in signing a letter requesting that we find other offsets to pay for this important measure. I am very pleased that we were able to avert the cuts to critical education programs and save teachers' jobs—all without raising the deficit.

Additionally, while I strongly support the measure, in no small part because it is completely paid for and does not add one dime to our deficit, I would like to raise a strong concern with one of the pay-fors in this package. A rescission of $1.5 billion from the Department of Energy's, DOE, renewable energy loan guarantee program was used to help offset this amendment.

In Colorado this important program has helped foster tremendous growth in the clean energy economy. Just last month, President Obama announced a conditional loan guarantee for a solar manufacturing facility in my home state and there are dozens of job creating renewable energy projects across the country waiting for approval from DOE.

This rescission places $15 to $20 billion of private investment in clean energy investment in jeopardy. While I am constantly reminded that the Senate needs to make tough choices as we strive to be fiscally responsible, I am compelled to raise my objection to this offset. It is my sincere hope that, in the future, this Chamber, the House of Representatives and the administration will avoid tapping into what are already scarce clean energy investments to pay for what are admittedly important recession-stopping items such as the ones we approved today.

Mr. NELSON of Nebraska. Madam President, earlier today, I voted in favor of two motions designed to extend the 2001 and 2003 tax cuts. Let me be clear, I strongly support extending individual income tax rates. While I voted in favor of these motions to show

my support for extending the tax cuts, I do not agree with the tactics being used to advance this goal. The repeated attempts to suspend rule XXII in order to make a motion to commit a bill back to committee are becoming part of an ongoing dilatory effort in the Senate. These tactics are not a serious attempt to come up with a legislative solution but are designed only to score political points and slow the progress of the underlying bill. The American taxpayers deserve more. I believe that instead of looking to score points both parties should work together on a serious effort to extend these expiring tax provisions, not waste time with procedural distractions.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2010

Mrs. FEINSTEIN. Madam President, I ask unanimous consent the Senate proceed to immediate consideration of Calendar No. 467, S. 3611.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3611) to authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent the amendment at the desk be considered and agreed to, and the bill, as amended, be read a third time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4588) was agreed to, as follows:

(Purpose: To strike provisions enacted by the Supplemental Appropriations Act, 2010 and to improve the bill)

On page 12, strike lines 3 through 9 and insert the following:

SEC. 106. BUDGETARY PROVISIONS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Beginning on page 88, strike line 20 and all that follows through page 89, lines 16 and insert the following:

(1) CONGRESSIONAL ARMED SERVICES COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Defense, the Director of National Intelligence, in consultation with the Secretary of Defense, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(2) CONGRESSIONAL JUDICIARY COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Justice, the Director of National Intelligence, in consultation with the Attorney General, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

Beginning on page 89, strike line 17 and all that follows through page 91, line 6.

Beginning on page 91, strike line 10 and all that follows through page 92, line 15.

On page 214, line 16, strike ''committees'' and insert ''committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives''.

The bill (S. 3611), as amended, was ordered to be engrossed for a third reading and was read the third time.

Mrs. FEINSTEIN. I now ask the pay-go letter from the Budget Committee be read, that upon its reading the bill, as amended, be passed, and the motion to reconsider be laid upon the table, with any statements relating thereto printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk read as follows:

Mr. CONRAD. This is the Statement of Budgetary Effects of PAYGO Legislation for S. 3611.

Total Budgetary Effects of S. 3611 for the 5-year Statutory PAYGO Scorecard: $0.

Total Budgetary Effects of S. 3611 for the 10-year Statutory PAYGO Scorecard: $0.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act.

The table is as follows:

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 3611, THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2010, AS REPORTED BY THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON JULY 19, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
Net Increase or Decrease (−) in the Deficit													
Statutory Pay-As-You-Go Impact [a]	0	0	0	0	0	0	0	0	0	0	0	0	0

[a] The legislation would authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System.

The bill (S. 3611), as amended, was passed, as follows:

S. 3611

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2010''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

Sec. 101. Authorization of appropriations.
Sec. 102. Classified Schedule of Authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Restriction on conduct of intelligence activities.
Sec. 106. Budgetary provisions.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.
Sec. 202. Technical modification to mandatory retirement provision of the Central Intelligence Agency Retirement Act.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A—Personnel Matters

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Enhanced flexibility in nonreimbursable details to elements of the intelligence community.
Sec. 303. Pay authority for critical positions.
Sec. 304. Award of rank to members of the Senior National Intelligence Service.
Sec. 305. Annual personnel level assessments for the intelligence community.
Sec. 306. Temporary personnel authorizations for critical language training.
Sec. 307. Conflict of interest regulations for intelligence community employees.

Subtitle B—Education Programs

Sec. 311. Permanent authorization for the Pat Roberts Intelligence Scholars Program.
Sec. 312. Modifications to the Louis Stokes Educational Scholarship Program.
Sec. 313. Intelligence officer training program.
Sec. 314. Pilot program for intensive language instruction in African languages.

Subtitle C—Acquisition Matters

Sec. 321. Vulnerability assessments of major systems.

Sec. 322. Intelligence community business system transformation.
Sec. 323. Reports on the acquisition of major systems.
Sec. 324. Critical cost growth in major systems.
Sec. 325. Future budget projections.
Sec. 326. National Intelligence Program funded acquisitions.

Subtitle D—Congressional Oversight, Plans, and Reports

Sec. 331. Notification procedures.
Sec. 332. Certification of compliance with oversight requirements.
Sec. 333. Report on detention and interrogation activities.
Sec. 334. Summary of intelligence relating to terrorist recidivism of detainees held at United States Naval Station, Guantanamo Bay, Cuba.
Sec. 335. Report and strategic plan on biological weapons.
Sec. 336. Cybersecurity oversight.
Sec. 337. Report on foreign language proficiency in the intelligence community.
Sec. 338. Report on plans to increase diversity within the intelligence community.
Sec. 339. Report on intelligence community contractors.
Sec. 340. Study on electronic waste destruction practices of the intelligence community.
Sec. 341. Review of records relating to potential health risks among Desert Storm veterans.
Sec. 342. Review of Federal Bureau of Investigation exercise of enforcement jurisdiction in foreign nations.
Sec. 343. Public release of information on procedures used in narcotics airbridge denial program in Peru.
Sec. 344. Report on threat from dirty bombs.
Sec. 345. Report on creation of space intelligence office.
Sec. 346. Report on attempt to detonate explosive device on Northwest Airlines flight 253.
Sec. 347. Repeal or modification of certain reporting requirements.
Sec. 348. Incorporation of reporting requirements.
Sec. 349. Conforming amendments for report submission dates.

Subtitle E—Other Matters

Sec. 361. Extension of authority to delete information about receipt and disposition of foreign gifts and decorations.
Sec. 362. Modification of availability of funds for different intelligence activities.
Sec. 363. Protection of certain national security information.
Sec. 364. National Intelligence Program budget.
Sec. 365. Improving the review authority of the Public Interest Declassification Board.
Sec. 366. Authority to designate undercover operations to collect foreign intelligence or counterintelligence.
Sec. 367. Security clearances: reports; reciprocity.
Sec. 368. Correcting long-standing material weaknesses.
Sec. 369. Intelligence community financial improvement and audit readiness.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

Sec. 401. Accountability reviews by the Director of National Intelligence.
Sec. 402. Authorities for intelligence information sharing.
Sec. 403. Location of the Office of the Director of National Intelligence.
Sec. 404. Title and appointment of Chief Information Officer of the Intelligence Community.
Sec. 405. Inspector General of the Intelligence Community.
Sec. 406. Chief Financial Officer of the Intelligence Community.
Sec. 407. Leadership and location of certain offices and officials.
Sec. 408. Protection of certain files of the Office of the Director of National Intelligence.
Sec. 409. Counterintelligence initiatives for the intelligence community.
Sec. 410. Inapplicability of Federal Advisory Committee Act to advisory committees of the Office of the Director of National Intelligence.
Sec. 411. Membership of the Director of National Intelligence on the Transportation Security Oversight Board.
Sec. 412. Repeal of certain authorities relating to the Office of the National Counterintelligence Executive.
Sec. 413. Misuse of the Office of the Director of National Intelligence name, initials, or seal.
Sec. 414. Plan to implement recommendations of the data center energy efficiency reports.
Sec. 415. Director of National Intelligence support for reviews of International Traffic in Arms Regulations and Export Administration Regulations.

Subtitle B—Central Intelligence Agency

Sec. 421. Additional functions and authorities for protective personnel of the Central Intelligence Agency.
Sec. 422. Appeals from decisions involving contracts of the Central Intelligence Agency.
Sec. 423. Deputy Director of the Central Intelligence Agency.
Sec. 424. Authority to authorize travel on a common carrier.
Sec. 425. Inspector General for the Central Intelligence Agency.
Sec. 426. Budget of the Inspector General for the Central Intelligence Agency.
Sec. 427. Public availability of unclassified versions of certain intelligence products.

Subtitle C—Defense Intelligence Components

Sec. 431. Inspector general matters.
Sec. 432. Clarification of national security missions of National Geospatial-Intelligence Agency for analysis and dissemination of certain intelligence information.
Sec. 433. Director of Compliance of the National Security Agency.

Subtitle D—Other Elements

Sec. 441. Codification of additional elements of the intelligence community.
Sec. 442. Authorization of appropriations for Coast Guard National Tactical Integration Office.
Sec. 443. Retention and relocation bonuses for the Federal Bureau of Investigation.
Sec. 444. Extension of the authority of the Federal Bureau of Investigation to waive mandatory retirement provisions.
Sec. 445. Report and assessments on transformation of the intelligence capabilities of the Federal Bureau of Investigation.

TITLE V—REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

Sec. 501. Reorganization of the Diplomatic Telecommunications Service Program Office.

TITLE VI—FOREIGN INTELLIGENCE AND INFORMATION COMMISSION ACT

Sec. 601. Short title.
Sec. 602. Definitions.
Sec. 603. Establishment and functions of the Commission.
Sec. 604. Members and staff of the Commission.
Sec. 605. Powers and duties of the Commission.
Sec. 606. Report of the Commission.
Sec. 607. Termination.
Sec. 608. Nonapplicability of Federal Advisory Committee Act.
Sec. 609. Authorization of appropriations.

TITLE VII—OTHER MATTERS

Sec. 701. Extension of National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
Sec. 702. Classification review of executive branch materials in the possession of the congressional intelligence committees.

TITLE VIII—TECHNICAL AMENDMENTS

Sec. 801. Technical amendments to the Foreign Intelligence Surveillance Act of 1978.
Sec. 802. Technical amendments to the Central Intelligence Agency Act of 1949.
Sec. 803. Technical amendments to title 10, United States Code.
Sec. 804. Technical amendments to the National Security Act of 1947.
Sec. 805. Technical amendments relating to the multiyear National Intelligence Program.
Sec. 806. Technical amendments to the Intelligence Reform and Terrorism Prevention Act of 2004.
Sec. 807. Technical amendments to the Executive Schedule.
Sec. 808. Technical amendments to section 105 of the Intelligence Authorization Act for Fiscal Year 2004.
Sec. 809. Technical amendments to section 602 of the Intelligence Authorization Act for Fiscal Year 1995.
Sec. 810. Technical amendments to section 403 of the Intelligence Authorization Act, Fiscal Year 1992.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term ''intelligence community'' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE I—BUDGET AND PERSONNEL AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2010 for the conduct of

the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Office of the Director of National Intelligence.

(2) The Central Intelligence Agency.

(3) The Department of Defense.

(4) The Defense Intelligence Agency.

(5) The National Security Agency.

(6) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(7) The Coast Guard.

(8) The Department of State.

(9) The Department of the Treasury.

(10) The Department of Energy.

(11) The Department of Justice.

(12) The Federal Bureau of Investigation.

(13) The Drug Enforcement Administration.

(14) The National Reconnaissance Office.

(15) The National Geospatial-Intelligence Agency.

(16) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL LEVELS.—The amounts authorized to be appropriated under section 101 and, subject to section 103, the authorized personnel levels (expressed as full-time equivalent positions) as of September 30, 2010, for the conduct of the intelligence activities of the elements listed in paragraphs (1) through (16) of section 101, are those specified in the classified Schedule of Authorizations prepared to accompany the bill S. 3611 of the One Hundred Eleventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The classified Schedule of Authorizations referred to in subsection (a) shall be made available to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR INCREASES.—The Director of National Intelligence may authorize the employment of civilian personnel in excess of the number of full-time equivalent positions for fiscal year 2010 authorized by the classified Schedule of Authorizations referred to in section 102(a) if the Director of National Intelligence determines that such action is necessary for the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 3 percent of the number of civilian personnel authorized under such section for such element.

(b) AUTHORITY FOR CONVERSION OF ACTIVITIES PERFORMED BY CONTRACT PERSONNEL.—

(1) IN GENERAL.—In addition to the authority in subsection (a) and subject to paragraph (2), if the head of an element of the intelligence community makes a determination that activities currently being performed by contract personnel should be performed by employees of such element, the Director of National Intelligence, in order to reduce a comparable number of contract personnel, may authorize for that purpose employment of additional full-time equivalent personnel in such element equal to the number of full-time equivalent contract personnel performing such activities.

(2) CONCURRENCE AND APPROVAL.—The authority described in paragraph (1) may not be exercised unless the Director of National Intelligence concurs with the determination described in such paragraph.

(c) TREATMENT OF CERTAIN PERSONNEL.—The Director of National Intelligence shall establish guidelines that govern, for each element of the intelligence community, the treatment under the personnel levels authorized under section 102(a), including any exemption from such personnel levels, of employment or assignment—

(1) in a student program, trainee program, or similar program;

(2) in a reserve corps or as a reemployed annuitant; or

(3) in details, joint duty, or long-term, full-time training.

(d) NOTICE TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—The Director of National Intelligence shall notify the congressional intelligence committees in writing at least 15 days prior to the initial exercise of an authority described in subsection (a) or (b).

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2010 the sum of $710,612,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2011.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of National Intelligence are authorized 822 full-time equivalent personnel as of September 30, 2010. Personnel serving in such elements may be permanent employees of the Office of the Director of National Intelligence or personnel detailed from other elements of the United States Government.

(c) CONSTRUCTION OF AUTHORITIES.—The authorities available to the Director of National Intelligence under section 103 are also available to the Director for the adjustment of personnel levels within the Intelligence Community Management Account.

(d) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are authorized to be appropriated for the Community Management Account for fiscal year 2010 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts made available for advanced research and development shall remain available until September 30, 2011.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2010, there are authorized such full-time equivalent personnel for the Community Management Account as of that date as are specified in the classified Schedule of Authorizations referred to in section 102(a).

SEC. 105. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 106. BUDGETARY PROVISIONS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2010 the sum of $290,900,000.

SEC. 202. TECHNICAL MODIFICATION TO MANDATORY RETIREMENT PROVISION OF THE CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.

Subparagraph (A) of section 235(b)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2055(b)(1)) is amended by striking ''receiving compensation under the Senior Intelligence Service pay schedule at the rate'' and inserting ''who is at the Senior Intelligence Service rank''.

TITLE III—GENERAL INTELLIGENCE COMMUNITY MATTERS

Subtitle A—Personnel Matters

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. ENHANCED FLEXIBILITY IN NONREIMBURSABLE DETAILS TO ELEMENTS OF THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 113 the following new section:

''DETAIL OF OTHER PERSONNEL

''SEC. 113A. Except as provided in section 904(g)(2) of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c(g)(2)) and section 113 of this Act, and notwithstanding any other provision of law, an officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a reimbursable or nonreimbursable basis, as jointly agreed to by the head of the receiving element and the head of the detailing element, for a period not to exceed 2 years.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 113 the following new item:

''Sec. 113A. Detail of other personnel.''.

SEC. 303. PAY AUTHORITY FOR CRITICAL POSITIONS.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended by adding at the end the following new subsection:

''(s) PAY AUTHORITY FOR CRITICAL POSITIONS.—(1) Notwithstanding any pay limitation established under any other provision of law applicable to employees in elements of the intelligence community, the Director of National Intelligence may, in coordination with the Director of the Office of Personnel Management and the Director of the Office of Management and Budget, grant authority to the head of a department or agency to fix the rate of basic pay for one or more positions within the intelligence community at a rate in excess of any applicable limitation, subject to the provisions of this subsection. The exercise of authority so granted is at the discretion of the head of the department or agency employing the individual in a position covered by such authority, subject to

the provisions of this subsection and any conditions established by the Director of National Intelligence when granting such authority.

''(2) Authority under this subsection may be granted or exercised only—

''(A) with respect to a position that requires an extremely high level of expertise and is critical to successful accomplishment of an important mission; and

''(B) to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

''(3) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level II of the Executive Schedule under section 5313 of title 5, United States Code, except upon written approval of the Director of National Intelligence or as otherwise authorized by law.

''(4) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, except upon written approval of the President in response to a request by the Director of National Intelligence or as otherwise authorized by law.

''(5) Any grant of authority under this subsection for a position shall terminate at the discretion of the Director of National Intelligence.

''(6)(A) The Director of National Intelligence shall notify the congressional intelligence committees not later than 30 days after the date on which the Director grants authority to the head of a department or agency under this subsection.

''(B) The head of a department or agency to which the Director of National Intelligence grants authority under this subsection shall notify the congressional intelligence committees and the Director of the exercise of such authority not later than 30 days after the date on which such head exercises such authority.''.

SEC. 304. AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), as amended by section 303 of this Act, is further amended by adding at the end the following new subsection:

''(t) AWARD OF RANK TO MEMBERS OF THE SENIOR NATIONAL INTELLIGENCE SERVICE.—(1) The President, based on the recommendation of the Director of National Intelligence, may award a rank to a member of the Senior National Intelligence Service or other intelligence community senior civilian officer not already covered by such a rank award program in the same manner in which a career appointee of an agency may be awarded a rank under section 4507 of title 5, United States Code.

''(2) The President may establish procedures to award a rank under paragraph (1) to a member of the Senior National Intelligence Service or a senior civilian officer of the intelligence community whose identity as such a member or officer is classified information (as defined in section 606(1)).''.

SEC. 305. ANNUAL PERSONNEL LEVEL ASSESSMENTS FOR THE INTELLIGENCE COMMUNITY.

(a) ASSESSMENT.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 506A the following new section:

''ANNUAL PERSONNEL LEVEL ASSESSMENTS FOR THE INTELLIGENCE COMMUNITY

''SEC. 506B. (a) REQUIREMENT TO PROVIDE.—The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community, prepare an annual personnel level assessment for such element that assesses the personnel levels for such element for the fiscal year following the fiscal year in which the assessment is submitted.

''(b) SCHEDULE.—Each assessment required by subsection (a) shall be submitted to the congressional intelligence committees each year at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code.

''(c) CONTENTS.—Each assessment required by subsection (a) submitted during a fiscal year shall contain the following information for the element of the intelligence community concerned:

''(1) The budget submission for personnel costs for the upcoming fiscal year.

''(2) The dollar and percentage increase or decrease of such costs as compared to the personnel costs of the current fiscal year.

''(3) The dollar and percentage increase or decrease of such costs as compared to the personnel costs during the prior 5 fiscal years.

''(4) The number of full-time equivalent positions that is the basis for which personnel funds are requested for the upcoming fiscal year.

''(5) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions of the current fiscal year.

''(6) The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions during the prior 5 fiscal years.

''(7) The best estimate of the number and costs of core contract personnel to be funded by the element for the upcoming fiscal year.

''(8) The numerical and percentage increase or decrease of such costs of core contract personnel as compared to the best estimate of the costs of core contract personnel of the current fiscal year.

''(9) The numerical and percentage increase or decrease of such number and such costs of core contract personnel as compared to the number and cost of core contract personnel during the prior 5 fiscal years.

''(10) A justification for the requested personnel and core contract personnel levels.

''(11) The best estimate of the number of intelligence collectors and analysts employed or contracted by each element of the intelligence community.

''(12) A statement by the Director of National Intelligence that, based on current and projected funding, the element concerned will have sufficient—

''(A) internal infrastructure to support the requested personnel and core contract personnel levels;

''(B) training resources to support the requested personnel levels; and

''(C) funding to support the administrative and operational activities of the requested personnel levels.''.

(b) APPLICABILITY DATE.—The first assessment required to be submitted under section 506B(b) of the National Security Act of 1947, as added by subsection (a), shall be submitted to the congressional intelligence committees at the time that the President submits to Congress the budget for fiscal year 2012 pursuant to section 1105 of title 31, United States Code.

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section such Act, as amended by section 302 of this Act, is further amended by inserting after the item relating to section 506A the following new item:

''Sec. 506B. Annual personnel level assessments for the intelligence community.''.

SEC. 306. TEMPORARY PERSONNEL AUTHORIZATIONS FOR CRITICAL LANGUAGE TRAINING.

Section 102A(e) of the National Security Act of 1947 (50 U.S.C. 403–1(e)) is amended by—

(1) redesignating paragraph (3) as paragraph (4); and

(2) inserting after paragraph (2) the following new paragraph:

''(3)(A) In addition to the number of full-time equivalent positions authorized for the Office of the Director of National Intelligence for a fiscal year, there is authorized for such Office for each fiscal year an additional 100 full-time equivalent positions that may be used only for the purposes described in subparagraph (B).

''(B) Except as provided in subparagraph (C), the Director of National Intelligence may use a full-time equivalent position authorized under subparagraph (A) only for the purpose of providing a temporary transfer of personnel made in accordance with paragraph (2) to an element of the intelligence community to enable such element to increase the total number of personnel authorized for such element, on a temporary basis—

''(i) during a period in which a permanent employee of such element is absent to participate in critical language training; or

''(ii) to accept a permanent employee of another element of the intelligence community to provide language-capable services.

''(C) Paragraph (2)(B) shall not apply with respect to a transfer of personnel made under subparagraph (B).

''(D) The Director of National Intelligence shall submit to the congressional intelligence committees an annual report on the use of authorities under this paragraph. Each such report shall include a description of—

''(i) the number of transfers of personnel made by the Director pursuant to subparagraph (B), disaggregated by each element of the intelligence community;

''(ii) the critical language needs that were fulfilled or partially fulfilled through the use of such transfers; and

''(iii) the cost to carry out subparagraph (B).''.

SEC. 307. CONFLICT OF INTEREST REGULATIONS FOR INTELLIGENCE COMMUNITY EMPLOYEES.

Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), as amended by section 304 of this Act, is further amended by adding at the end the following new subsection:

''(u) CONFLICT OF INTEREST REGULATIONS.—(1) The Director of National Intelligence, in consultation with the Director of the Office of Government Ethics, shall issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a conflict of interest or appearance thereof.

''(2) The Director of National Intelligence shall annually submit to the congressional intelligence committees a report describing all outside employment for officers and employees of elements of the intelligence community that was authorized by the head of an element of the intelligence community during the preceding calendar year. Such report shall be submitted each year on the date provided in section 507.''.

Subtitle B—Education Programs

SEC. 311. PERMANENT AUTHORIZATION FOR THE PAT ROBERTS INTELLIGENCE SCHOLARS PROGRAM.

(a) PERMANENT AUTHORIZATION.—Subtitle C of title X of the National Security Act of

1947 (50 U.S.C. 441m et seq.) is amended by adding at the end the following new section:

''PROGRAM ON RECRUITMENT AND TRAINING

''SEC. 1022. (a) PROGRAM.—(1) The Director of National Intelligence shall carry out a program to ensure that selected students or former students are provided funds to continue academic training, or are reimbursed for academic training previously obtained, in areas of specialization that the Director, in consultation with the other heads of the elements of the intelligence community, identifies as areas in which the current capabilities of the intelligence community are deficient or in which future capabilities of the intelligence community are likely to be deficient.

''(2) A student or former student selected for participation in the program shall commit to employment with an element of the intelligence community, following completion of appropriate academic training, under such terms and conditions as the Director considers appropriate.

''(3) The program shall be known as the Pat Roberts Intelligence Scholars Program.

''(b) ELEMENTS.—In carrying out the program under subsection (a), the Director shall—

''(1) establish such requirements relating to the academic training of participants as the Director considers appropriate to ensure that participants are prepared for employment as intelligence professionals; and

''(2) periodically review the areas of specialization of the elements of the intelligence community to determine the areas in which such elements are, or are likely to be, deficient in capabilities.

''(c) USE OF FUNDS.—Funds made available for the program under subsection (a) shall be used—

''(1) to provide a monthly stipend for each month that a student is pursuing a course of study;

''(2) to pay the full tuition of a student or former student for the completion of such course of study;

''(3) to pay for books and materials that the student or former student requires or required to complete such course of study;

''(4) to pay the expenses of the student or former student for travel requested by an element of the intelligence community in relation to such program; or

''(5) for such other purposes the Director considers reasonably appropriate to carry out such program.''.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act, as amended by section 305 of this Act, is further amended—

(A) by transferring the item relating to section 1002 so such item immediately follows the item relating to section 1001; and

(B) by inserting after the item relating to section 1021 the following new item:

''Sec. 1022. Program on recruitment and training.''.

(2) REPEAL OF PILOT PROGRAM.—

(A) AUTHORITY.—Section 318 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 441g note) is repealed.

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2599) is amended by striking the item relating to section 318.

SEC. 312. MODIFICATIONS TO THE LOUIS STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.

(a) EXPANSION OF THE LOUIS STOKES EDUCATIONAL SCHOLARSHIP PROGRAM TO GRADUATE STUDENTS.—Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended—

(1) in subsection (a)—

(A) by inserting ''and graduate'' after ''undergraduate''; and

(B) by striking ''the baccalaureate'' and inserting ''a baccalaureate or graduate'';

(2) in subsection (b), by inserting ''or graduate'' after ''undergraduate'';

(3) in subsection (e)(2), by inserting ''and graduate'' after ''undergraduate''; and

(4) by adding at the end the following new subsection:

''(h) The undergraduate and graduate training program established under this section shall be known as the Louis Stokes Educational Scholarship Program.''.

(b) AUTHORITY FOR PARTICIPATION BY INDIVIDUALS WHO ARE NOT EMPLOYED BY THE UNITED STATES GOVERNMENT.—

(1) IN GENERAL.—Subsection (b) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (a)(2), is further amended by striking ''civilian employees'' and inserting ''civilians who may or may not be employees''.

(2) CONFORMING AMENDMENTS.—Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (a), is further amended—

(A) in subsection (c), by striking ''employees'' and inserting ''program participants''; and

(B) in subsection (d)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), strike ''an employee of the Agency,'' and insert ''a program participant,'';

(II) in subparagraph (A), by striking ''employee'' and inserting ''program participant'';

(III) in subparagraph (C)—

(aa) by striking ''employee'' each place that term appears and inserting ''program participant''; and

(bb) by striking ''employee's'' each place that term appears and inserting ''program participant's''; and

(IV) in subparagraph (D)—

(aa) by striking ''employee'' each place that term appears and inserting ''program participant''; and

(bb) by striking ''employee's'' each place that term appears and inserting ''program participant's''; and

(ii) in paragraph (3)(C)—

(I) by striking ''employee'' both places that term appears and inserting ''program participant''; and

(II) by striking ''employee's'' and inserting ''program participant's''.

(c) TERMINATION OF PROGRAM PARTICIPANTS.—Subsection (d)(1)(C) of section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note), as amended by subsection (b)(2)(B)(i)(III), is further amended by striking ''terminated'' and all that follows and inserting ''terminated—

''(i) by the Agency due to misconduct by the program participant;

''(ii) by the program participant voluntarily; or

''(iii) by the Agency for the failure of the program participant to maintain such level of academic standing in the educational course of training as the Director of the National Security Agency shall have specified in the agreement of the program participant under this subsection; and''.

(d) AUTHORITY TO WITHHOLD DISCLOSURE OF AFFILIATION WITH NSA.—Subsection (e) of Section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking ''(1) When an employee'' and all that follows through ''(2) Agency efforts'' and inserting ''Agency efforts''.

(e) AUTHORITY OF ELEMENTS OF THE INTELLIGENCE COMMUNITY TO ESTABLISH A STOKES EDUCATIONAL SCHOLARSHIP PROGRAM.—

(1) AUTHORITY.—Subtitle C of title X of the National Security Act of 1947 (50 U.S.C. 441m et seq.), as amended by section 311 of this Act, is further amended by adding at the end the following new section:

''EDUCATIONAL SCHOLARSHIP PROGRAM

''SEC. 1023. The head of a department or agency containing an element of the intelligence community may establish an undergraduate or graduate training program with respect to civilian employees and prospective civilian employees of such element similar in purpose, conditions, content, and administration to the program that the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 311 of this Act, is further amended by inserting after the item relating to section 1022, as added by such section 311, the following new item:

''Sec. 1023. Educational scholarship program.''.

SEC. 313. INTELLIGENCE OFFICER TRAINING PROGRAM.

(a) PROGRAM.—Subtitle C of title X of the National Security Act of 1947 (50 U.S.C. 441m et seq.), as amended by section 312(e) of this Act, is further amended by adding at the end the following new section:

''INTELLIGENCE OFFICER TRAINING PROGRAM

''SEC. 1024. (a) PROGRAMS.—(1) The Director of National Intelligence may carry out grant programs in accordance with subsection (b) to enhance the recruitment and retention of an ethnically and culturally diverse intelligence community workforce with capabilities critical to the national security interests of the United States.

''(2) In carrying out paragraph (1), the Director shall identify the skills necessary to meet current or emergent needs of the intelligence community and the educational disciplines that will provide individuals with such skills.

''(b) INSTITUTIONAL GRANT PROGRAM.—(1) The Director may provide grants to institutions of higher education to support the establishment or continued development of programs of study in educational disciplines identified under subsection (a)(2).

''(2) A grant provided under paragraph (1) may, with respect to the educational disciplines identified under subsection (a)(2), be used for the following purposes:

''(A) Curriculum or program development.

''(B) Faculty development.

''(C) Laboratory equipment or improvements.

''(D) Faculty research.

''(c) APPLICATION.—An institution of higher education seeking a grant under this section shall submit an application describing the proposed use of the grant at such time and in such manner as the Director may require.

''(d) REPORTS.—An institution of higher education that receives a grant under this section shall submit to the Director regular reports regarding the use of such grant, including—

''(1) a description of the benefits to students who participate in the course of study funded by such grant;

''(2) a description of the results and accomplishments related to such course of study; and

''(3) any other information that the Director may require.

''(e) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to carry out this section.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Director' means the Director of National Intelligence.

''(2) The term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''.

(b) REPEAL OF DUPLICATIVE PROVISIONS.—

(1) IN GENERAL.—The following provisions of law are repealed:

(A) Subsections (b) through (g) of section 319 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403 note).

(B) Section 1003 of the National Security Act of 1947 (50 U.S.C. 441g–2).

(C) Section 922 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 50 U.S.C. 402 note).

(2) EXISTING AGREEMENTS.—Notwithstanding the repeals made by paragraph (1), nothing in this subsection shall be construed to amend, modify, or abrogate any agreement, contract, or employment relationship that was in effect in relation to the provisions repealed under paragraph (1) on the day prior to the date of the enactment of this Act.

(3) TECHNICAL AMENDMENT.—Section 319 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403 note) is amended by striking ''(a) FINDINGS.—''.

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 312 of this Act, is further amended by striking the item relating to section 1003 and inserting the following new item:

''Sec. 1024. Intelligence officer training program.''.

SEC. 314. PILOT PROGRAM FOR INTENSIVE LANGUAGE INSTRUCTION IN AFRICAN LANGUAGES.

(a) ESTABLISHMENT.—The Director of National Intelligence, in consultation with the National Security Education Board established under section 803(a) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1903(a)), may establish a pilot program for intensive language instruction in African languages.

(b) PROGRAM.—A pilot program established under subsection (a) shall provide scholarships for programs that provide intensive language instruction—

(1) in any of the five highest priority African languages for which scholarships are not offered under the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.), as determined by the Director of National Intelligence; and

(2) both in the United States and in a country in which the language is the native language of a significant portion of the population, as determined by the Director of National Intelligence.

(c) TERMINATION.—A pilot program established under subsection (a) shall terminate on the date that is five years after the date on which such pilot program is established.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $2,000,000.

(2) AVAILABILITY.—Funds authorized to be appropriated under paragraph (1) shall remain available until the termination of the pilot program in accordance with subsection (c).

Subtitle C—Acquisition Matters

SEC. 321. VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS.

(a) VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS.—

(1) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 305 of this Act, is further amended by inserting after section 506B, as added by section 305(a), the following new section:

''VULNERABILITY ASSESSMENTS OF MAJOR SYSTEMS

''SEC. 506C. (a) INITIAL VULNERABILITY ASSESSMENTS.—(1)(A) Except as provided in subparagraph (B), the Director of National Intelligence shall conduct and submit to the congressional intelligence committees an initial vulnerability assessment for each major system and its significant items of supply—

''(i) except as provided in clause (ii), prior to the completion of Milestone B or an equivalent acquisition decision for the major system; or

''(ii) prior to the date that is 1 year after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010 in the case of a major system for which Milestone B or an equivalent acquisition decision—

''(I) was completed prior to such date of enactment; or

''(II) is completed on a date during the 180-day period following such date of enactment.

''(B) The Director may submit to the congressional intelligence committees an initial vulnerability assessment required by clause (ii) of subparagraph (A) not later than 180 days after the date such assessment is required to be submitted under such clause if the Director notifies the congressional intelligence committees of the extension of the submission date under this subparagraph and provides a justification for such extension.

''(C) The initial vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach to—

''(i) identify vulnerabilities;

''(ii) define exploitation potential;

''(iii) examine the system's potential effectiveness;

''(iv) determine overall vulnerability; and

''(v) make recommendations for risk reduction.

''(2) If an initial vulnerability assessment for a major system is not submitted to the congressional intelligence committees as required by paragraph (1), funds appropriated for the acquisition of the major system may not be obligated for a major contract related to the major system. Such prohibition on the obligation of funds for the acquisition of the major system shall cease to apply on the date on which the congressional intelligence committees receive the initial vulnerability assessment.

''(b) SUBSEQUENT VULNERABILITY ASSESSMENTS.—(1) The Director of National Intelligence shall, periodically throughout the procurement of a major system or if the Director determines that a change in circumstances warrants the issuance of a subsequent vulnerability assessment, conduct a subsequent vulnerability assessment of each major system and its significant items of supply within the National Intelligence Program.

''(2) Upon the request of a congressional intelligence committee, the Director of National Intelligence may, if appropriate, recertify the previous vulnerability assessment or may conduct a subsequent vulnerability assessment of a particular major system and its significant items of supply within the National Intelligence Program.

''(3) Any subsequent vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach and, if applicable, a testing-based approach, to monitor the exploitation potential of such system and reexamine the factors described in clauses (i) through (v) of subsection (a)(1)(C).

''(c) MAJOR SYSTEM MANAGEMENT.—The Director of National Intelligence shall give due consideration to the vulnerability assessments prepared for a given major system when developing and determining the National Intelligence Program budget.

''(d) CONGRESSIONAL OVERSIGHT.—(1) The Director of National Intelligence shall provide to the congressional intelligence committees a copy of each vulnerability assessment conducted under subsection (a) or (b) not later than 10 days after the date of the completion of such assessment.

''(2) The Director of National Intelligence shall provide the congressional intelligence committees with a proposed schedule for subsequent periodic vulnerability assessments of a major system under subsection (b)(1) when providing such committees with the initial vulnerability assessment under subsection (a) of such system as required by paragraph (1).

''(e) DEFINITIONS.—In this section:

''(1) The term 'item of supply' has the meaning given that term in section 4(10) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(10)).

''(2) The term 'major contract' means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of $40,000,000 and that is not a firm, fixed price contract.

''(3) The term 'major system' has the meaning given that term in section 506A(e).

''(4) The term 'Milestone B' means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director of National Intelligence.

''(5) The term 'vulnerability assessment' means the process of identifying and quantifying vulnerabilities in a major system and its significant items of supply.''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 313 of this Act, is further amended by inserting after the item relating to section 506B, as added by section 305(c) of this Act, the following new item:

''Sec. 506C. Vulnerability assessments of major systems.''.

(b) DEFINITION OF MAJOR SYSTEM.—Paragraph (3) of section 506A(e) of the National Security Act of 1947 (50 U.S.C. 415a–1(e)) is amended by striking ''(in current fiscal year dollars)'' and inserting ''(based on fiscal year 2010 constant dollars)''.

SEC. 322. INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.

(a) INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.—

(1) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 321 of this Act, is further amended by inserting after section 506C, as added by section 321(a), the following new section:

''INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION

''SEC. 506D. (a) LIMITATION ON OBLIGATION OF FUNDS.—(1) Subject to paragraph (3), no funds appropriated to any element of the intelligence community may be obligated for an intelligence community business system transformation that will have a total cost in excess of $3,000,000 unless—

''(A) the Director of the Office of Business Transformation of the Office of the Director of National Intelligence makes a certification described in paragraph (2) with respect to such intelligence community business system transformation; and

''(B) such certification is approved by the board established under subsection (f).

''(2) The certification described in this paragraph for an intelligence community business system transformation is a certification made by the Director of the Office of

Business Transformation of the Office of the Director of National Intelligence that the intelligence community business system transformation—

''(A) complies with the enterprise architecture under subsection (b) and such other policies and standards that the Director of National Intelligence considers appropriate; or

''(B) is necessary—

''(i) to achieve a critical national security capability or address a critical requirement; or

''(ii) to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration any alternative solutions for preventing such adverse effect.

''(3) With respect to a fiscal year after fiscal year 2010, the amount referred to in paragraph (1) in the matter preceding subparagraph (A) shall be equal to the sum of—

''(A) the amount in effect under such paragraph (1) for the preceding fiscal year (determined after application of this paragraph), plus

''(B) such amount multiplied by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of the previous fiscal year.

''(b) ENTERPRISE ARCHITECTURE FOR INTELLIGENCE COMMUNITY BUSINESS SYSTEMS.—(1) The Director of National Intelligence shall, acting through the board established under subsection (f), develop and implement an enterprise architecture to cover all intelligence community business systems, and the functions and activities supported by such business systems. The enterprise architecture shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable intelligence community business system solutions, consistent with applicable policies and procedures established by the Director of the Office of Management and Budget.

''(2) The enterprise architecture under paragraph (1) shall include the following:

''(A) An information infrastructure that will enable the intelligence community to—

''(i) comply with all Federal accounting, financial management, and reporting requirements;

''(ii) routinely produce timely, accurate, and reliable financial information for management purposes;

''(iii) integrate budget, accounting, and program information and systems; and

''(iv) provide for the measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

''(B) Policies, procedures, data standards, and system interface requirements that apply uniformly throughout the intelligence community.

''(c) RESPONSIBILITIES FOR INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION.—The Director of National Intelligence shall be responsible for the entire life cycle of an intelligence community business system transformation, including review, approval, and oversight of the planning, design, acquisition, deployment, operation, and maintenance of the business system transformation.

''(d) INTELLIGENCE COMMUNITY BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Director of the Office of Business Transformation of the Office of the Director of National Intelligence shall establish and implement, not later than September 30, 2010, an investment review process for the intelligence community business systems for which the Director of the Office of Business Transformation is responsible.

''(2) The investment review process under paragraph (1) shall—

''(A) meet the requirements of section 11312 of title 40, United States Code; and

''(B) specifically set forth the responsibilities of the Director of the Office of Business Transformation under such review process.

''(3) The investment review process under paragraph (1) shall include the following elements:

''(A) Review and approval by an investment review board (consisting of appropriate representatives of the intelligence community) of each intelligence community business system as an investment before the obligation of funds for such system.

''(B) Periodic review, but not less often than annually, of every intelligence community business system investment.

''(C) Thresholds for levels of review to ensure appropriate review of intelligence community business system investments depending on the scope, complexity, and cost of the system involved.

''(D) Procedures for making certifications in accordance with the requirements of subsection (a)(2).

''(e) BUDGET INFORMATION.—For each fiscal year after fiscal year 2011, the Director of National Intelligence shall include in the materials the Director submits to Congress in support of the budget for such fiscal year that is submitted to Congress under section 1105 of title 31, United States Code, the following information:

''(1) An identification of each intelligence community business system for which funding is proposed in such budget.

''(2) An identification of all funds, by appropriation, proposed in such budget for each such system, including—

''(A) funds for current services to operate and maintain such system;

''(B) funds for business systems modernization identified for each specific appropriation; and

''(C) funds for associated business process improvement or reengineering efforts.

''(3) The certification, if any, made under subsection (a)(2) with respect to each such system.

''(f) INTELLIGENCE COMMUNITY BUSINESS SYSTEM TRANSFORMATION GOVERNANCE BOARD.—(1) The Director of National Intelligence shall establish a board within the intelligence community business system transformation governance structure (in this subsection referred to as the 'Board').

''(2) The Board shall—

''(A) recommend to the Director policies and procedures necessary to effectively integrate all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the intelligence community;

''(B) review and approve any major update of—

''(i) the enterprise architecture developed under subsection (b); and

''(ii) any plans for an intelligence community business systems modernization;

''(C) manage cross-domain integration consistent with such enterprise architecture;

''(D) coordinate initiatives for intelligence community business system transformation to maximize benefits and minimize costs for the intelligence community, and periodically report to the Director on the status of efforts to carry out an intelligence community business system transformation;

''(E) ensure that funds are obligated for intelligence community business system transformation in a manner consistent with subsection (a); and

''(F) carry out such other duties as the Director shall specify.

''(g) RELATION TO ANNUAL REGISTRATION REQUIREMENTS.—Nothing in this section shall be construed to alter the requirements of section 8083 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 989), with regard to information technology systems (as defined in subsection (d) of such section).

''(h) RELATIONSHIP TO DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—Nothing in this section shall be construed to exempt funds authorized to be appropriated to the Department of Defense from the requirements of section 2222 of title 10, United States Code, to the extent that such requirements are otherwise applicable.

''(i) RELATION TO CLINGER-COHEN ACT.—(1) Executive agency responsibilities in chapter 113 of title 40, United States Code, for any intelligence community business system transformation shall be exercised jointly by—

''(A) the Director of National Intelligence and the Chief Information Officer of the Intelligence Community; and

''(B) the head of the executive agency that contains the element of the intelligence community involved and the chief information officer of that executive agency.

''(2) The Director of National Intelligence and the head of the executive agency referred to in paragraph (1)(B) shall enter into a Memorandum of Understanding to carry out the requirements of this section in a manner that best meets the needs of the intelligence community and the executive agency.

''(j) REPORTS.—Not later than March 31 of each of the years 2011 through 2015, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the compliance of the intelligence community with the requirements of this section. Each such report shall—

''(1) describe actions taken and proposed for meeting the requirements of subsection (a), including—

''(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

''(B) specific actions on the intelligence community business system transformations submitted for certification under such subsection;

''(2) identify the number of intelligence community business system transformations that received a certification described in subsection (a)(2); and

''(3) describe specific improvements in business operations and cost savings resulting from successful intelligence community business systems transformation efforts.

''(k) DEFINITIONS.—In this section:

''(1) The term 'enterprise architecture' has the meaning given that term in section 3601(4) of title 44, United States Code.

''(2) The terms 'information system' and 'information technology' have the meanings given those terms in section 11101 of title 40, United States Code.

''(3) The term 'intelligence community business system' means an information system, including a national security system, that is operated by, for, or on behalf of an element of the intelligence community, including a financial system, mixed system, financial data feeder system, and the business infrastructure capabilities shared by the systems of the business enterprise architecture, including people, process, and technology, that build upon the core infrastructure used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

''(4) The term 'intelligence community business system transformation' means—

''(A) the acquisition or development of a new intelligence community business system; or

''(B) any significant modification or enhancement of an existing intelligence community business system (other than necessary to maintain current services).

''(5) The term 'national security system' has the meaning given that term in section 3542 of title 44, United States Code.

''(6) The term 'Office of Business Transformation of the Office of the Director of National Intelligence' includes any successor office that assumes the functions of the Office of Business Transformation of the Office of the Director of National Intelligence as carried out by the Office of Business Transformation on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010.''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 321 of this Act, is further amended by inserting after the item relating to section 506C, as added by section 321(a)(2), the following new item:

''Sec. 506D. Intelligence community business system transformation.''.

(b) IMPLEMENTATION.—

(1) CERTAIN DUTIES.—Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall designate a chair and other members to serve on the board established under subsection (f) of such section 506D of the National Security Act of 1947 (as added by subsection (a)).

(2) ENTERPRISE ARCHITECTURE.—

(A) SCHEDULE FOR DEVELOPMENT.—The Director shall develop the enterprise architecture required by subsection (b) of such section 506D (as so added), including the initial Business Enterprise Architecture for business transformation, not later than September 30, 2010.

(B) REQUIREMENT FOR IMPLEMENTATION PLAN.—In developing such an enterprise architecture, the Director shall develop an implementation plan for such enterprise architecture that includes the following:

(i) An acquisition strategy for new systems that are expected to be needed to complete such enterprise architecture, including specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

(ii) An identification of the intelligence community business systems in operation or planned as of September 30, 2010, that will not be a part of such enterprise architecture, together with the schedule for the phased termination of the utilization of any such systems.

(iii) An identification of the intelligence community business systems in operation or planned as of September 30, 2010, that will be a part of such enterprise architecture, together with a strategy for modifying such systems to ensure that such systems comply with such enterprise architecture.

(C) SUBMISSION OF ACQUISITION STRATEGY.—Based on the results of an enterprise process management review and the availability of funds, the Director shall submit the acquisition strategy described in subparagraph (B)(i) to the congressional intelligence committees not later than March 31, 2011.

SEC. 323. REPORTS ON THE ACQUISITION OF MAJOR SYSTEMS.

(a) REPORTS.—

(1) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 322 of this Act, is further amended by inserting after section 506D, as added by section 322(a)(1), the following new section:

''REPORTS ON THE ACQUISITION OF MAJOR SYSTEMS

''SEC. 506E. (a) DEFINITIONS.—In this section:

''(1) The term 'cost estimate'—

''(A) means an assessment and quantification of all costs and risks associated with the acquisition of a major system based upon reasonably available information at the time the Director establishes the 2010 adjusted total acquisition cost for such system pursuant to subsection (h) or restructures such system pursuant to section 506F(c); and

''(B) does not mean an 'independent cost estimate'.

''(2) The term 'critical cost growth threshold' means a percentage increase in the total acquisition cost for a major system of at least 25 percent over the total acquisition cost for the major system as shown in the current Baseline Estimate for the major system.

''(3)(A) The term 'current Baseline Estimate' means the projected total acquisition cost of a major system that is—

''(i) approved by the Director, or a designee of the Director, at Milestone B or an equivalent acquisition decision for the development, procurement, and construction of such system;

''(ii) approved by the Director at the time such system is restructured pursuant to section 506F(c); or

''(iii) the 2010 adjusted total acquisition cost determined pursuant to subsection (h).

''(B) A current Baseline Estimate may be in the form of an independent cost estimate.

''(4) Except as otherwise specifically provided, the term 'Director' means the Director of National Intelligence.

''(5) The term 'independent cost estimate' has the meaning given that term in section 506A(e).

''(6) The term 'major contract' means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of $40,000,000 and that is not a firm, fixed price contract.

''(7) The term 'major system' has the meaning given that term in section 506A(e).

''(8) The term 'Milestone B' means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director.

''(9) The term 'program manager' means—

''(A) the head of the element of the intelligence community that is responsible for the budget, cost, schedule, and performance of a major system; or

''(B) in the case of a major system within the Office of the Director of National Intelligence, the deputy who is responsible for the budget, cost, schedule, and performance of the major system.

''(10) The term 'significant cost growth threshold' means the percentage increase in the total acquisition cost for a major system of at least 15 percent over the total acquisition cost for such system as shown in the current Baseline Estimate for such system.

''(11) The term 'total acquisition cost' means the amount equal to the total cost for development and procurement of, and system-specific construction for, a major system.

''(b) MAJOR SYSTEM COST REPORTS.—(1) The program manager for a major system shall, on a quarterly basis, submit to the Director a major system cost report as described in paragraph (2).

''(2) A major system cost report shall include the following information (as of the last day of the quarter for which the report is made):

''(A) The total acquisition cost for the major system.

''(B) Any cost variance or schedule variance in a major contract for the major system since the contract was entered into.

''(C) Any changes from a major system schedule milestones or performances that are known, expected, or anticipated by the program manager.

''(D) Any significant changes in the total acquisition cost for development and procurement of any software component of the major system, schedule milestones for such software component of the major system, or expected performance of such software component of the major system that are known, expected, or anticipated by the program manager.

''(3) Each major system cost report required by paragraph (1) shall be submitted not more than 30 days after the end of the reporting quarter.

''(c) REPORTS FOR BREACH OF SIGNIFICANT OR CRITICAL COST GROWTH THRESHOLDS.—If the program manager of a major system for which a report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold and if a report indicating an increase of such percentage or more has not previously been submitted to the Director, then the program manager shall immediately submit to the Director a major system cost report containing the information, determined as of the date of the report, required under subsection (b).

''(d) NOTIFICATION TO CONGRESS OF COST GROWTH.—(1) Whenever a major system cost report is submitted to the Director, the Director shall determine whether the current acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold.

''(2) If the Director determines that the current total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Director shall submit to Congress a Major System Congressional Report pursuant to subsection (e).

''(e) REQUIREMENT FOR MAJOR SYSTEM CONGRESSIONAL REPORT.—(1) Whenever the Director determines under subsection (d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the significant cost growth threshold for the major system, a Major System Congressional Report shall be submitted to Congress not later than 45 days after the date on which the Director receives the major system cost report for such major system.

''(2) If the total acquisition cost of a major system (as determined by the Director under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Director shall take actions consistent with the requirements of section 506F.

''(f) MAJOR SYSTEM CONGRESSIONAL REPORT ELEMENTS.—(1) Except as provided in paragraph (2), each Major System Congressional Report shall include the following:

''(A) The name of the major system.

''(B) The date of the preparation of the report.

''(C) The program phase of the major system as of the date of the preparation of the report.

''(D) The estimate of the total acquisition cost for the major system expressed in constant base-year dollars and in current dollars.

''(E) The current Baseline Estimate for the major system in constant base-year dollars and in current dollars.

''(F) A statement of the reasons for any increase in total acquisition cost for the major system.

''(G) The completion status of the major system—

''(i) expressed as the percentage that the number of years for which funds have been appropriated for the major system is of the number of years for which it is planned that funds will be appropriated for the major system; and

''(ii) expressed as the percentage that the amount of funds that have been appropriated for the major system is of the total amount of funds which it is planned will be appropriated for the major system.

''(H) The fiscal year in which the major system was first authorized and in which funds for such system were first appropriated by Congress.

''(I) The current change and the total change, in dollars and expressed as a percentage, in the total acquisition cost for the major system, stated both in constant base-year dollars and in current dollars.

''(J) The quantity of end items to be acquired under the major system and the current change and total change, if any, in that quantity.

''(K) The identities of the officers responsible for management and cost control of the major system.

''(L) The action taken and proposed to be taken to control future cost growth of the major system.

''(M) Any changes made in the performance or schedule milestones of the major system and the extent to which such changes have contributed to the increase in total acquisition cost for the major system.

''(N) The following contract performance assessment information with respect to each major contract under the major system:

''(i) The name of the contractor.

''(ii) The phase that the contract is in at the time of the preparation of the report.

''(iii) The percentage of work under the contract that has been completed.

''(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

''(v) The percentage by which the contract is currently ahead of or behind schedule.

''(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the major system, contributing to the changes identified and a discussion of the effect these occurrences will have on the future costs and schedule of the major system.

''(O) In any case in which one or more problems with a software component of the major system significantly contributed to the increase in costs of the major system, the action taken and proposed to be taken to solve such problems.

''(2) A Major System Congressional Report prepared for a major system for which the increase in the total acquisition cost is due to termination or cancellation of the entire major system shall include only—

''(A) the information described in subparagraphs (A) through (F) of paragraph (1); and

''(B) the total percentage change in total acquisition cost for such system.

''(g) PROHIBITION ON OBLIGATION OF FUNDS.—If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Director under subsection (d) and a Major System Congressional Report containing the information described in subsection (f) is not submitted to Congress under subsection (e)(1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Director under subsection (d) and the Major System Congressional Report containing the information described in subsection (f) and section 506F(b)(3) and the certification required by section 506F(b)(2) are not submitted to Congress under subsection (e)(2), funds appropriated for construction, research, development, test, evaluation, and procurement may not be obligated for a major contract under the major system. The prohibition on the obligation of funds for a major system shall cease to apply at the end of the 45-day period that begins on the date—

''(1) on which Congress receives the Major System Congressional Report under subsection (e)(1) with respect to that major system, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

''(2) on which Congress receives both the Major System Congressional Report under subsection (e)(2) and the certification of the Director under section 506F(b)(2) with respect to that major system, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

''(h) TREATMENT OF COST INCREASES PRIOR TO ENACTMENT OF INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2010.—(1) Not later than 180 days after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010, the Director—

''(A) shall, for each major system, determine if the total acquisition cost of such major system increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date of enactment;

''(B) shall establish for each major system for which the total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date of enactment a revised current Baseline Estimate based upon an updated cost estimate;

''(C) may, for a major system not described in subparagraph (B), establish a revised current Baseline Estimate based upon an updated cost estimate; and

''(D) shall submit to Congress a report describing—

''(i) each determination made under subparagraph (A);

''(ii) each revised current Baseline Estimate established for a major system under subparagraph (B); and

''(iii) each revised current Baseline Estimate established for a major system under subparagraph (C), including the percentage increase of the total acquisition cost of such major system that occurred prior to the date of the enactment of such Act.

''(2) The revised current Baseline Estimate established for a major system under subparagraph (B) or (C) of paragraph (1) shall be the 2010 adjusted total acquisition cost for the major system and may include the estimated cost of conducting any vulnerability assessments for such major system required under section 506C.

''(i) REQUIREMENTS TO USE BASE YEAR DOLLARS.—Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars.

''(j) FORM OF REPORT.—Any report required to be submitted under this section may be submitted in a classified form.''.

(2) APPLICABILITY DATE OF QUARTERLY REPORTS.—The first report required to be submitted under subsection (b) of section 506E of the National Security Act of 1947, as added by paragraph (1) of this subsection, shall be submitted with respect to the first fiscal quarter that begins on a date that is not less than 180 days after the date of the enactment of this Act.

(3) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 322 of this Act, is further amended by inserting after the item relating to section 506D, as added by section 322(a)(2), the following new item:

''Sec. 506E. Reports on the acquisition of major systems.''.

(b) MAJOR DEFENSE ACQUISITION PROGRAMS.—Nothing in this section, section 324, or an amendment made by this section or section 324, shall be construed to exempt an acquisition program of the Department of Defense from the requirements of chapter 144 of title 10, United States Code or Department of Defense Directive 5000, to the extent that such requirements are otherwise applicable.

SEC. 324. CRITICAL COST GROWTH IN MAJOR SYSTEMS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 323 of this Act, is further amended by inserting after section 506E, as added by section 323(a), the following new section:

''CRITICAL COST GROWTH IN MAJOR SYSTEMS

''SEC. 506F. (a) REASSESSMENT OF MAJOR SYSTEM.—If the Director of National Intelligence determines under section 506E(d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the critical cost growth threshold for the major system, the Director shall—

''(1) determine the root cause or causes of the critical cost growth, in accordance with applicable statutory requirements, policies, procedures, and guidance; and

''(2) carry out an assessment of—

''(A) the projected cost of completing the major system if current requirements are not modified;

''(B) the projected cost of completing the major system based on reasonable modification of such requirements;

''(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

''(D) the need to reduce funding for other systems due to the growth in cost of the major system.

''(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major system, the Director shall terminate the major system unless the Director submits to Congress a Major System Congressional Report containing a certification in accordance with paragraph (2) and the information described in paragraph (3). The Director shall submit such Major System Congressional Report and certification not later than 90 days after the date the Director receives the relevant major system cost report under subsection (b) or (c) of section 506E.

''(2) A certification described by this paragraph with respect to a major system is a written certification that—

''(A) the continuation of the major system is essential to the national security;

''(B) there are no alternatives to the major system that will provide acceptable capability to meet the intelligence requirement at less cost;

''(C) the new estimates of the total acquisition cost have been determined by the Director to be reasonable;

''(D) the major system is a higher priority than other systems whose funding must be reduced to accommodate the growth in cost of the major system; and

''(E) the management structure for the major system is adequate to manage and control the total acquisition cost.

''(3) A Major System Congressional Report accompanying a written certification under paragraph (2) shall include, in addition to the requirements of section 506E(e), the root cause analysis and assessment carried out

pursuant to subsection (a), the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), and a description of all funding changes made as a result of the growth in the cost of the major system, including reductions made in funding for other systems to accommodate such cost growth, together with supporting documentation.

''(c) ACTIONS IF MAJOR SYSTEM NOT TERMINATED.—If the Director elects not to terminate a major system pursuant to subsection (b), the Director shall—

''(1) restructure the major system in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the system has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

''(2) rescind the most recent Milestone approval for the major system;

''(3) require a new Milestone approval for the major system before taking any action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the system, except to the extent determined necessary by the Milestone Decision Authority, on a nondelegable basis, to ensure that the system may be restructured as intended by the Director without unnecessarily wasting resources;

''(4) establish a revised current Baseline Estimate for the major system based upon an updated cost estimate; and

''(5) conduct regular reviews of the major system.

''(d) ACTIONS IF MAJOR SYSTEM TERMINATED.—If a major system is terminated pursuant to subsection (b), the Director shall submit to Congress a written report setting forth—

''(1) an explanation of the reasons for terminating the major system;

''(2) the alternatives considered to address any problems in the major system; and

''(3) the course the Director plans to pursue to meet any intelligence requirements otherwise intended to be met by the major system.

''(e) FORM OF REPORT.—Any report or certification required to be submitted under this section may be submitted in a classified form.

''(f) WAIVER.—(1) The Director may waive the requirements of subsections (d)(2), (e), and (g) of section 506E and subsections (a)(2), (b), (c), and (d) of this section with respect to a major system if the Director determines that at least 90 percent of the amount of the current Baseline Estimate for the major system has been expended.

''(2)(A) If the Director grants a waiver under paragraph (1) with respect to a major system, the Director shall submit to the congressional intelligence committees written notice of the waiver that includes—

''(i) the information described in section 506E(f); and

''(ii) if the current total acquisition cost of the major system has increased by a percentage equal to or greater than the critical cost growth threshold—

''(I) a determination of the root cause or causes of the critical cost growth, as described in subsection (a)(1); and

''(II) a certification that includes the elements described in subparagraphs (A), (B), and (E) of subsection (b)(2).

''(B) The Director shall submit the written notice required by subparagraph (A) not later than 90 days after the date that the Director receives a major system cost report under subsection (b) or (c) of section 506E that indicates that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold.

''(g) DEFINITIONS.—In this section, the terms 'cost estimate', 'critical cost growth threshold', 'current Baseline Estimate', 'major system', and 'total acquisition cost' have the meaning given those terms in section 506E(a).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 323 of this Act, is further amended by inserting after the items relating to section 506E, as added by section 323(a)(3), the following new item:

''Sec. 506F. Critical cost growth in major systems.''.

SEC. 325. FUTURE BUDGET PROJECTIONS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 324 of this Act, is further amended by inserting after section 506F, as added by section 324(a), the following new section:

''FUTURE BUDGET PROJECTIONS

''SEC. 506G. (a) FUTURE YEAR INTELLIGENCE PLANS.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Future Year Intelligence Plan, as described in paragraph (2), for—

''(A) each expenditure center in the National Intelligence Program; and

''(B) each major system in the National Intelligence Program.

''(2)(A) A Future Year Intelligence Plan submitted under this subsection shall include the year-by-year proposed funding for each center or system referred to in subparagraph (A) or (B) of paragraph (1), for the budget year for which the Plan is submitted and not less than the 4 subsequent fiscal years.

''(B) A Future Year Intelligence Plan submitted under subparagraph (B) of paragraph (1) for a major system shall include—

''(i) the estimated total life-cycle cost of such major system; and

''(ii) major milestones that have significant resource implications for such major system.

''(b) LONG-TERM BUDGET PROJECTIONS.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Long-term Budget Projection for each element of the intelligence community funded under the National Intelligence Program acquiring a major system that includes the budget for such element for the 5-year period that begins on the day after the end of the last fiscal year for which year-by-year proposed funding is included in a Future Year Intelligence Plan for such major system in accordance with subsection (a)(2)(A).

''(2) A Long-term Budget Projection submitted under paragraph (1) shall include—

''(A) projections for the appropriate element of the intelligence community for—

''(i) pay and benefits of officers and employees of such element;

''(ii) other operating and support costs and minor acquisitions of such element;

''(iii) research and technology required by such element;

''(iv) current and planned major system acquisitions for such element;

''(v) any future major system acquisitions for such element; and

''(vi) any additional funding projections that the Director of National Intelligence considers appropriate;

''(B) a budget projection based on effective cost and schedule execution of current or planned major system acquisitions and application of Office of Management and Budget inflation estimates to future major system acquisitions;

''(C) any additional assumptions and projections that the Director of National Intelligence considers appropriate; and

''(D) a description of whether, and to what extent, the total projection for each year exceeds the level that would result from applying the most recent Office of Management and Budget inflation estimate to the budget of that element of the intelligence community.

''(c) SUBMISSION TO CONGRESS.—The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall submit to the congressional intelligence committees each Future Year Intelligence Plan or Long-term Budget Projection required under subsection (a) or (b) for a fiscal year at the time that the President submits to Congress the budget for such fiscal year pursuant section 1105 of title 31, United States Code.

''(d) MAJOR SYSTEM AFFORDABILITY REPORT.—(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall prepare a report on the acquisition of a major system funded under the National Intelligence Program before the time that the President submits to Congress the budget for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

''(2) The report on such major system shall include an assessment of whether, and to what extent, such acquisition, if developed, procured, and operated, is projected to cause an increase in the most recent Future Year Intelligence Plan and Long-term Budget Projection submitted under section 506G for an element of the intelligence community.

''(3) The Director of National Intelligence shall update the report whenever an independent cost estimate must be updated pursuant to section 506A(a)(4).

''(4) The Director of National Intelligence shall submit each report required by this subsection at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code.

''(e) DEFINITIONS.—In this section:

''(1) BUDGET YEAR.—The term 'budget year' means the next fiscal year for which the President is required to submit to Congress a budget pursuant to section 1105 of title 31, United States Code.

''(2) INDEPENDENT COST ESTIMATE; MAJOR SYSTEM.—The terms 'independent cost estimate' and 'major system' have the meaning given those terms in section 506A(e).''.

(b) APPLICABILITY DATE.—The first Future Year Intelligence Plan and Long-term Budget Projection required to be submitted under subsection (a) and (b) of section 506G of the National Security Act of 1947, as added by subsection (a), shall be submitted to the congressional intelligence committees at the time that the President submits to Congress the budget for fiscal year 2012 pursuant to section 1105 of title 31, United States Code.

(c) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of that Act, as amended by section 324 of this Act, is further amended by inserting after the items relating to section 506F, as added by section 324(b), the following new item:

''Sec. 506G. Future budget projections.''.

(2) REPEAL OF DUPLICATIVE PROVISION.—Section 8104 of the Department of Defense Appropriations Act, 2010 (50 U.S.C. 415a–3; Public Law 111–118; 123 Stat. 3451) is repealed.

SEC. 326. NATIONAL INTELLIGENCE PROGRAM FUNDED ACQUISITIONS.

Subsection (n) of section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended by adding at the end the following new paragraph:

''(4)(A) In addition to the authority referred to in paragraph (1), the Director of National Intelligence may authorize the head of an element of the intelligence community to exercise an acquisition authority referred to in section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)) for an acquisition by such element that is more than 50 percent funded under the National Intelligence Program.

''(B) The head of an element of the intelligence community may not exercise an authority referred to in subparagraph (A) until—

''(i) the head of such element (without delegation) submits to the Director of National Intelligence a written request that includes—

''(I) a description of such authority requested to be exercised;

''(II) an explanation of the need for such authority, including an explanation of the reasons that other authorities are insufficient; and

''(III) a certification that the mission of such element would be—

''(aa) impaired if such authority is not exercised; or

''(bb) significantly and measurably enhanced if such authority is exercised; and

''(ii) the Director of National Intelligence issues a written authorization that includes—

''(I) a description of the authority referred to in subparagraph (A) that is authorized to be exercised; and

''(II) a justification to support the exercise of such authority.

''(C) A request and authorization to exercise an authority referred to in subparagraph (A) may be made with respect to an individual acquisition or with respect to a specific class of acquisitions described in the request and authorization referred to in subparagraph (B).

''(D)(i) A request from a head of an element of the intelligence community located within one of the departments described in clause (ii) to exercise an authority referred to in subparagraph (A) shall be submitted to the Director of National Intelligence in accordance with any procedures established by the head of such department.

''(ii) The departments described in this clause are the Department of Defense, the Department of Energy, the Department of Homeland Security, the Department of Justice, the Department of State, and the Department of the Treasury.

''(E)(i) The head of an element of the intelligence community may not be authorized to utilize an authority referred to in subparagraph (A) for a class of acquisitions for a period of more than 3 years, except that the Director of National Intelligence (without delegation) may authorize the use of such an authority for not more than 6 years.

''(ii) Each authorization to utilize an authority referred to in subparagraph (A) may be extended in accordance with the requirements of subparagraph (B) for successive periods of not more than 3 years, except that the Director of National Intelligence (without delegation) may authorize an extension period of not more than 6 years.

''(F) Subject to clauses (i) and (ii) of subparagraph (E), the Director of National Intelligence may only delegate the authority of the Director under subparagraphs (A) through (E) to the Principal Deputy Director of National Intelligence or a Deputy Director of National Intelligence.

''(G) The Director of National Intelligence shall submit—

''(i) to the congressional intelligence committees a notification of an authorization to exercise an authority referred to in subparagraph (A) or an extension of such authorization that includes the written authorization referred to in subparagraph (B)(ii); and

''(ii) to the Director of the Office of Management and Budget a notification of an authorization to exercise an authority referred to in subparagraph (A) for an acquisition or class of acquisitions that will exceed $50,000,000 annually.

''(H) Requests and authorizations to exercise an authority referred to in subparagraph (A) shall remain available within the Office of the Director of National Intelligence for a period of at least 6 years following the date of such request or authorization.

''(I) Nothing in this paragraph may be construed to alter or otherwise limit the authority of the Central Intelligence Agency to independently exercise an authority under section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)).''.

Subtitle D—Congressional Oversight, Plans, and Reports

SEC. 331. NOTIFICATION PROCEDURES.

(a) PROCEDURES.—Section 501(c) of the National Security Act of 1947 (50 U.S.C. 413(c)) is amended by striking ''such procedures'' and inserting ''such written procedures''.

(b) INTELLIGENCE ACTIVITIES.—Section 502(a)(2) of such Act (50 U.S.C. 413a(a)(2)) is amended by inserting ''(including the legal basis under which the intelligence activity is being or was conducted)'' after ''concerning intelligence activities''.

(c) COVERT ACTIONS.—Section 503 of such Act (50 U.S.C. 413b) is amended—

(1) in subsection (b)(2), by inserting ''(including the legal basis under which the covert action is being or was conducted)'' after ''concerning covert actions'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting ''in writing'' after ''be reported'';

(B) in paragraph (4), by striking ''committee. When'' and inserting the following: ''committee.

''(5) When''; and

(C) in paragraph (5), as designated by subparagraph (B)—

(i) by inserting '', or a notice provided under subsection (d)(1),'' after ''access to a finding''; and

(ii) by inserting ''written'' before ''statement'';

(3) in subsection (d)—

(A) by striking ''(d) The President'' and inserting ''(d)(1) The President'';

(B) in paragraph (1), as designated by subparagraph (A), by inserting ''in writing'' after ''notified''; and

(C) by adding at the end the following new paragraph:

''(2) In determining whether an activity constitutes a significant undertaking for purposes of paragraph (1), the President shall consider whether the activity—

''(A) involves significant risk of loss of life;

''(B) requires an expansion of existing authorities, including authorities relating to research, development, or operations;

''(C) results in the expenditure of significant funds or other resources;

''(D) requires notification under section 504;

''(E) gives rise to a significant risk of disclosing intelligence sources or methods; or

''(F) presents a reasonably foreseeable risk of serious damage to the diplomatic relations of the United States if such activity were disclosed without authorization.''; and

(4) by adding at the end the following new subsection:

''(g) The President shall maintain—

''(1) a record of the Members of Congress to whom a finding is reported under subsection (c) or notice is provided under subsection (d)(1) and the date on which each Member of Congress receives such finding or notice; and

''(2) each written statement provided under subsection (c)(5).''.

SEC. 332. CERTIFICATION OF COMPLIANCE WITH OVERSIGHT REQUIREMENTS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 325 of this Act, is further amended by adding at the end the following new section:

''CERTIFICATION OF COMPLIANCE WITH OVERSIGHT REQUIREMENTS

''SEC. 508. The head of each element of the intelligence community shall annually submit to the congressional intelligence committees—

''(1) a certification that, to the best of the knowledge of the head of such element—

''(A) the head of such element is in full compliance with the requirements of this title; and

''(B) any information required to be submitted by the head of such element under this Act before the date of the submission of such certification has been properly submitted; or

''(2) if the head of such element is unable to submit a certification under paragraph (1), a statement—

''(A) of the reasons the head of such element is unable to submit such a certification;

''(B) describing any information required to be submitted by the head of such element under this Act before the date of the submission of such statement that has not been properly submitted; and

''(C) that the head of such element will submit such information as soon as possible after the submission of such statement.''.

(b) APPLICABILITY DATE.—The first certification or statement required to be submitted by the head of each element of the intelligence community under section 508 of the National Security Act of 1947, as added by subsection (a), shall be submitted not later than 90 days after the date of the enactment of this Act.

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 325 of this Act, is further amended by inserting after the item related to section 507 the following new item:

''Sec. 508. Certification of compliance with oversight requirements.''.

SEC. 333. REPORT ON DETENTION AND INTERROGATION ACTIVITIES.

(a) REQUIREMENT FOR REPORT.—Not later than December 1, 2010, the Director of National Intelligence, in coordination with the Attorney General and the Secretary of Defense, shall submit to the congressional intelligence committees a comprehensive report containing—

(1) the policies and procedures of the United States Government governing participation by an element of the intelligence community in the interrogation of individuals detained by the United States who are suspected of international terrorism with the objective, in whole or in part, of acquiring national intelligence, including such policies and procedures of each appropriate element of the intelligence community or interagency body established to carry out interrogation;

(2) the policies and procedures relating to any detention by the Central Intelligence Agency of such individuals in accordance with Executive Order 13491;

(3) the legal basis for the policies and procedures referred to in paragraphs (1) and (2);

(4) the training and research to support the policies and procedures referred to in paragraphs (1) and (2); and

(5) any action that has been taken to implement section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1).

(b) OTHER SUBMISSION OF REPORT.—

(1) CONGRESSIONAL ARMED SERVICES COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Defense, the Director of National Intelligence, in consultation with the Secretary of Defense, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(2) CONGRESSIONAL JUDICIARY COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Justice, the Director of National Intelligence, in consultation with the Attorney General, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(c) FORM OF SUBMISSIONS.—Any submission required under this section may be submitted in classified form.

SEC. 334. SUMMARY OF INTELLIGENCE RELATING TO TERRORIST RECIDIVISM OF DETAINEES HELD AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Director of the Central Intelligence Agency and the Director of the Defense Intelligence Agency, shall make publicly available an unclassified summary of—

(1) intelligence relating to recidivism of detainees currently or formerly held at the Naval Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense; and

(2) an assessment of the likelihood that such detainees will engage in terrorism or communicate with persons in terrorist organizations.

SEC. 335. REPORT AND STRATEGIC PLAN ON BIOLOGICAL WEAPONS.

(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report on—

(1) the intelligence collection efforts of the United States dedicated to assessing the threat from biological weapons from state, nonstate, or rogue actors, either foreign or domestic; and

(2) efforts to protect the biodefense knowledge and infrastructure of the United States.

(b) CONTENT.—The report required by subsection (a) shall include—

(1) an assessment of the intelligence collection efforts of the United States dedicated to detecting the development or use of biological weapons by state, nonstate, or rogue actors, either foreign or domestic;

(2) information on fiscal, human, technical, open-source, and other intelligence collection resources of the United States dedicated for use to detect or protect against the threat of biological weapons;

(3) an assessment of any problems that may reduce the overall effectiveness of United States intelligence collection and analysis to identify and protect biological weapons targets, including—

(A) intelligence collection gaps or inefficiencies;

(B) inadequate information sharing practices; or

(C) inadequate cooperation among departments or agencies of the United States;

(4) a strategic plan prepared by the Director of National Intelligence, in coordination with the Attorney General, the Secretary of Defense, and the Secretary of Homeland Security, that provides for actions for the appropriate elements of the intelligence community to close important intelligence gaps related to biological weapons;

(5) a description of appropriate goals, schedules, milestones, or metrics to measure the long-term effectiveness of actions implemented to carry out the plan described in paragraph (4); and

(6) any long-term resource and human capital issues related to the collection of intelligence regarding biological weapons, including any recommendations to address shortfalls of experienced and qualified staff possessing relevant scientific, language, and technical skills.

(c) IMPLEMENTATION OF STRATEGIC PLAN.—Not later than 30 days after the date on which the Director of National Intelligence submits the report required by subsection (a), the Director shall begin implementation of the strategic plan referred to in subsection (b)(4).

SEC. 336. CYBERSECURITY OVERSIGHT.

(a) NOTIFICATION OF CYBERSECURITY PROGRAMS.—

(1) REQUIREMENT FOR NOTIFICATION.—

(A) EXISTING PROGRAMS.—Not later than 30 days after the date of the enactment of this Act, the President shall submit to Congress a notification for each cybersecurity program in operation on such date that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

(B) NEW PROGRAMS.—Not later than 30 days after the date of the commencement of operations of a new cybersecurity program, the President shall submit to Congress a notification of such commencement that includes the documentation referred to in subparagraphs (A) through (F) of paragraph (2).

(2) DOCUMENTATION.—A notification required by paragraph (1) for a cybersecurity program shall include—

(A) the legal basis for the cybersecurity program;

(B) the certification, if any, made pursuant to section 2511(2)(a)(ii)(B) of title 18, United States Code, or other statutory certification of legality for the cybersecurity program;

(C) the concept for the operation of the cybersecurity program that is approved by the head of the appropriate department or agency of the United States;

(D) the assessment, if any, of the privacy impact of the cybersecurity program prepared by the privacy or civil liberties protection officer or comparable officer of such department or agency;

(E) the plan, if any, for independent audit or review of the cybersecurity program to be carried out by the head of such department or agency, in conjunction with the appropriate inspector general; and

(F) recommendations, if any, for legislation to improve the capabilities of the United States Government to protect the cybersecurity of the United States.

(b) PROGRAM REPORTS.—

(1) REQUIREMENT FOR REPORTS.—The head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification was submitted under subsection (a), in consultation with the inspector general for that department or agency, shall submit to Congress and the President a report on such cybersecurity program that includes—

(A) the results of any audit or review of the cybersecurity program carried out under the plan referred to in subsection (a)(2)(E), if any; and

(B) an assessment of whether the implementation of the cybersecurity program—

(i) is in compliance with—

(I) the legal basis referred to in subsection (a)(2)(A); and

(II) an assessment referred to in subsection (a)(2)(D), if any;

(ii) is adequately described by the concept of operation referred to in subsection (a)(2)(C); and

(iii) includes an adequate independent audit or review system and whether improvements to such independent audit or review system are necessary.

(2) SCHEDULE FOR SUBMISSION OF REPORTS.—

(A) EXISTING PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the head of a department or agency of the United States with responsibility for a cybersecurity program for which a notification is required to be submitted under subsection (a)(1)(A) shall submit a report required under paragraph (1).

(B) NEW PROGRAMS.—Not later than 120 days after the date on which a certification is submitted under subsection (a)(1)(B), and annually thereafter, the head of a department or agency of the United States with responsibility for the cybersecurity program for which such certification is submitted shall submit a report required under paragraph (1).

(3) COOPERATION AND COORDINATION.—

(A) COOPERATION.—The head of each department or agency of the United States required to submit a report under paragraph (1) for a particular cybersecurity program, and the inspector general of each such department or agency, shall, to the extent practicable, work in conjunction with any other such head or inspector general required to submit such a report for such cybersecurity program.

(B) COORDINATION.—The heads of all of the departments and agencies of the United States required to submit a report under paragraph (1) for a particular cybersecurity program shall designate one such head to coordinate the conduct of the reports on such program.

(c) INFORMATION SHARING REPORT.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security and the Inspector General of the Intelligence Community shall jointly submit to Congress and the President a report on the status of the sharing of cyber-threat information, including—

(1) a description of how cyber-threat intelligence information, including classified information, is shared among the agencies and departments of the United States and with persons responsible for critical infrastructure;

(2) a description of the mechanisms by which classified cyber-threat information is distributed;

(3) an assessment of the effectiveness of cyber-threat information sharing and distribution; and

(4) any other matters identified by either Inspector General that would help to fully

inform Congress or the President regarding the effectiveness and legality of cybersecurity programs.

(d) PERSONNEL DETAILS.—

(1) AUTHORITY TO DETAIL.—Notwithstanding any other provision of law, the head of an element of the intelligence community that is funded through the National Intelligence Program may detail an officer or employee of such element to the National Cyber Investigative Joint Task Force or to the Department of Homeland Security to assist the Task Force or the Department with cybersecurity, as jointly agreed by the head of such element and the Task Force or the Department.

(2) BASIS FOR DETAIL.—A personnel detail made under paragraph (1) may be made—

(A) for a period of not more than three years; and

(B) on a reimbursable or nonreimbursable basis.

(e) ADDITIONAL PLAN.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a plan for recruiting, retaining, and training a highly-qualified cybersecurity intelligence community workforce to secure the networks of the intelligence community. Such plan shall include—

(1) an assessment of the capabilities of the current workforce;

(2) an examination of issues of recruiting, retention, and the professional development of such workforce, including the possibility of providing retention bonuses or other forms of compensation;

(3) an assessment of the benefits of outreach and training with both private industry and academic institutions with respect to such workforce;

(4) an assessment of the impact of the establishment of the Department of Defense Cyber Command on such workforce;

(5) an examination of best practices for making the intelligence community workforce aware of cybersecurity best practices and principles; and

(6) strategies for addressing such other matters as the Director of National Intelligence considers necessary to the cybersecurity of the intelligence community.

(f) REPORT ON GUIDELINES AND LEGISLATION TO IMPROVE CYBERSECURITY OF THE UNITED STATES.—

(1) INITIAL.—Not later than one year after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress a report containing guidelines or legislative recommendations, if appropriate, to improve the capabilities of the intelligence community and law enforcement agencies to protect the cybersecurity of the United States. Such report shall include guidelines or legislative recommendations on—

(A) improving the ability of the intelligence community to detect hostile actions and attribute attacks to specific parties;

(B) the need for data retention requirements to assist the intelligence community and law enforcement agencies;

(C) improving the ability of the intelligence community to anticipate nontraditional targets of foreign intelligence services; and

(D) the adequacy of existing criminal statutes to successfully deter cyber attacks, including statutes criminalizing the facilitation of criminal acts, the scope of laws for which a cyber crime constitutes a predicate offense, trespassing statutes, data breach notification requirements, and victim restitution statutes.

(2) SUBSEQUENT.—Not later than one year after the date on which the initial report is submitted under paragraph (1), and annually thereafter for two years, the Director of National Intelligence, in consultation with the Attorney General, the Director of the National Security Agency, the White House Cybersecurity Coordinator, and any other officials the Director of National Intelligence considers appropriate, shall submit to Congress an update of the report required under paragraph (1).

(g) SUNSET.—The requirements and authorities of subsections (a) through (e) shall terminate on December 31, 2013.

(h) DEFINITIONS.—In this section:

(1) CYBERSECURITY PROGRAM.—The term ''cybersecurity program'' means a class or collection of similar cybersecurity operations of a department or agency of the United States that involves personally identifiable data that is—

(A) screened by a cybersecurity system outside of the department or agency of the United States that was the intended recipient of the personally identifiable data;

(B) transferred, for the purpose of cybersecurity, outside the department or agency of the United States that was the intended recipient of the personally identifiable data; or

(C) transferred, for the purpose of cybersecurity, to an element of the intelligence community.

(2) NATIONAL CYBER INVESTIGATIVE JOINT TASK FORCE.—The term ''National Cyber Investigative Joint Task Force'' means the multiagency cyber investigation coordination organization overseen by the Director of the Federal Bureau of Investigation known as the National Cyber Investigative Joint Task Force that coordinates, integrates, and provides pertinent information related to cybersecurity investigations.

(3) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016 of the USA PATRIOT Act (42 U.S.C. 5195c).

SEC. 337. REPORT ON FOREIGN LANGUAGE PROFICIENCY IN THE INTELLIGENCE COMMUNITY.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, and biennially thereafter for four years, the Director of National Intelligence shall submit to the congressional intelligence committees and the Committees on Armed Services of the House of Representatives and the Senate a report on the proficiency in foreign languages and, as appropriate, in foreign dialects, of each element of the intelligence community, including—

(1) the number of positions authorized for such element that require foreign language proficiency and a description of the level of proficiency required;

(2) an estimate of the number of such positions that such element will require during the five-year period beginning on the date of the submission of the report;

(3) the number of positions authorized for such element that require foreign language proficiency that are filled by—

(A) military personnel; and

(B) civilian personnel;

(4) the number of applicants for positions in such element in the preceding fiscal year that indicated foreign language proficiency, including the foreign language indicated and the proficiency level;

(5) the number of persons hired by such element with foreign language proficiency, including the foreign language and a description of the proficiency level of such persons;

(6) the number of personnel of such element currently attending foreign language training, including the provider of such training;

(7) a description of the efforts of such element to recruit, hire, train, and retain personnel that are proficient in a foreign language;

(8) an assessment of methods and models for basic, advanced, and intensive foreign language training utilized by such element;

(9) for each foreign language and, as appropriate, dialect of a foreign language—

(A) the number of positions of such element that require proficiency in the foreign language or dialect;

(B) the number of personnel of such element that are serving in a position that requires proficiency in the foreign language or dialect to perform the primary duty of the position;

(C) the number of personnel of such element that are serving in a position that does not require proficiency in the foreign language or dialect to perform the primary duty of the position;

(D) the number of personnel of such element rated at each level of proficiency of the Interagency Language Roundtable;

(E) whether the number of personnel at each level of proficiency of the Interagency Language Roundtable meets the requirements of such element;

(F) the number of personnel serving or hired to serve as linguists for such element that are not qualified as linguists under the standards of the Interagency Language Roundtable;

(G) the number of personnel hired to serve as linguists for such element during the preceding calendar year;

(H) the number of personnel serving as linguists that discontinued serving such element during the preceding calendar year;

(I) the percentage of work requiring linguistic skills that is fulfilled by a foreign country, international organization, or other foreign entity; and

(J) the percentage of work requiring linguistic skills that is fulfilled by contractors;

(10) an assessment of the foreign language capacity and capabilities of the intelligence community as a whole;

(11) an identification of any critical gaps in foreign language proficiency with respect to such element and recommendations for eliminating such gaps;

(12) recommendations, if any, for eliminating required reports relating to foreign-language proficiency that the Director of National Intelligence considers outdated or no longer relevant; and

(13) an assessment of the feasibility of employing foreign nationals lawfully present in the United States who have previously worked as translators or interpreters for the Armed Forces or another department or agency of the United States Government in Iraq or Afghanistan to meet the critical language needs of such element.

(b) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 338. REPORT ON PLANS TO INCREASE DIVERSITY WITHIN THE INTELLIGENCE COMMUNITY.

(a) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Director of National Intelligence, in coordination with the head of each element of the intelligence community, shall submit to the congressional intelligence committees a report on the plans of each such element to increase diversity within the intelligence community.

(b) CONTENT.—The report required by subsection (a) shall include specific implementation plans to increase diversity within each element of the intelligence community, including—

(1) specific implementation plans for each such element designed to achieve the goals articulated in the strategic plan of the Director of National Intelligence on equal employment opportunity and diversity;

(2) specific plans and initiatives for each such element to increase recruiting and hiring of diverse candidates;

(3) specific plans and initiatives for each such element to improve retention of diverse Federal employees at the junior, midgrade, senior, and management levels;

(4) a description of specific diversity awareness training and education programs for senior officials and managers of each such element; and

(5) a description of performance metrics to measure the success of carrying out the plans, initiatives, and programs described in paragraphs (1) through (4).

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 339. REPORT ON INTELLIGENCE COMMUNITY CONTRACTORS.

(a) REQUIREMENT FOR REPORT.—Not later than February 1, 2011, the Director of National Intelligence shall submit to the congressional intelligence committees and the Committees on Armed Services of the House of Representatives and the Senate a report describing the use of personal services contracts across the intelligence community, the impact of the use of such contracts on the intelligence community workforce, plans for conversion of contractor employment into United States Government employment, and the accountability mechanisms that govern the performance of such personal services contracts.

(b) CONTENT.—

(1) IN GENERAL.—The report submitted under subsection (a) shall include—

(A) a description of any relevant regulations or guidance issued by the Director of National Intelligence or the head of an element of the intelligence community and in effect as of February 1, 2011, relating to minimum standards required regarding the hiring, training, security clearance, and assignment of contract personnel and how those standards may differ from those for United States Government employees performing substantially similar functions;

(B) an identification of contracts in effect during the preceding fiscal year under which the contractor is performing substantially similar functions to a United States Government employee;

(C) an assessment of costs incurred or savings achieved during the preceding fiscal year by awarding contracts for the performance of such functions referred to in subparagraph (B) instead of using full-time employees of the elements of the intelligence community to perform such functions;

(D) an assessment of the appropriateness of using contractors to perform the activities described in paragraph (2);

(E) an estimate of the number of contracts, and the number of personnel working under such contracts, related to the performance of activities described in paragraph (2);

(F) a comparison of the compensation of contract employees and United States Government employees performing substantially similar functions during the preceding fiscal year;

(G) an analysis of the attrition of United States Government employees for contractor positions that provide substantially similar functions during the preceding fiscal year;

(H) a description of positions that have been or will be converted from contractor employment to United States Government employment during fiscal years 2011 and 2012;

(I) an analysis of the oversight and accountability mechanisms applicable to personal services contracts awarded for intelligence activities by each element of the intelligence community during fiscal years 2009 and 2010;

(J) an analysis of procedures in use in the intelligence community as of February 1, 2011, for conducting oversight of contractors to ensure identification and prosecution of criminal violations, financial waste, fraud, or other abuses committed by contractors or contract personnel; and

(K) an identification of best practices for oversight and accountability mechanisms applicable to personal services contracts.

(2) ACTIVITIES.—Activities described in this paragraph are the following:

(A) Intelligence collection.

(B) Intelligence analysis.

(C) Covert actions, including rendition, detention, and interrogation activities.

SEC. 340. STUDY ON ELECTRONIC WASTE DESTRUCTION PRACTICES OF THE INTELLIGENCE COMMUNITY.

(a) STUDY.—The Inspector General of the Intelligence Community shall conduct a study on the electronic waste destruction practices of the intelligence community. Such study shall assess—

(1) the security of the electronic waste disposal practices of the intelligence community, including the potential for counterintelligence exploitation of destroyed, discarded, or recycled materials;

(2) the environmental impact of such disposal practices; and

(3) methods to improve the security and environmental impact of such disposal practices, including steps to prevent the forensic exploitation of electronic waste.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report containing the results of the study conducted under subsection (a).

SEC. 341. REVIEW OF RECORDS RELATING TO POTENTIAL HEALTH RISKS AMONG DESERT STORM VETERANS.

(a) REVIEW.—The Director of the Central Intelligence Agency shall conduct a classification review of the records of the Agency that are relevant to the known or potential health effects suffered by veterans of Operation Desert Storm as described in the November 2008, report by the Department of Veterans Affairs Research Advisory Committee on Gulf War Veterans' Illnesses.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall submit to Congress the results of the classification review conducted under subsection (a), including the total number of records of the Agency that are relevant.

(c) FORM.—The report required under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

SEC. 342. REVIEW OF FEDERAL BUREAU OF INVESTIGATION EXERCISE OF ENFORCEMENT JURISDICTION IN FOREIGN NATIONS.

Not later than 120 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation, in consultation with the Secretary of State, shall submit to Congress a review of constraints under international law and the laws of foreign nations to the assertion of enforcement jurisdiction with respect to criminal investigations of terrorism offenses under the laws of the United States conducted by agents of the Federal Bureau of Investigation in foreign nations and using funds made available for the National Intelligence Program, including constraints identified in section 432 of the Restatement (Third) of the Foreign Relations Law of the United States.

SEC. 343. PUBLIC RELEASE OF INFORMATION ON PROCEDURES USED IN NARCOTICS AIRBRIDGE DENIAL PROGRAM IN PERU.

Not later than 30 days after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall make publicly available an unclassified version of the report of the Inspector General of the Central Intelligence Agency entitled ''Procedures Used in Narcotics Airbridge Denial Program in Peru, 1995–2001'', dated August 25, 2008.

SEC. 344. REPORT ON THREAT FROM DIRTY BOMBS.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence, in consultation with the Nuclear Regulatory Commission, shall submit to Congress a report summarizing intelligence related to the threat to the United States from weapons that use radiological materials, including highly dispersible substances such as cesium-137.

SEC. 345. REPORT ON CREATION OF SPACE INTELLIGENCE OFFICE.

Not later than 60 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the feasibility and advisability of creating a national space intelligence office to manage space-related intelligence assets and access to such assets.

SEC. 346. REPORT ON ATTEMPT TO DETONATE EXPLOSIVE DEVICE ON NORTHWEST AIRLINES FLIGHT 253.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to Congress a report on the attempt to detonate an explosive device aboard Northwest Airlines flight number 253 on December 25, 2009. Such report shall describe the failures, if any, to share or analyze intelligence or other information and the measures that the intelligence community has taken or will take to prevent such failures, including—

(1) a description of the roles and responsibilities of the counterterrorism analytic components of the intelligence community in synchronizing, correlating, and analyzing all sources of intelligence related to terrorism;

(2) an assessment of the technological capabilities of the United States Government to assess terrorist threats, including—

(A) a list of all databases used by counterterrorism analysts;

(B) a description of the steps taken by the intelligence community to integrate all relevant terrorist databases and allow for cross-database searches;

(C) a description of the steps taken by the intelligence community to correlate biographic information with terrorism-related intelligence; and

(D) a description of the improvements to information technology needed to enable the United States Government to better share information;

(3) any recommendations that the Director considers appropriate for legislation to improve the sharing of intelligence or information relating to terrorists;

(4) a description of the steps taken by the intelligence community to train analysts on watchlisting processes and procedures;

(5) a description of the manner in which watchlisting information is entered, reviewed, searched, analyzed, and acted upon by the relevant elements of the United States Government;

(6) a description of the steps the intelligence community is taking to enhance the rigor and raise the standard of tradecraft of intelligence analysis related to uncovering and preventing terrorist plots;

(7) a description of the processes and procedures by which the intelligence community

prioritizes terrorism threat leads and the standards used by elements of the intelligence community to determine if follow-up action is appropriate;

(8) a description of the steps taken to enhance record information on possible terrorists in the Terrorist Identities Datamart Environment;

(9) an assessment of how to meet the challenge associated with exploiting the ever-increasing volume of information available to the intelligence community; and

(10) a description of the steps the intelligence community has taken or will take to respond to any findings and recommendations of the congressional intelligence committees, with respect to any such failures, that have been transmitted to the Director of National Intelligence.

SEC. 347. REPEAL OR MODIFICATION OF CERTAIN REPORTING REQUIREMENTS.

(a) ANNUAL REPORT ON INTELLIGENCE.—Section 109 of the National Security Act of 1947 (50 U.S.C. 404d) is repealed.

(b) ANNUAL AND SPECIAL REPORTS ON INTELLIGENCE SHARING WITH THE UNITED NATIONS.—Section 112 of the National Security Act of 1947 (50 U.S.C. 404g) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) ANNUAL REPORT ON PROGRESS IN AUDITABLE FINANCIAL STATEMENTS.—Section 114A of the National Security Act of 1947 (50 U.S.C. 404i–1) is repealed.

(d) REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST ASSETS.—Section 118 of the National Security Act of 1947 (50 U.S.C. 404m) is amended—

(1) in the heading, by striking ''SEMIANNUAL'' and inserting ''ANNUAL'';

(2) in subsection (a)—

(A) in the heading, by striking ''SEMIANNUAL'' and inserting ''ANNUAL'';

(B) in the matter preceding paragraph (1)—

(i) by striking ''semiannual basis'' and inserting ''annual basis''; and

(ii) by striking ''preceding six-month period'' and inserting ''preceding one-year period'';

(C) by striking paragraph (2); and

(D) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(3) in subsection (d)—

(A) in paragraph (1), by inserting ''the Committee on Armed Services,'' after ''the Committee on Appropriations,''; and

(B) in paragraph (2), by inserting ''the Committee on Armed Services,'' after ''the Committee on Appropriations,''.

(e) ANNUAL CERTIFICATION ON COUNTERINTELLIGENCE INITIATIVES.—Section 1102(b) of the National Security Act of 1947 (50 U.S.C. 442a(b)) is amended—

(1) by striking ''(1)''; and

(2) by striking paragraph (2).

(f) REPORT AND CERTIFICATION UNDER TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.—Section 343 of the Intelligence Authorization Act for Fiscal Year 2003 (50 U.S.C. 404n–2) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

(g) ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.—Section 826 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 21 U.S.C. 873 note) is repealed.

(h) BIENNIAL REPORT ON FOREIGN INDUSTRIAL ESPIONAGE.—Subsection (b) of section 809 of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. App. 2170b) is amended—

(1) in the heading, by striking ''ANNUAL UPDATE'' and inserting ''BIENNIAL REPORT'';

(2) by striking paragraphs (1) and (2) and inserting the following new paragraph:

''(1) REQUIREMENT TO SUBMIT.—Not later than February 1, 2011, and once every two years thereafter, the President shall submit to the congressional intelligence committees and congressional leadership a report updating the information referred to in subsection (a)(1)D).''; and

(3) by redesignating paragraph (3) as paragraph (2).

(i) TABLE OF CONTENTS AMENDMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—The table of contents in the first section of the National Security Act of 1947, as amended by section 332 of this Act, is further amended—

(A) by striking the item relating to section 109;

(B) by striking the item relating to section 114A; and

(C) by striking the item relating to section 118 and inserting the following new item:

''Sec. 118. Annual report on financial intelligence on terrorist assets.''.

(2) INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003.—The table of contents in the first section of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2383) is amended by striking the item relating to section 826.

SEC. 348. INCORPORATION OF REPORTING REQUIREMENTS.

Each requirement to submit a report to the congressional intelligence committees that is included in the classified annex to this Act is hereby incorporated into this Act and is hereby made a requirement in law.

SEC. 349. CONFORMING AMENDMENTS FOR REPORT SUBMISSION DATES.

Section 507 of the National Security Act of 1947 (50 U.S.C. 415b) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking subparagraphs (A), (B), and (G);

(ii) by redesignating subparagraphs (C), (D), (E), (F), (H), (I), and (N) as subparagraphs (A), (B), (C), (D), (E), (F), and (G), respectively; and

(iii) by adding at the end the following new subparagraphs:

''(H) The annual report on outside employment of employees of elements of the intelligence community required by section 102A(u)(2).

''(I) The annual report on financial intelligence on terrorist assets required by section 118.''; and

(B) in paragraph (2), by striking subparagraphs (C) and (D); and

(2) in subsection (b), by striking paragraph (6).

Subtitle E—Other Matters

SEC. 361. EXTENSION OF AUTHORITY TO DELETE INFORMATION ABOUT RECEIPT AND DISPOSITION OF FOREIGN GIFTS AND DECORATIONS.

Paragraph (4) of section 7342(f) of title 5, United States Code, is amended to read as follows:

''(4)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraph (A) or (C) of paragraph (2) or in subparagraph (A) or (C) of paragraph (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.

''(B) Any information not provided to the Secretary of State pursuant to the authority in subparagraph (A) shall be transmitted to the Director of National Intelligence who shall keep a record of such information.

''(C) In this paragraph, the term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).''.

SEC. 362. MODIFICATION OF AVAILABILITY OF FUNDS FOR DIFFERENT INTELLIGENCE ACTIVITIES.

Subparagraph (B) of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended to read as follows:

''(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and''.

SEC. 363. PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION.

(a) INCREASE IN PENALTIES FOR DISCLOSURE OF UNDERCOVER INTELLIGENCE OFFICERS AND AGENTS.—

(1) DISCLOSURE OF AGENT AFTER ACCESS TO INFORMATION IDENTIFYING AGENT.—Subsection (a) of section 601 of the National Security Act of 1947 (50 U.S.C. 421) is amended by striking ''ten years'' and inserting ''15 years''.

(2) DISCLOSURE OF AGENT AFTER ACCESS TO CLASSIFIED INFORMATION.—Subsection (b) of such section is amended by striking ''five years'' and inserting ''10 years''.

(b) MODIFICATIONS TO ANNUAL REPORT ON PROTECTION OF INTELLIGENCE IDENTITIES.—The first sentence of section 603(a) of the National Security Act of 1947 (50 U.S.C. 423(a)) is amended by inserting ''including an assessment of the need, if any, for modification of this title for the purpose of improving legal protections for covert agents,'' after ''measures to protect the identities of covert agents,''.

SEC. 364. NATIONAL INTELLIGENCE PROGRAM BUDGET.

Section 601 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (50 U.S.C. 415c) is amended to read as follows:

''SEC. 601. AVAILABILITY TO PUBLIC OF CERTAIN INTELLIGENCE FUNDING INFORMATION.

''(a) BUDGET REQUEST.—At the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, United States Code, the President shall disclose to the public the aggregate amount of appropriations requested for that fiscal year for the National Intelligence Program.

''(b) AMOUNTS APPROPRIATED EACH FISCAL YEAR.—Not later than 30 days after the end of each fiscal year, the Director of National Intelligence shall disclose to the public the aggregate amount of funds appropriated by Congress for the National Intelligence Program for such fiscal year.

''(c) WAIVER.—

''(1) IN GENERAL.—The President may waive or postpone the disclosure required by subsection (a) or (b) for a fiscal year by submitting to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives—

''(A) a statement, in unclassified form, that the disclosure required in subsection (a) or (b) for that fiscal year would damage national security; and

''(B) a statement detailing the reasons for the waiver or postponement, which may be submitted in classified form.

''(2) SUBMISSION DATES.—The President shall submit the statements required under paragraph (1)—

''(A) in the case of a waiver or postponement of a disclosure required under subsection (a), at the time of the submission of the budget for the fiscal year for which such disclosure is waived or postponed; and

''(B) in the case of a waiver or postponement of a disclosure required under subsection (b), not later than 30 days after the

date of the end of the fiscal year for which such disclosure is waived or postponed.

''(d) DEFINITION.—As used in this section, the term 'National Intelligence Program' has the meaning given the term in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6)).''.

SEC. 365. IMPROVING THE REVIEW AUTHORITY OF THE PUBLIC INTEREST DECLASSIFICATION BOARD.

Paragraph (5) of section 703(b) of the Public Interest Declassification Act of 2000 (50 U.S.C. 435 note) is amended—

(1) by striking ''jurisdiction,'' and inserting ''jurisdiction or by a member of the committee of jurisdiction,''; and

(2) by inserting '', to evaluate the proper classification of certain records,'' after ''certain records''.

SEC. 366. AUTHORITY TO DESIGNATE UNDERCOVER OPERATIONS TO COLLECT FOREIGN INTELLIGENCE OR COUNTERINTELLIGENCE.

Paragraph (1) of section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102–395; 28 U.S.C. 533 note) is amended in the flush text following subparagraph (D) by striking ''(or, if designated by the Director, the Assistant Director, Intelligence Division) and the Attorney General (or, if designated by the Attorney General, the Assistant Attorney General for National Security)'' and inserting ''(or a designee of the Director who is in a position not lower than Deputy Assistant Director in the National Security Branch or a similar successor position) and the Attorney General (or a designee of the Attorney General who is in the National Security Division in a position not lower than Deputy Assistant Attorney General or a similar successor position)''.

SEC. 367. SECURITY CLEARANCES: REPORTS; RECIPROCITY.

(a) REPORTS RELATING TO SECURITY CLEARANCES.—

(1) QUADRENNIAL AUDIT; SECURITY CLEARANCE DETERMINATIONS.—

(A) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 325 of this Act, is further amended by inserting after section 506G, as added by section 325(a), the following new section:

''REPORTS ON SECURITY CLEARANCES

''SEC. 506H. (a) QUADRENNIAL AUDIT OF POSITION REQUIREMENTS.—(1) The President shall every four years conduct an audit of the manner in which the executive branch determines whether a security clearance is required for a particular position in the United States Government.

''(2) Not later than 30 days after the completion of an audit conducted under paragraph (1), the President shall submit to Congress the results of such audit.

''(b) REPORT ON SECURITY CLEARANCE DETERMINATIONS.—(1) Not later than February 1 of each year, the President shall submit to Congress a report on the security clearance process. Such report shall include, for each security clearance level—

''(A) the number of employees of the United States Government who—

''(i) held a security clearance at such level as of October 1 of the preceding year; and

''(ii) were approved for a security clearance at such level during the preceding fiscal year;

''(B) the number of contractors to the United States Government who—

''(i) held a security clearance at such level as of October 1 of the preceding year; and

''(ii) were approved for a security clearance at such level during the preceding fiscal year; and

''(C) for each element of the intelligence community—

''(i) the total amount of time it took to process the security clearance determination for such level that—

''(I) was among the 80 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

''(II) took the longest amount of time to complete;

''(ii) the total amount of time it took to process the security clearance determination for such level that—

''(I) was among the 90 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

''(II) took the longest amount of time to complete;

''(iii) the number of pending security clearance investigations for such level as of October 1 of the preceding year that have remained pending for—

''(I) 4 months or less;

''(II) between 4 months and 8 months;

''(III) between 8 months and one year; and

''(IV) more than one year;

''(iv) the percentage of reviews during the preceding fiscal year that resulted in a denial or revocation of a security clearance;

''(v) the percentage of investigations during the preceding fiscal year that resulted in incomplete information;

''(vi) the percentage of investigations during the preceding fiscal year that did not result in enough information to make a decision on potentially adverse information; and

''(vii) for security clearance determinations completed or pending during the preceding fiscal year that have taken longer than one year to complete—

''(I) the number of security clearance determinations for positions as employees of the United States Government that required more than one year to complete;

''(II) the number of security clearance determinations for contractors that required more than one year to complete;

''(III) the agencies that investigated and adjudicated such determinations; and

''(IV) the cause of significant delays in such determinations.

''(2) For purposes of paragraph (1), the President may consider—

''(A) security clearances at the level of confidential and secret as one security clearance level; and

''(B) security clearances at the level of top secret or higher as one security clearance level.

''(c) FORM.—The results required under subsection (a)(2) and the reports required under subsection (b)(1) shall be submitted in unclassified form, but may include a classified annex.''.

(B) INITIAL AUDIT.—The first audit required to be conducted under section 506H(a)(1) of the National Security Act of 1947, as added by subparagraph (A) of this paragraph, shall be completed not later than February 1, 2011.

(C) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act, as amended by section 348(i) of this Act, is further amended by inserting after the item relating to section 506G, as added by section 325 of this Act, the following new item:

''Sec. 506H. Reports on security clearances.''.

(2) REPORT ON METRICS FOR ADJUDICATION QUALITY.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on security clearance investigations and adjudications. Such report shall include—

(A) United States Government-wide adjudication guidelines and metrics for adjudication quality;

(B) a plan to improve the professional development of security clearance adjudicators;

(C) metrics to evaluate the effectiveness of interagency clearance reciprocity;

(D) United States Government-wide investigation standards and metrics for investigation quality; and

(E) the advisability, feasibility, counterintelligence risk, and cost effectiveness of—

(i) by not later than January 1, 2012, requiring the investigation and adjudication of security clearances to be conducted by not more than two Federal agencies; and

(ii) by not later than January 1, 2015, requiring the investigation and adjudication of security clearances to be conducted by not more than one Federal agency.

(b) SECURITY CLEARANCE RECIPROCITY.—

(1) AUDIT.—The Inspector General of the Intelligence Community shall conduct an audit of the reciprocity of security clearances among the elements of the intelligence community.

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Intelligence Community shall submit to the congressional intelligence committees a report containing the results of the audit conducted under paragraph (1). Such report shall include an assessment of the time required to obtain a reciprocal security clearance for—

(A) an employee of an element of the intelligence community detailed to another element of the intelligence community;

(B) an employee of an element of the intelligence community seeking permanent employment with another element of the intelligence community; and

(C) a contractor seeking permanent employment with an element of the intelligence community.

(3) FORM.—The report required under paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

SEC. 368. CORRECTING LONG-STANDING MATERIAL WEAKNESSES.

(a) DEFINITIONS.—In this section:

(1) COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ''covered element of the intelligence community'' means—

(A) the Central Intelligence Agency;

(B) the Defense Intelligence Agency;

(C) the National Geospatial-Intelligence Agency;

(D) the National Reconnaissance Office; or

(E) the National Security Agency.

(2) INDEPENDENT AUDITOR.—The term ''independent auditor'' means an individual who—

(A)(i) is a Federal, State, or local government auditor who meets the independence standards included in generally accepted government auditing standards; or

(ii) is a public accountant who meets such independence standards; and

(B) is designated as an auditor by the Director of National Intelligence or the head of a covered element of the intelligence community, as appropriate.

(3) INDEPENDENT REVIEW.—The term ''independent review'' means an audit, attestation, or examination conducted by an independent auditor in accordance with generally accepted government auditing standards.

(4) LONG-STANDING, CORRECTABLE MATERIAL WEAKNESS.—The term ''long-standing, correctable material weakness'' means a material weakness—

(A) that was first reported in the annual financial report of a covered element of the intelligence community for a fiscal year prior to fiscal year 2007; and

(B) the correction of which is not substantially dependent on a business system that will not be implemented prior to the end of fiscal year 2010.

(5) MATERIAL WEAKNESS.—The term ''material weakness'' has the meaning given that term under the Office of Management and Budget Circular A–123, entitled ''Management's Responsibility for Internal Control,'' revised December 21, 2004.

(6) SENIOR INTELLIGENCE MANAGEMENT OFFICIAL.—The term ''senior intelligence management official'' means an official within a covered element of the intelligence community who is—

(A)(i) compensated under the Senior Intelligence Service pay scale; or

(ii) the head of a covered element of the intelligence community; and

(B) compensated for employment with funds appropriated pursuant to an authorization of appropriations in this Act.

(b) IDENTIFICATION OF SENIOR INTELLIGENCE MANAGEMENT OFFICIALS.—

(1) REQUIREMENT TO IDENTIFY.—Not later than 30 days after the date of the enactment of this Act, the head of a covered element of the intelligence community shall designate a senior intelligence management official of such element to be responsible for correcting each long-standing, correctable material weakness of such element.

(2) HEAD OF A COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The head of a covered element of the intelligence community may designate himself or herself as the senior intelligence management official responsible for correcting a long-standing, correctable material weakness under paragraph (1).

(3) REQUIREMENT TO UPDATE DESIGNATION.—If the head of a covered element of the intelligence community determines that a senior intelligence management official designated under paragraph (1) is no longer responsible for correcting a long-standing, correctable material weakness, the head of such element shall designate the successor to such official not later than 10 days after the date of such determination.

(c) NOTIFICATION.—Not later than 10 days after the date on which the head of a covered element of the intelligence community has designated a senior intelligence management official pursuant to paragraph (1) or (3) of subsection (b), the head of such element shall provide written notification of such designation to the Director of National Intelligence and to such senior intelligence management official.

(d) CORRECTION OF LONG-STANDING, MATERIAL WEAKNESS.—

(1) DETERMINATION OF CORRECTION OF DEFICIENCY.—If a long-standing, correctable material weakness is corrected, the senior intelligence management official who is responsible for correcting such long-standing, correctable material weakness shall make and issue a determination of the correction.

(2) BASIS FOR DETERMINATION.—The determination of the senior intelligence management official under paragraph (1) shall be based on the findings of an independent review.

(3) NOTIFICATION AND SUBMISSION OF FINDINGS.—A senior intelligence management official who makes a determination under paragraph (1) shall—

(A) notify the head of the appropriate covered element of the intelligence community of such determination at the time the determination is made; and

(B) ensure that the independent auditor whose findings are the basis of a determination under paragraph (1) submits to the head of the covered element of the intelligence community and the Director of National Intelligence the findings that such determination is based on not later than 5 days after the date on which such determination is made.

(e) CONGRESSIONAL OVERSIGHT.—The head of a covered element of the intelligence community shall notify the congressional intelligence committees not later than 30 days after the date—

(1) on which a senior intelligence management official is designated under paragraph (1) or (3) of subsection (b) and notified under subsection (c); or

(2) of the correction of a long-standing, correctable material weakness, as verified by an independent auditor under subsection (d)(2).

SEC. 369. INTELLIGENCE COMMUNITY FINANCIAL IMPROVEMENT AND AUDIT READINESS.

Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall—

(1) conduct a review of the status of the auditability compliance of each element of the intelligence community; and

(2) develop a plan and schedule to achieve a full, unqualified audit of each element of the intelligence community not later than September 30, 2013.

TITLE IV—MATTERS RELATING TO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Subtitle A—Office of the Director of National Intelligence

SEC. 401. ACCOUNTABILITY REVIEWS BY THE DIRECTOR OF NATIONAL INTELLIGENCE.

Subsection (f) of section 102A of the National Security Act of 1947 (50 U.S.C. 403–1) is amended—

(1) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

''(7)(A) The Director of National Intelligence shall, if the Director determines it is necessary, or may, if requested by a congressional intelligence committee, conduct an accountability review of an element of the intelligence community or the personnel of such element in relation to a failure or deficiency within the intelligence community.

''(B) The Director of National Intelligence, in consultation with the Attorney General, shall establish guidelines and procedures for conducting an accountability review under subparagraph (A).

''(C)(i) The Director of National Intelligence shall provide the findings of an accountability review conducted under subparagraph (A) and the Director's recommendations for corrective or punitive action, if any, to the head of the applicable element of the intelligence community. Such recommendations may include a recommendation for dismissal of personnel.

''(ii) If the head of such element does not implement a recommendation made by the Director under clause (i), the head of such element shall submit to the congressional intelligence committees a notice of the determination not to implement the recommendation, including the reasons for the determination.

''(D) The requirements of this paragraph shall not be construed to limit any authority of the Director of National Intelligence under subsection (m) or with respect to supervision of the Central Intelligence Agency.''.

SEC. 402. AUTHORITIES FOR INTELLIGENCE INFORMATION SHARING.

(a) AUTHORITIES FOR INTERAGENCY FUNDING.—Section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403–1(d)(2)) is amended by striking ''Program to another such program.'' and inserting ''Program—

''(A) to another such program;

''(B) to other departments or agencies of the United States Government for the development and fielding of systems of common concern related to the collection, processing, analysis, exploitation, and dissemination of intelligence information; or

''(C) to a program funded by appropriations not within the National Intelligence Program to address critical gaps in intelligence information sharing or access capabilities.''.

(b) AUTHORITIES OF HEADS OF OTHER DEPARTMENTS AND AGENCIES.—Notwithstanding any other provision of law, the head of any department or agency of the United States is authorized to receive and utilize funds made available to the department or agency by the Director of National Intelligence pursuant to section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403–1(d)(2)), as amended by subsection (a), and receive and utilize any system referred to in such section that is made available to such department or agency.

SEC. 403. LOCATION OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

Subsection (e) of section 103 of the National Security Act of 1947 (50 U.S.C. 403–3) is amended to read as follows:

''(e) LOCATION OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.—The headquarters of the Office of the Director of National Intelligence may be located in the Washington metropolitan region, as that term is defined in section 8301 of title 40, United States Code.''.

SEC. 404. TITLE AND APPOINTMENT OF CHIEF INFORMATION OFFICER OF THE INTELLIGENCE COMMUNITY.

Section 103G of the National Security Act of 1947 (50 U.S.C. 403–3g) is amended—

(1) in subsection (a)—

(A) by inserting ''of the Intelligence Community'' after ''Chief Information Officer''; and

(B) by striking ''President,'' and all that follows and inserting ''President.'';

(2) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(3) in subsection (b) (as so redesignated), by inserting ''of the Intelligence Community'' after ''Chief Information Officer''; and

(4) in subsection (c) (as so redesignated), by inserting ''of the Intelligence Community'' before ''may not''.

SEC. 405. INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 348 of this Act, is further amended by inserting after section 103G the following new section:

''INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

''SEC. 103H. (a) OFFICE OF INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.—There is within the Office of the Director of National Intelligence an Office of the Inspector General of the Intelligence Community.

''(b) PURPOSE.—The purpose of the Office of the Inspector General of the Intelligence Community is—

''(1) to create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence;

''(2) to provide leadership and coordination and recommend policies for activities designed—

''(A) to promote economy, efficiency, and effectiveness in the administration and implementation of such programs and activities; and

''(B) to prevent and detect fraud and abuse in such programs and activities;

''(3) to provide a means for keeping the Director of National Intelligence fully and currently informed about—

''(A) problems and deficiencies relating to the administration of programs and activities within the responsibility and authority of the Director of National Intelligence; and

''(B) the necessity for, and the progress of, corrective actions; and

''(4) in the manner prescribed by this section, to ensure that the congressional intelligence committees are kept similarly informed of—

''(A) significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence; and

''(B) the necessity for, and the progress of, corrective actions.

''(c) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.—(1) There is an Inspector General of the Intelligence Community, who shall be the head of the Office of the Inspector General of the Intelligence Community, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(2) The nomination of an individual for appointment as Inspector General shall be made—

''(A) without regard to political affiliation;

''(B) on the basis of integrity, compliance with security standards of the intelligence community, and prior experience in the field of intelligence or national security; and

''(C) on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations.

''(3) The Inspector General shall report directly to and be under the general supervision of the Director of National Intelligence.

''(4) The Inspector General may be removed from office only by the President. The President shall communicate in writing to the congressional intelligence committees the reasons for the removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.

''(d) ASSISTANT INSPECTORS GENERAL.—Subject to the policies of the Director of National Intelligence, the Inspector General of the Intelligence Community shall—

''(1) appoint an Assistant Inspector General for Audit who shall have the responsibility for supervising the performance of auditing activities relating to programs and activities within the responsibility and authority of the Director;

''(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and activities; and

''(3) appoint other Assistant Inspectors General that, in the judgment of the Inspector General, are necessary to carry out the duties of the Inspector General.

''(e) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General of the Intelligence Community—

''(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, audits, and reviews relating to programs and activities within the responsibility and authority of the Director of National Intelligence;

''(2) to keep the Director of National Intelligence fully and currently informed concerning violations of law and regulations, fraud, and other serious problems, abuses, and deficiencies relating to the programs and activities within the responsibility and authority of the Director, to recommend corrective action concerning such problems, and to report on the progress made in implementing such corrective action;

''(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

''(4) in the execution of the duties and responsibilities under this section, to comply with generally accepted government auditing.

''(f) LIMITATIONS ON ACTIVITIES.—(1) The Director of National Intelligence may prohibit the Inspector General of the Intelligence Community from initiating, carrying out, or completing any investigation, inspection, audit, or review if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

''(2) Not later than seven days after the date on which the Director exercises the authority under paragraph (1), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority.

''(3) The Director shall advise the Inspector General at the time a statement under paragraph (2) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such statement.

''(4) The Inspector General may submit to the congressional intelligence committees any comments on the statement of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

''(g) AUTHORITIES.—(1) The Inspector General of the Intelligence Community shall have direct and prompt access to the Director of National Intelligence when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

''(2)(A) The Inspector General shall, subject to the limitations in subsection (f), make such investigations and reports relating to the administration of the programs and activities within the authorities and responsibilities of the Director as are, in the judgment of the Inspector General, necessary or desirable.

''(B) The Inspector General shall have access to any employee, or any employee of a contractor, of any element of the intelligence community needed for the performance of the duties of the Inspector General.

''(C) The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section.

''(D) The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (C).

''(E) The Director, or on the recommendation of the Director, another appropriate official of the intelligence community, shall take appropriate administrative actions against an employee, or an employee of a contractor, of an element of the intelligence community that fails to cooperate with the Inspector General. Such administrative action may include loss of employment or the termination of an existing contractual relationship.

''(3) The Inspector General is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the intelligence community—

''(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

''(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

''(4) The Inspector General shall have the authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of the Inspector General of the Intelligence Community designated by the Inspector General shall have the same force and effect as if administered or taken by, or before, an officer having a seal.

''(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

''(B) In the case of departments, agencies, and other elements of the United States Government, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

''(C) The Inspector General may not issue a subpoena for, or on behalf of, any component of the Office of the Director of National Intelligence or any element of the intelligence community, including the Office of the Director of National Intelligence.

''(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

''(6) The Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS–15 of the General Schedule under section 5332 of title 5, United States Code.

''(7) The Inspector General may, to the extent and in such amounts as may be provided in appropriations, enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this section.

''(h) COORDINATION AMONG INSPECTORS GENERAL.—(1)(A) In the event of a matter within the jurisdiction of the Inspector General of the Intelligence Community that may be

subject to an investigation, inspection, audit, or review by both the Inspector General of the Intelligence Community and an inspector general with oversight responsibility for an element of the intelligence community, the Inspector General of the Intelligence Community and such other inspector general shall expeditiously resolve the question of which inspector general shall conduct such investigation, inspection, audit, or review to avoid unnecessary duplication of the activities of the inspectors general.

''(B) In attempting to resolve a question under subparagraph (A), the inspectors general concerned may request the assistance of the Intelligence Community Inspectors General Forum established under paragraph (2). In the event of a dispute between an inspector general within a department or agency of the United States Government and the Inspector General of the Intelligence Community that has not been resolved with the assistance of such Forum, the inspectors general shall submit the question to the Director of National Intelligence and the head of the affected department or agency for resolution.

''(2)(A) There is established the Intelligence Community Inspectors General Forum, which shall consist of all statutory or administrative inspectors general with oversight responsibility for an element of the intelligence community.

''(B) The Inspector General of the Intelligence Community shall serve as the Chair of the Forum established under subparagraph (A). The Forum shall have no administrative authority over any inspector general, but shall serve as a mechanism for informing its members of the work of individual members of the Forum that may be of common interest and discussing questions about jurisdiction or access to employees, employees of contract personnel, records, audits, reviews, documents, recommendations, or other materials that may involve or be of assistance to more than one of its members.

''(3) The inspector general conducting an investigation, inspection, audit, or review covered by paragraph (1) shall submit the results of such investigation, inspection, audit, or review to any other inspector general, including the Inspector General of the Intelligence Community, with jurisdiction to conduct such investigation, inspection, audit, or review who did not conduct such investigation, inspection, audit, or review.

''(i) COUNSEL TO THE INSPECTOR GENERAL.—(1) The Inspector General of the Intelligence Community shall—

''(A) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

''(B) obtain the services of a counsel appointed by and directly reporting to another inspector general or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

''(2) The counsel appointed or obtained under paragraph (1) shall perform such functions as the Inspector General may prescribe.

''(j) STAFF AND OTHER SUPPORT.—(1) The Director of National Intelligence shall provide the Inspector General of the Intelligence Community with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

''(2)(A) Subject to applicable law and the policies of the Director of National Intelligence, the Inspector General shall select, appoint, and employ such officers and employees as may be necessary to carry out the functions, powers, and duties of the Inspector General. The Inspector General shall ensure that any officer or employee so selected, appointed, or employed has security clearances appropriate for the assigned duties of such officer or employee.

''(B) In making selections under subparagraph (A), the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

''(C) In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the Intelligence Community a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

''(3) Consistent with budgetary and personnel resources allocated by the Director of National Intelligence, the Inspector General has final approval of—

''(A) the selection of internal and external candidates for employment with the Office of the Inspector General; and

''(B) all other personnel decisions concerning personnel permanently assigned to the Office of the Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of a component of the Office of the Director of National Intelligence.

''(4)(A) Subject to the concurrence of the Director of National Intelligence, the Inspector General may request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any department, agency, or other element of the United States Government.

''(B) Upon request of the Inspector General for information or assistance under subparagraph (A), the head of the department, agency, or element concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the department, agency, or element, furnish to the Inspector General, such information or assistance.

''(C) The Inspector General of the Intelligence Community may, upon reasonable notice to the head of any element of the intelligence community and in coordination with that element's inspector general pursuant to subsection (h), conduct, as authorized by this section, an investigation, inspection, audit, or review of such element and may enter into any place occupied by such element for purposes of the performance of the duties of the Inspector General.

''(k) REPORTS.—(1)(A) The Inspector General of the Intelligence Community shall, not later than January 31 and July 31 of each year, prepare and submit to the Director of National Intelligence a classified, and, as appropriate, unclassified semiannual report summarizing the activities of the Office of the Inspector General of the Intelligence Community during the immediately preceding 6-month period ending December 31 (of the preceding year) and June 30, respectively. The Inspector General of the Intelligence Community shall provide any portion of the report involving a component of a department of the United States Government to the head of that department simultaneously with submission of the report to the Director of National Intelligence.

''(B) Each report under this paragraph shall include, at a minimum, the following:

''(i) A list of the title or subject of each investigation, inspection, audit, or review conducted during the period covered by such report.

''(ii) A description of significant problems, abuses, and deficiencies relating to the administration of programs and activities of the intelligence community within the responsibility and authority of the Director of National Intelligence, and in the relationships between elements of the intelligence community, identified by the Inspector General during the period covered by such report.

''(iii) A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

''(iv) A statement of whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action.

''(v) A certification of whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

''(vi) A description of the exercise of the subpoena authority under subsection (g)(5) by the Inspector General during the period covered by such report.

''(vii) Such recommendations as the Inspector General considers appropriate for legislation to promote economy, efficiency, and effectiveness in the administration and implementation of programs and activities within the responsibility and authority of the Director of National Intelligence, and to detect and eliminate fraud and abuse in such programs and activities.

''(C) Not later than 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the congressional intelligence committees together with any comments the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of the report involving a component of such department simultaneously with submission of the report to the congressional intelligence committees.

''(2)(A) The Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence.

''(B) The Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves a problem, abuse, or deficiency related to a component of such department simultaneously with transmission of the report to the congressional intelligence committees.

''(3)(A) In the event that—

''(i) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

''(ii) an investigation, inspection, audit, or review carried out by the Inspector General focuses on any current or former intelligence community official who—

''(I) holds or held a position in an element of the intelligence community that is subject to appointment by the President, whether or not by and with the advice and consent of the Senate, including such a position held on an acting basis;

''(II) holds or held a position in an element of the intelligence community, including a position held on an acting basis, that is appointed by the Director of National Intelligence; or

''(III) holds or held a position as head of an element of the intelligence community or a position covered by subsection (b) or (c) of section 106;

''(iii) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in clause (ii);

''(iv) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in clause (ii); or

''(v) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, audit, or review,

the Inspector General shall immediately notify, and submit a report to, the congressional intelligence committees on such matter.

''(B) The Inspector General shall submit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves an investigation, inspection, audit, or review carried out by the Inspector General focused on any current or former official of a component of such department simultaneously with submission of the report to the congressional intelligence committees.

''(4) The Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, audit, or review conducted by the office which has been requested by the Chairman or Vice Chairman or ranking minority member of either committee.

''(5)(A) An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

''(B) Not later than the end of the 14-calendar-day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.

''(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.

''(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly.

''(ii) An employee may contact the congressional intelligence committees directly as described in clause (i) only if the employee—

''(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the congressional intelligence committees directly; and

''(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the congressional intelligence committees in accordance with appropriate security practices.

''(iii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under this subparagraph does so in that member or employee's official capacity as a member or employee of such committee.

''(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

''(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

''(G) In this paragraph, the term 'urgent concern' means any of the following:

''(i) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.

''(ii) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

''(iii) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (g)(3)(B) of this section in response to an employee's reporting an urgent concern in accordance with this paragraph.

''(H) Nothing in this section shall be construed to limit the protections afforded to an employee under section 17(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)) or section 8H of the Inspector General Act of 1978 (5 U.S.C. App.).

''(6) In accordance with section 535 of title 28, United States Code, the Inspector General shall expeditiously report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involves a program or operation of an element of the intelligence community, or in the relationships between the elements of the intelligence community, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.

''(l) CONSTRUCTION OF DUTIES REGARDING ELEMENTS OF INTELLIGENCE COMMUNITY.—Except as resolved pursuant to subsection (h), the performance by the Inspector General of the Intelligence Community of any duty, responsibility, or function regarding an element of the intelligence community shall not be construed to modify or affect the duties and responsibilities of any other inspector general having duties and responsibilities relating to such element.

''(m) SEPARATE BUDGET ACCOUNT.—The Director of National Intelligence shall, in accordance with procedures issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of the Inspector General of the Intelligence Community.

''(n) BUDGET.—(1) For each fiscal year, the Inspector General of the Intelligence Community shall transmit a budget estimate and request to the Director of National Intelligence that specifies for such fiscal year—

''(A) the aggregate amount requested for the operations of the Inspector General;

''(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office of the Inspector General; and

''(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

''(2) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

''(A) the aggregate amount requested for the Inspector General of the Intelligence Community;

''(B) the amount requested for Inspector General training;

''(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

''(D) the comments of the Inspector General, if any, with respect to such proposed budget.

''(3) The Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives for each fiscal year—

''(A) a separate statement of the budget estimate transmitted pursuant to paragraph (1);

''(B) the amount requested by the Director for the Inspector General pursuant to paragraph (2)(A);

''(C) the amount requested by the Director for the training of personnel of the Office of the Inspector General pursuant to paragraph (2)(B);

''(D) the amount requested by the Director for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (2)(C); and

''(E) the comments of the Inspector General under paragraph (2)(D), if any, on the amounts requested pursuant to paragraph (2), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office of the Inspector General.''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 348 of this Act, is further amended by inserting after the item relating to section 103G the following new item:

''Sec. 103H. Inspector General of the Intelligence Community.''.

(b) PAY OF INSPECTOR GENERAL.—Subparagraph (A) of section 4(a)(3) of the Inspector General Reform Act of 2008 (Public Law 110–409; 5 U.S.C. App. note) is amended by inserting ''the Inspector General of the Intelligence Community,'' after ''basic pay of''.

(c) CONSTRUCTION.—Nothing in the amendment made by subsection (a)(1) shall be construed to alter the duties and responsibilities of the General Counsel of the Office of the Director of National Intelligence.

(d) REPEAL OF SUPERSEDED AUTHORITY TO ESTABLISH POSITION.—Section 8K of the Inspector General Act of 1978 (5 U.S.C. App.) shall be repealed on the date that the President appoints, with the advice and consent of the Senate, the first individual to serve as

Inspector General for the Intelligence Community pursuant to section 103H of the National Security Act of 1947, as added by subsection (a), and such individual assumes the duties of the Inspector General.

SEC. 406. CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.

(a) ESTABLISHMENT.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 405 of this Act, is further amended by inserting after section 103H, as added by section 405(a)(1), the following new section:

''CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY

''SEC. 103I. (a) CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.—To assist the Director of National Intelligence in carrying out the responsibilities of the Director under this Act and other applicable provisions of law, there is within the Office of the Director of National Intelligence a Chief Financial Officer of the Intelligence Community who shall be appointed by the Director.

''(b) DUTIES AND RESPONSIBILITIES.—Subject to the direction of the Director of National Intelligence, the Chief Financial Officer of the Intelligence Community shall—

''(1) serve as the principal advisor to the Director of National Intelligence and the Principal Deputy Director of National Intelligence on the management and allocation of intelligence community budgetary resources;

''(2) participate in overseeing a comprehensive and integrated strategic process for resource management within the intelligence community;

''(3) ensure that the strategic plan of the Director of National Intelligence—

''(A) is based on budgetary constraints as specified in the Future Year Intelligence Plans and Long-term Budget Projections required under section 506G; and

''(B) contains specific goals and objectives to support a performance-based budget;

''(4) prior to the obligation or expenditure of funds for the acquisition of any major system pursuant to a Milestone A or Milestone B decision, receive verification from appropriate authorities that the national requirements for meeting the strategic plan of the Director have been established, and that such requirements are prioritized based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Projections for such major system required under section 506G;

''(5) ensure that the collection architectures of the Director are based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Projections required under section 506G;

''(6) coordinate or approve representations made to Congress by the intelligence community regarding National Intelligence Program budgetary resources;

''(7) participate in key mission requirements, acquisitions, or architectural boards formed within or by the Office of the Director of National Intelligence; and

''(8) perform such other duties as may be prescribed by the Director of National Intelligence.

''(c) OTHER LAW.—The Chief Financial Officer of the Intelligence Community shall serve as the Chief Financial Officer of the intelligence community and, to the extent applicable, shall have the duties, responsibilities, and authorities specified in chapter 9 of title 31, United States Code.

''(d) PROHIBITION ON SIMULTANEOUS SERVICE AS OTHER CHIEF FINANCIAL OFFICER.—An individual serving in the position of Chief Financial Officer of the Intelligence Community may not, while so serving, serve as the chief financial officer of any other department or agency, or component thereof, of the United States Government.

''(e) DEFINITIONS.—In this section:

''(1) The term 'major system' has the meaning given that term in section 506A(e).

''(2) The term 'Milestone A' has the meaning given that term in section 506G(f).

''(3) The term 'Milestone B' has the meaning given that term in section 506C(e).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 405(a), is further amended by inserting after the item relating to section 103H, as added by section 405(a)(2), the following new item:

''Sec. 103I. Chief Financial Officer of the Intelligence Community.''.

SEC. 407. LEADERSHIP AND LOCATION OF CERTAIN OFFICES AND OFFICIALS.

(a) NATIONAL COUNTER PROLIFERATION CENTER.—Section 119A(a) of the National Security Act of 1947 (50 U.S.C. 404o–1(a)) is amended—

(1) by striking ''Not later than 18 months after the date of the enactment of the National Security Intelligence Reform Act of 2004, the'' and inserting ''(1) The''; and

(2) by adding at the end the following new paragraphs:

''(2) The head of the National Counter Proliferation Center shall be the Director of the National Counter Proliferation Center, who shall be appointed by the Director of National Intelligence.

''(3) The National Counter Proliferation Center shall be located within the Office of the Director of National Intelligence.''.

(b) OFFICERS.—Section 103(c) of that Act (50 U.S.C. 403–3(c)) is amended—

(1) by redesignating paragraph (9) as paragraph (14); and

(2) by inserting after paragraph (8) the following new paragraphs:

''(9) The Chief Information Officer of the Intelligence Community.

''(10) The Inspector General of the Intelligence Community.

''(11) The Director of the National Counterterrorism Center.

''(12) The Director of the National Counter Proliferation Center.

''(13) The Chief Financial Officer of the Intelligence Community.''.

SEC. 408. PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—Title VII of the National Security Act of 1947 (50 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

''PROTECTION OF CERTAIN FILES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

''SEC. 706. (a) INAPPLICABILITY OF FOIA TO EXEMPTED OPERATIONAL FILES PROVIDED TO ODNI.—(1) Subject to paragraph (2), the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of a record shall not apply to a record provided to the Office of the Director of National Intelligence by an element of the intelligence community from the exempted operational files of such element.

''(2) Paragraph (1) shall not apply with respect to a record of the Office that—

''(A) contains information derived or disseminated from an exempted operational file, unless such record is created by the Office for the sole purpose of organizing such exempted operational file for use by the Office;

''(B) is disseminated by the Office to a person other than an officer, employee, or contractor of the Office; or

''(C) is no longer designated as an exempted operational file in accordance with this title.

''(b) EFFECT OF PROVIDING FILES TO ODNI.—Notwithstanding any other provision of this title, an exempted operational file that is provided to the Office by an element of the intelligence community shall not be subject to the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of a record solely because such element provides such exempted operational file to the Office.

''(c) SEARCH AND REVIEW FOR CERTAIN PURPOSES.—Notwithstanding subsection (a) or (b), an exempted operational file shall continue to be subject to search and review for information concerning any of the following:

''(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code.

''(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code.

''(3) The specific subject matter of an investigation for any impropriety or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity by any of the following:

''(A) The Select Committee on Intelligence of the Senate.

''(B) The Permanent Select Committee on Intelligence of the House of Representatives.

''(C) The Intelligence Oversight Board.

''(D) The Department of Justice.

''(E) The Office of the Director of National Intelligence.

''(F) The Office of the Inspector General of the Intelligence Community.

''(d) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of National Intelligence shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

''(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

''(3) A complainant that alleges that the Director of National Intelligence has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

''(A) Whether the Director has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2010 or before the expiration of the 10-year period beginning on the date of the most recent review.

''(B) Whether the Director of National Intelligence, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

''(e) SUPERSEDURE OF OTHER LAWS.—The provisions of this section may not be superseded except by a provision of law that is enacted after the date of the enactment of this section and that specifically cites and repeals or modifies such provisions.

''(f) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.—(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that the Office has withheld records

improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

''(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

''(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the Office, such information shall be examined ex parte, in camera by the court.

''(B) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

''(C)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Office may meet the burden of the Office under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted files likely to contain responsive records are records provided to the Office by an element of the intelligence community from the exempted operational files of such element.

''(ii) The court may not order the Office to review the content of any exempted file in order to make the demonstration required under clause (i), unless the complainant disputes the Office's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

''(D) In proceedings under subparagraph (C), a party may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36 of the Federal Rules of Civil Procedure.

''(E) If the court finds under this subsection that the Office has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Office to search and review each appropriate exempted file for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section.

''(F) If at any time following the filing of a complaint pursuant to this paragraph the Office agrees to search each appropriate exempted file for the requested records, the court shall dismiss the claim based upon such complaint.

''(g) DEFINITIONS.—In this section:

''(1) The term 'exempted operational file' means a file of an element of the intelligence community that, in accordance with this title, is exempted from the provisions of section 552 of title 5, United States Code, that require search, review, publication, or disclosure of such file.

''(2) Except as otherwise specifically provided, the term 'Office' means the Office of the Director of National Intelligence.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 406(b) of this Act, is further amended by inserting after the item relating to section 705 the following new item:

''Sec. 706. Protection of certain files of the Office of the Director of National Intelligence.''.

SEC. 409. COUNTERINTELLIGENCE INITIATIVES FOR THE INTELLIGENCE COMMUNITY.

Section 1102 of the National Security Act of 1947 (50 U.S.C. 442a) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2); and

(B) by striking ''(1) In'' and inserting ''In''; and

(2) in subsection (c)—

(A) by striking paragraph (2); and

(B) by striking ''(1) The'' and inserting ''The''.

SEC. 410. INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT TO ADVISORY COMMITTEES OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—Section 4(b) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking ''or'';

(2) in paragraph (2), by striking the period and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(3) the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of this Act.''.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—The Director of National Intelligence and the Director of the Central Intelligence Agency shall each submit to the congressional intelligence committees an annual report on advisory committees created by each such Director. Each report shall include—

(A) a description of each such advisory committee, including the subject matter of the committee; and

(B) a list of members of each such advisory committee.

(2) REPORT ON REASONS FOR ODNI EXCLUSION OF ADVISORY COMMITTEE FROM FACA.—Each report submitted by the Director of National Intelligence in accordance with paragraph (1) shall include the reasons for a determination by the Director under section 4(b)(3) of the Federal Advisory Committee Act (5 U.S.C. App.), as added by subsection (a) of this section, that an advisory committee cannot comply with the requirements of such Act.

SEC. 411. MEMBERSHIP OF THE DIRECTOR OF NATIONAL INTELLIGENCE ON THE TRANSPORTATION SECURITY OVERSIGHT BOARD.

Subparagraph (F) of section 115(b)(1) of title 49, United States Code, is amended to read as follows:

''(F) The Director of National Intelligence, or the Director's designee.''.

SEC. 412. REPEAL OF CERTAIN AUTHORITIES RELATING TO THE OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) REPEAL OF CERTAIN AUTHORITIES.—Section 904 of the Counterintelligence Enhancement Act of 2002 (50 U.S.C. 402c) is amended—

(1) by striking subsections (d), (h), (i), and (j);

(2) by redesignating subsections (e), (f), (g), (k), (l), and (m) as subsections (d), (e), (f), (g), (h), and (i), respectively; and

(3) in subsection (f), as redesignated by paragraph (2), by striking paragraphs (3) and (4).

(b) CONFORMING AMENDMENTS.—Such section 904 is further amended—

(1) in subsection (d), as redesignated by subsection (a)(2) of this section, by striking ''subsection (f)'' each place it appears in paragraphs (1) and (2) and inserting ''subsection (e)''; and

(2) in subsection (e), as so redesignated—

(A) in paragraph (1), by striking ''subsection (e)(1)'' and inserting ''subsection (d)(1)''; and

(B) in paragraph (2), by striking ''subsection (e)(2)'' and inserting ''subsection (d)(2)''.

SEC. 413. MISUSE OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE NAME, INITIALS, OR SEAL.

(a) PROHIBITION.—Title XI of the National Security Act of 1947 (50 U.S.C. 442 et seq.) is amended by adding at the end the following new section:

''MISUSE OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE NAME, INITIALS, OR SEAL

''SEC. 1103. (a) PROHIBITED ACTS.—No person may, except with the written permission of the Director of National Intelligence, or a designee of the Director, knowingly use the words 'Office of the Director of National Intelligence', the initials 'ODNI', the seal of the Office of the Director of National Intelligence, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Director of National Intelligence.

''(b) INJUNCTION.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of such Act, as amended by section 408 of this Act, is further amended by inserting after the item relating to section 1102 the following new item:

''Sec. 1103. Misuse of the Office of the Director of National Intelligence name, initials, or seal.''.

SEC. 414. PLAN TO IMPLEMENT RECOMMENDATIONS OF THE DATA CENTER ENERGY EFFICIENCY REPORTS.

(a) PLAN.—The Director of National Intelligence shall develop a plan to implement the recommendations of the report submitted to Congress under section 1 of the Act entitled ''An Act to study and promote the use of energy efficient computer servers in the United States'' (Public Law 109–431; 120 Stat. 2920) across the intelligence community.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report containing the plan developed under subsection (a).

(2) FORM.—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

SEC. 415. DIRECTOR OF NATIONAL INTELLIGENCE SUPPORT FOR REVIEWS OF INTERNATIONAL TRAFFIC IN ARMS REGULATIONS AND EXPORT ADMINISTRATION REGULATIONS.

The Director of National Intelligence may provide support for any review conducted by a department or agency of the United States Government of the International Traffic in Arms Regulations or Export Administration Regulations, including a review of technologies and goods on the United States Munitions List and Commerce Control List that

may warrant controls that are different or additional to the controls such technologies and goods are subject to at the time of such review.

Subtitle B—Central Intelligence Agency

SEC. 421. ADDITIONAL FUNCTIONS AND AUTHORITIES FOR PROTECTIVE PERSONNEL OF THE CENTRAL INTELLIGENCE AGENCY.

Section 5(a)(4) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(4)) is amended—

(1) by striking ''and the protection'' and inserting ''the protection''; and

(2) by inserting before the semicolon the following: '', and the protection of the Director of National Intelligence and such personnel of the Office of the Director of National Intelligence as the Director of National Intelligence may designate''.

SEC. 422. APPEALS FROM DECISIONS INVOLVING CONTRACTS OF THE CENTRAL INTELLIGENCE AGENCY.

Section 8(d) of the Contract Disputes Act of 1978 (41 U.S.C. 607(d)) is amended by adding at the end ''Notwithstanding any other provision of this section and any other provision of law, an appeal from a decision of a contracting officer of the Central Intelligence Agency relative to a contract made by that Agency may be filed with whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by such contracting officer as the Board to which such an appeal may be made and such Board shall have jurisdiction to decide that appeal.''.

SEC. 423. DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) ESTABLISHMENT AND DUTIES OF DEPUTY DIRECTOR OF THE CIA.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 406 of this Act, is further amended by inserting after section 104A the following new section:

''DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

''SEC. 104B. (a) DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.—There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President.

''(b) DUTIES.—The Deputy Director of the Central Intelligence Agency shall—

''(1) assist the Director of the Central Intelligence Agency in carrying out the duties and responsibilities of the Director of the Central Intelligence Agency; and

''(2) during the absence or disability of the Director of the Central Intelligence Agency, or during a vacancy in the position of Director of the Central Intelligence Agency, act for and exercise the powers of the Director of the Central Intelligence Agency.''.

(b) CONFORMING AMENDMENTS.—

(1) EXECUTIVE SCHEDULE III.—Section 5314 of title 5, United States Code, is amended by striking ''Deputy Directors of Central Intelligence (2)'' and inserting ''Deputy Director of the Central Intelligence Agency''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the National Security Act of 1947, as amended by section 414 of this Act, is further amended by inserting after the item relating to section 104A the following new item:

''Sec. 104B. Deputy Director of the Central Intelligence Agency.''.

(c) APPLICABILITY.—The amendments made by this section shall apply on the earlier of—

(1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency pursuant to section 104B of the National Security Act of 1947, as added by subsection (a), except that the individual administratively performing the duties of the Deputy Director of the Central Intelligence Agency as of the date of the enactment of this Act may continue to perform such duties until the individual appointed to the position of Deputy Director of the Central Intelligence Agency assumes the duties of such position; or

(2) the date of the cessation of the performance of the duties of the Deputy Director of the Central Intelligence Agency by the individual administratively performing such duties as of the date of the enactment of this Act.

SEC. 424. AUTHORITY TO AUTHORIZE TRAVEL ON A COMMON CARRIER.

Subsection (b) of section 116 of the National Security Act of 1947 (50 U.S.C. 404k) is amended by striking the period at the end and inserting '', who may delegate such authority to other appropriate officials of the Central Intelligence Agency.''.

SEC. 425. INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY.

(a) APPOINTMENT AND QUALIFICATIONS OF THE INSPECTOR GENERAL.—Paragraph (1) of section 17(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)) is amended by striking the second and third sentences and inserting ''This appointment shall be made without regard to political affiliation and shall be on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigation. Such appointment shall also be made on the basis of compliance with the security standards of the Agency and prior experience in the field of foreign intelligence.''.

(b) REMOVAL OF THE INSPECTOR GENERAL.—Paragraph (6) of section 17(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(b)) is amended—

(1) by striking ''immediately''; and

(2) by striking the period at the end and inserting ''not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.''.

(c) APPLICATION OF SEMIANNUAL REPORTING REQUIREMENTS WITH RESPECT TO REVIEW REPORTS.—Paragraph (1) of section 17(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)) is amended in the matter preceding subparagraph (A) by inserting ''review,'' after ''investigation,''.

(d) PROTECTION AGAINST REPRISALS.—Subparagraph (B) of section 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(3)) is amended by inserting ''or providing such information'' after ''making such complaint''.

(e) INSPECTOR GENERAL SUBPOENA POWER.—Subparagraph (A) of section 17(e)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(e)(5)) is amended by inserting ''in any medium (including electronically stored information or any tangible thing)'' after ''other data''.

(f) OTHER ADMINISTRATIVE AUTHORITIES.—

(1) IN GENERAL.—Subsection (e) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q), as amended by subsections (d) and (e) of this section, is further amended—

(A) by redesignating paragraph (8) as subparagraph (9);

(B) in paragraph (9), as so redesignated—

(i) by striking ''Subject to the concurrence of the Director, the'' and inserting ''The''; and

(ii) by adding at the end the following: ''Consistent with budgetary and personnel resources allocated by the Director, the Inspector General has final approval of—

''(A) the selection of internal and external candidates for employment with the Office of Inspector General; and

''(B) all other personnel decisions concerning personnel permanently assigned to the Office of Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of other Central Intelligence Agency offices.''; and

(C) by inserting after paragraph (7) the following new paragraph:

''(8)(A) The Inspector General shall—

''(i) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

''(ii) obtain the services of a counsel appointed by and directly reporting to another Inspector General or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

''(B) The counsel appointed or obtained under subparagraph (A) shall perform such functions as the Inspector General may prescribe.''.

(2) CONSTRUCTION.—Nothing in the amendment made by paragraph (1)(C) shall be construed to alter the duties and responsibilities of the General Counsel of the Central Intelligence Agency.

SEC. 426. BUDGET OF THE INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY.

Subsection (f) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended—

(1) by inserting ''(1)'' before ''Beginning''; and

(2) by adding at the end the following new paragraph:

''(2) For each fiscal year, the Inspector General shall transmit a budget estimate and request through the Director to the Director of National Intelligence that specifies for such fiscal year—

''(A) the aggregate amount requested for the operations of the Inspector General;

''(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office; and

''(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

''(3) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

''(A) the aggregate amount requested for the Inspector General of the Central Intelligence Agency;

''(B) the amount requested for Inspector General training;

''(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

''(D) the comments of the Inspector General, if any, with respect to such proposed budget.

''(4) The Director of National Intelligence shall submit to the Committee on Appropriations and the Select Committee on Intelligence of the Senate and the Committee on Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives for each fiscal year—

''(A) a separate statement of the budget estimate transmitted pursuant to paragraph (2);

''(B) the amount requested by the Director of National Intelligence for the Inspector General pursuant to paragraph (3)(A);

''(C) the amount requested by the Director of National Intelligence for training of personnel of the Office of the Inspector General pursuant to paragraph (3)(B);

''(D) the amount requested by the Director of National Intelligence for support for the

Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (3)(C); and

''(E) the comments of the Inspector General under paragraph (3)(D), if any, on the amounts requested pursuant to paragraph (3), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office.''.

SEC. 427. PUBLIC AVAILABILITY OF UNCLASSIFIED VERSIONS OF CERTAIN INTELLIGENCE PRODUCTS.

The Director of the Central Intelligence Agency shall make publicly available an unclassified version of any memoranda or finished intelligence products assessing the—

(1) information gained from high-value detainee reporting; and

(2) dated April 3, 2003, July 15, 2004, March 2, 2005, and June 1, 2005.

Subtitle C—Defense Intelligence Components

SEC. 431. INSPECTOR GENERAL MATTERS.

(a) COVERAGE UNDER INSPECTOR GENERAL ACT OF 1978.—Subsection (a)(2) of section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by inserting ''the Defense Intelligence Agency,'' after ''the Corporation for Public Broadcasting,'';

(2) by inserting ''the National Geospatial-Intelligence Agency,'' after ''the National Endowment for the Humanities,''; and

(3) by inserting ''the National Reconnaissance Office, the National Security Agency,'' after ''the National Labor Relations Board,''.

(b) CERTAIN DESIGNATIONS UNDER INSPECTOR GENERAL ACT OF 1978.—Subsection (a) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new paragraph:

''(3) The Inspectors General of the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, and the National Security Agency shall be designees of the Inspector General of the Department of Defense for purposes of this section.''.

(c) POWER OF HEADS OF ELEMENTS OVER INVESTIGATIONS.—Subsection (d) of section 8G of such Act (5 U.S.C. App.) is amended—

(1) by inserting ''(1)'' after ''(d)'';

(2) in the second sentence of paragraph (1), as designated by paragraph (1) of this subsection, by striking ''The head'' and inserting ''Except as provided in paragraph (2), the head''; and

(3) by adding at the end the following new paragraph:

''(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

''(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

''(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

''(D) The elements of the intelligence community specified in this subparagraph are as follows:

''(i) The Defense Intelligence Agency.

''(ii) The National Geospatial-Intelligence Agency.

''(iii) The National Reconnaissance Office.

''(iv) The National Security Agency.

''(E) The committees of Congress specified in this subparagraph are—

''(i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

''(ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.''.

SEC. 432. CLARIFICATION OF NATIONAL SECURITY MISSIONS OF NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY FOR ANALYSIS AND DISSEMINATION OF CERTAIN INTELLIGENCE INFORMATION.

Section 442(a) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) by inserting after paragraph (1) the following new paragraph (2):

''(2)(A) As directed by the Director of National Intelligence, the National Geospatial-Intelligence Agency shall develop a system to facilitate the analysis, dissemination, and incorporation of likenesses, videos, and presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information, into the National System for Geospatial Intelligence.

''(B) The authority provided by this paragraph does not include authority for the National Geospatial-Intelligence Agency to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.''; and

(3) in paragraph (3), as so redesignated, by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)''.

SEC. 433. DIRECTOR OF COMPLIANCE OF THE NATIONAL SECURITY AGENCY.

The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by inserting after the first section the following new section:

''SEC. 2. There is a Director of Compliance of the National Security Agency, who shall be appointed by the Director of the National Security Agency and who shall be responsible for the programs of compliance over mission activities of the National Security Agency.''.

Subtitle D—Other Elements

SEC. 441. CODIFICATION OF ADDITIONAL ELEMENTS OF THE INTELLIGENCE COMMUNITY.

Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) in subparagraph (H)—

(A) by inserting ''the Coast Guard,'' after ''the Marine Corps,''; and

(B) by inserting ''the Drug Enforcement Administration,'' after ''the Federal Bureau of Investigation,''; and

(2) in subparagraph (K), by striking '', including the Office of Intelligence of the Coast Guard''.

SEC. 442. AUTHORIZATION OF APPROPRIATIONS FOR COAST GUARD NATIONAL TACTICAL INTEGRATION OFFICE.

Title 14, United States Code, is amended—

(1) in paragraph (4) of section 93(a), by striking ''function'' and inserting ''function, including research, development, test, or evaluation related to intelligence systems and capabilities,''; and

(2) in paragraph (4) of section 662, by inserting ''intelligence systems and capabilities or'' after ''related to''.

SEC. 443. RETENTION AND RELOCATION BONUSES FOR THE FEDERAL BUREAU OF INVESTIGATION.

Section 5759 of title 5, United States Code, is amended—

(1) in subsection (a)(2), by striking ''is transferred to a different geographic area with a higher cost of living'' and inserting ''is subject to a mobility agreement and is transferred to a position in a different geographical area in which there is a shortage of critical skills'';

(2) in subsection (b)(2), by striking the period at the end and inserting '', including requirements for a bonus recipient's repayment of a bonus in circumstances determined by the Director of the Federal Bureau of Investigation.'';

(3) in subsection (c), by striking ''basic pay.'' and inserting ''annual rate of basic pay. The bonus may be paid in a lump sum or installments linked to completion of periods of service.''; and

(4) in subsection (d), by striking ''retention bonus'' and inserting ''bonus paid under this section''.

SEC. 444. EXTENSION OF THE AUTHORITY OF THE FEDERAL BUREAU OF INVESTIGATION TO WAIVE MANDATORY RETIREMENT PROVISIONS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Subsection (b) of section 8335 of title 5, United States Code, is amended—

(1) in the paragraph (2) enacted by section 112(a)(2) of the Department of Justice Appropriations Act, 2005 (title I of division B of Public Law 108–447; 118 Stat. 2868), by striking ''2009'' and inserting ''2011''; and

(2) by striking the paragraph (2) enacted by section 2005(a)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3704).

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Subsection (b) of section 8425 of title 5, United States Code, is amended—

(1) in the paragraph (2) enacted by section 112(b)(2) of the Department of Justice Appropriations Act, 2005 (title I of division B of Public Law 108–447; 118 Stat. 2868), by striking ''2009'' and inserting ''2011''; and

(2) by striking the paragraph (2) enacted by section 2005(b)(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3704).

SEC. 445. REPORT AND ASSESSMENTS ON TRANSFORMATION OF THE INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) REPORT.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation, in consultation with the Director of National Intelligence, shall submit to the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report describing—

(A) a long-term vision for the intelligence capabilities of the National Security Branch of the Bureau;

(B) a strategic plan for the National Security Branch; and

(C) the progress made in advancing the capabilities of the National Security Branch.

(2) CONTENT.—The report required by paragraph (1) shall include—

(A) a description of the direction, strategy, and goals for improving the intelligence capabilities of the National Security Branch;

(B) a description of the intelligence and national security capabilities of the National Security Branch that will be fully functional within the five-year period beginning on the date on which the report is submitted;

(C) a description—

(i) of the internal reforms that were carried out at the National Security Branch during the two-year period ending on the date on which the report is submitted; and

(ii) of the manner in which such reforms have advanced the capabilities of the National Security Branch;

(D) an assessment of the effectiveness of the National Security Branch in performing tasks that are critical to the effective functioning of the National Security Branch as an intelligence agency, including—

(i) human intelligence collection, both within and outside the parameters of an existing case file or ongoing investigation, in a manner that protects civil liberties;

(ii) intelligence analysis, including the ability of the National Security Branch to produce, and provide policymakers with, information on national security threats to the United States;

(iii) management, including the ability of the National Security Branch to manage and develop human capital and implement an organizational structure that supports the objectives and strategies of the Branch;

(iv) integration of the National Security Branch into the intelligence community, including an ability to robustly share intelligence and effectively communicate and operate with appropriate Federal, State, local, and tribal partners;

(v) implementation of an infrastructure that supports the national security and intelligence missions of the National Security Branch, including proper information technology and facilities; and

(vi) reformation of the culture of the National Security Branch, including the integration by the Branch of intelligence analysts and other professional staff into intelligence collection operations and the success of the National Security Branch in ensuring that intelligence and threat information drive the operations of the Branch;

(E) performance metrics and specific annual timetables for advancing the performance of the tasks referred to in clauses (i) through (vi) of subparagraph (D) and a description of the activities being undertaken to ensure that the performance of the National Security Branch in carrying out such tasks improves; and

(F) an assessment of the effectiveness of the field office supervisory term limit policy of the Federal Bureau of Investigation that requires the mandatory reassignment of a supervisor of the Bureau after a specific term of years.

(b) ANNUAL ASSESSMENTS.—

(1) REQUIREMENT FOR ASSESSMENTS.—Not later than 180 days after the date on which the report required by subsection (a)(1) is submitted, and annually thereafter for five years, the Director of National Intelligence, in consultation with the Director of the Federal Bureau of Investigation, shall submit to the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives an assessment of the performance of the National Security Branch in carrying out the tasks referred to in clauses (i) through (vi) of subsection (a)(2)(D) in comparison to such performance during previous years.

(2) CONSIDERATIONS.—In conducting each assessment required by paragraph (1), the Director of National Intelligence—

(A) shall use the performance metrics and specific annual timetables for carrying out such tasks referred to in subsection (a)(2)(E); and

(B) may request the assistance of any expert that the Director considers appropriate, including an inspector general of an appropriate department or agency.

TITLE V—REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE

SEC. 501. REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

(a) REORGANIZATION OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.—

(1) IN GENERAL.—Subtitle B of title III of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 22 U.S.C. 7301 et seq.) is amended by striking sections 321, 322, 323, and 324, and inserting the following new sections:

"SEC. 321. DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

''(a) REORGANIZATION.—The Diplomatic Telecommunications Service Program Office established pursuant to title V of Public Law 102–140 shall be reorganized in accordance with this subtitle.

''(b) DUTIES.—The duties of the DTS–PO include implementing a program for the establishment and maintenance of a DTS Network capable of providing multiple levels of service to meet the wide-ranging needs of all United States Government departments and agencies operating from diplomatic and consular facilities outside of the United States, including national security needs for secure, reliable, and robust communications capabilities.

"SEC. 322. ESTABLISHMENT OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE GOVERNANCE BOARD.

''(a) GOVERNANCE BOARD.—

''(1) ESTABLISHMENT.—There is established the Diplomatic Telecommunications Service Governance Board to direct and oversee the activities and performance of the DTS–PO.

''(2) EXECUTIVE AGENT.—

''(A) DESIGNATION.—The Director of the Office of Management and Budget shall designate, from among the departments and agencies of the United States Government that use the DTS Network, a department or agency as the DTS–PO Executive Agent.

''(B) DUTIES.—The Executive Agent designated under subparagraph (A) shall—

''(i) nominate a Director of the DTS–PO for approval by the Governance Board in accordance with subsection (e); and

''(ii) perform such other duties as established by the Governance Board in the determination of written implementing arrangements and other relevant and appropriate governance processes and procedures under paragraph (3).

''(3) REQUIREMENT FOR IMPLEMENTING ARRANGEMENTS.—Subject to the requirements of this subtitle, the Governance Board shall determine the written implementing arrangements and other relevant and appropriate governance processes and procedures to manage, oversee, resource, or otherwise administer the DTS–PO.

''(b) MEMBERSHIP.—

''(1) SELECTION.—The Director of the Office of Management and Budget shall designate from among the departments and agencies that use the DTS Network—

''(A) four departments and agencies to each appoint one voting member of the Governance Board from the personnel of such departments and agencies; and

''(B) any other departments and agencies that the Director considers appropriate to each appoint one nonvoting member of the Governance Board from the personnel of such departments and agencies.

''(2) VOTING AND NONVOTING MEMBERS.—The Governance Board shall consist of voting members and nonvoting members as follows:

''(A) VOTING MEMBERS.—The voting members shall consist of a Chair, who shall be designated by the Director of the Office of Management and Budget, and the four members appointed by departments and agencies designated under paragraph (1)(A).

''(B) NONVOTING MEMBERS.—The nonvoting members shall consist of the members appointed by departments and agencies designated under paragraph (1)(B) and shall act in an advisory capacity.

''(c) CHAIR DUTIES AND AUTHORITIES.—The Chair of the Governance Board shall—

''(1) preside over all meetings and deliberations of the Governance Board;

''(2) provide the Secretariat functions of the Governance Board; and

''(3) propose bylaws governing the operation of the Governance Board.

''(d) QUORUM, DECISIONS, MEETINGS.—A quorum of the Governance Board shall consist of the presence of the Chair and four voting members. The decisions of the Governance Board shall require a majority of the voting membership. The Chair shall convene a meeting of the Governance Board not less than four times each year to carry out the functions of the Governance Board. The Chair or any voting member may convene a meeting of the Governance Board.

''(e) GOVERNANCE BOARD DUTIES.—The Governance Board shall have the following duties with respect to the DTS–PO:

''(1) To approve and monitor the plans, services, priorities, policies, and pricing methodology of the DTS–PO for bandwidth costs and projects carried out at the request of a department or agency that uses the DTS Network.

''(2) To provide to the DTS–PO Executive Agent the recommendation of the Governance Board with respect to the approval, disapproval, or modification of each annual budget request for the DTS–PO, prior to the submission of any such request by the Executive Agent.

''(3) To review the performance of the DTS–PO against plans approved under paragraph (1) and the management activities and internal controls of the DTS–PO.

''(4) To require from the DTS–PO any plans, reports, documents, and records the Governance Board considers necessary to perform its oversight responsibilities.

''(5) To conduct and evaluate independent audits of the DTS–PO.

''(6) To approve or disapprove the nomination of the Director of the DTS–PO by the Executive Agent with a majority vote of the Governance Board.

''(7) To recommend to the Executive Agent the replacement of the Director of the DTS–PO with a majority vote of the Governance Board.

''(f) NATIONAL SECURITY INTERESTS.—The Governance Board shall ensure that those enhancements of, and the provision of service for, telecommunication capabilities that involve the national security interests of the United States receive the highest prioritization.

"SEC. 323. FUNDING OF THE DIPLOMATIC TELECOMMUNICATIONS SERVICE.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the operations, maintenance, development, enhancement, modernization, and investment costs of the DTS Network and the DTS–PO. Funds appropriated for allocation to the DTS–PO shall remain available to the DTS–PO for a period of two fiscal years.

''(b) FEES.—The DTS–PO shall charge a department or agency that uses the DTS Network for only those bandwidth costs attributable to such department or agency and for

specific projects carried out at the request of such department or agency, pursuant to the pricing methodology for such bandwidth costs and such projects approved under section 322(e)(1), for which amounts have not been appropriated for allocation to the DTS–PO. The DTS–PO is authorized to directly receive payments from departments or agencies that use the DTS Network and to invoice such departments or agencies for the fees under this section either in advance of, or upon or after, providing the bandwidth or performing such projects. Such funds received from such departments or agencies shall remain available to the DTS–PO for a period of two fiscal years.

"SEC. 324. DEFINITIONS.

''In this subtitle:

''(1) DTS NETWORK.—The term 'DTS Network' means the worldwide telecommunications network supporting all United States Government agencies and departments operating from diplomatic and consular facilities outside of the United States.

''(2) DTS–PO.—The term 'DTS–PO' means the Diplomatic Telecommunications Service Program Office.

''(3) GOVERNANCE BOARD.—The term 'Governance Board' means the Diplomatic Telecommunications Service Governance Board established under section 322(a)(1).''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106–567; 114 Stat. 2831) is amended by striking the items relating to sections 321, 322, 323, and 324 and inserting the following new items:

''Sec. 321. Diplomatic Telecommunications Service Program Office.

''Sec. 322. Establishment of the Diplomatic Telecommunications Service Governance Board.

''Sec. 323. Funding of the Diplomatic Telecommunications Service.

''Sec. 324. Definitions.''.

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF SUSPENSION OF REORGANIZATION.—

(A) REPEAL.—The Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 22 U.S.C. 7301 note) is amended by striking section 311.

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 311.

(2) REPEAL OF REFORM.—

(A) REPEAL.—The Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501A–405) is amended by striking section 305.

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 2(b) of such Act is amended by striking the item related to section 305.

(3) REPEAL OF REPORTING REQUIREMENTS.—Section 507(b) of the National Security Act of 1947 (50 U.S.C. 415b(b)), as amended by section 351 of this Act, is further amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

TITLE VI—FOREIGN INTELLIGENCE AND INFORMATION COMMISSION ACT

SEC. 601. SHORT TITLE.

This title may be cited as the ''Foreign Intelligence and Information Commission Act''.

SEC. 602. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Foreign Intelligence and Information Commission established in section 603(a).

(2) FOREIGN INTELLIGENCE; INTELLIGENCE.—The terms ''foreign intelligence'' and ''intelligence'' have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(3) INFORMATION.—The term ''information'' includes information of relevance to the foreign policy of the United States collected and conveyed through diplomatic reporting and other reporting by personnel of the United States Government who are not employed by an element of the intelligence community, including public and open-source information.

SEC. 603. ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION.

(a) ESTABLISHMENT.—There is established in the legislative branch a Foreign Intelligence and Information Commission.

(b) PURPOSE.—The purpose of the Commission is to evaluate systems and processes at the strategic, interagency level and provide recommendations accordingly, and not to seek to duplicate the functions of the Director of National Intelligence.

(c) FUNCTIONS.—The Commission shall—

(1) evaluate the current processes or systems for the strategic integration of the intelligence community, including the Open Source Center, and other elements of the United States Government, including the Department of State, with regard to the collection, reporting, and analysis of foreign intelligence and information;

(2) provide recommendations to improve or develop such processes or systems to integrate the intelligence community with other elements of the United States Government, potentially including the development of an interagency strategy that identifies—

(A) the collection, reporting, and analysis requirements of the United States Government;

(B) the elements of the United States Government best positioned to meet collection and reporting requirements, with regard to missions, comparative institutional advantages, and any other relevant factors; and

(C) interagency budget and resource allocations necessary to achieve such collection, reporting, and analytical requirements;

(3) evaluate the extent to which current intelligence collection, reporting, and analysis strategies are intended to provide global coverage and anticipate future threats, challenges, and crises;

(4) provide recommendations on how to incorporate into the interagency strategy the means to anticipate future threats, challenges, and crises, including by identifying and supporting collection, reporting, and analytical capabilities that are global in scope and directed at emerging, long-term, and strategic targets;

(5) provide recommendations on strategies for sustaining human and budgetary resources to effect the global collection and reporting missions identified in the interagency strategy, including the prepositioning of collection and reporting capabilities;

(6) provide recommendations for developing, clarifying, and, if necessary, bolstering current and future collection and reporting roles and capabilities of elements of the United States Government that are not elements of the intelligence community deployed in foreign countries;

(7) provide recommendations related to the role of individual country missions in contributing to the interagency strategy;

(8) evaluate the extent to which the establishment of new embassies and out-of-embassy posts are able to contribute to expanded global coverage and increased collection and reporting and provide recommendations related to the establishment of new embassies and out-of-embassy posts;

(9) provide recommendations on executive or legislative changes necessary to establish any new executive branch entity or to expand the authorities of any existing executive branch entity, as needed to improve the strategic integration referred to in paragraph (1) and develop and oversee the implementation of any interagency strategy;

(10) provide recommendations on processes for developing and presenting to Congress budget requests for each relevant element of the United States Government that reflect the allocations identified in the interagency strategy and for congressional oversight of the development and implementation of the strategy; and

(11) provide recommendations on any institutional reforms related to the collection and reporting roles of individual elements of the United States Government outside the intelligence community, as well as any budgetary, legislative, or other changes needed to achieve such reforms.

SEC. 604. MEMBERS AND STAFF OF THE COMMISSION.

(a) MEMBERS OF THE COMMISSION.—

(1) APPOINTMENT.—The Commission shall be composed of 10 members as follows:

(A) Two members appointed by the majority leader of the Senate.

(B) Two members appointed by the minority leader of the Senate.

(C) Two members appointed by the Speaker of the House of Representatives.

(D) Two members appointed by the minority leader of the House of Representatives.

(E) One nonvoting member appointed by the Director of National Intelligence.

(F) One nonvoting member appointed by the Secretary of State.

(2) SELECTION.—

(A) IN GENERAL.—Members of the Commission shall be individuals who—

(i) are not officers or employees of the United States Government or any State or local government; and

(ii) have knowledge and experience—

(I) in foreign information and intelligence collection, reporting, and analysis, including clandestine collection and classified analysis (such as experience in the intelligence community), diplomatic reporting and analysis, and collection of public and open-source information;

(II) in issues related to the national security and foreign policy of the United States gained by serving as a senior official of the Department of State, a member of the Foreign Service, an employee or officer of an appropriate department or agency of the United States, or an independent organization with expertise in the field of international affairs; or

(III) with foreign policy decision-making.

(B) DIVERSITY OF EXPERIENCE.—The individuals appointed to the Commission should be selected with a view to establishing diversity of experience with regard to various geographic regions, functions, and issues.

(3) CONSULTATION.—The Speaker and the minority leader of the House of Representatives, the majority leader and the minority leader of the Senate, the Director of National Intelligence, and the Secretary of State shall consult among themselves prior to the appointment of the members of the Commission in order to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be considered by the Commission in accordance with this title.

(4) TIME OF APPOINTMENT.—The appointments under subsection (a) shall be made—

(A) after the date on which funds are first appropriated for the Commission pursuant to section 609; and

(B) not later than 60 days after such date.

(5) TERM OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(6) VACANCIES.—Any vacancy of the Commission shall not affect the powers of the Commission and shall be filled in the manner in which the original appointment was made.

(7) CHAIR.—The voting members of the Commission shall designate one of the voting members to serve as the chair of the Commission.

(8) QUORUM.—Five voting members of the Commission shall constitute a quorum for purposes of transacting the business of the Commission.

(9) MEETINGS.—The Commission shall meet at the call of the chair and shall meet regularly, not less than once every 3 months, during the life of the Commission.

(b) STAFF.—

(1) IN GENERAL.—The chair of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of that title relating to classification of positions and General Schedule pay rates, appoint and terminate an executive director and, in consultation with the executive director, appoint and terminate such other additional personnel as may be necessary to enable the Commission to perform its duties. In addition to the executive director and one full-time support staff for the executive director, there shall be additional staff with relevant intelligence and foreign policy experience to support the work of the Commission.

(2) SELECTION OF THE EXECUTIVE DIRECTOR.—The executive director shall be selected with the approval of a majority of the voting members of the Commission.

(3) COMPENSATION.—

(A) EXECUTIVE DIRECTOR.—The executive director shall be compensated at the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61–1(e)), as adjusted by any order of the President pro tempore of the Senate.

(B) STAFF.—The chair of the Commission may fix the compensation of other personnel of the Commission without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the maximum annual rate payable for an employee of a standing committee of the Senate under section 105(e) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61–1(e)), as adjusted by any order of the President pro tempore of the Senate.

(c) EXPERTS AND CONSULTANTS.—The Commission is authorized to procure temporary or intermittent services of experts and consultants as necessary to the extent authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of such title.

(d) STAFF AND SERVICES OF OTHER AGENCIES OR DEPARTMENTS OF THE UNITED STATES.—Upon the request of the Commission, the head of a department or agency of the United States may detail, on a reimbursable or nonreimbursable basis, any of the personnel of that department or agency to the Commission to assist the Commission in carrying out this title. The detail of any such personnel shall be without interruption or loss of civil service or Foreign Service status or privilege.

(e) SECURITY CLEARANCE.—The appropriate departments or agencies of the United States shall cooperate with the Commission in expeditiously providing to the members and staff of the Commission appropriate security clearances to the extent possible pursuant to existing procedures and requirements.

(f) REPORTS UNDER ETHICS IN GOVERNMENT ACT OF 1978.—Notwithstanding any other provision of law, for purposes of title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), each member and staff of the Commission—

(1) shall be deemed to be an officer or employee of the Congress (as defined in section 109(13) of such title); and

(2) shall file any report required to be filed by such member or such staff (including by virtue of the application of paragraph (1)) under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) with the Secretary of the Senate.

SEC. 605. POWERS AND DUTIES OF THE COMMISSION.

(a) HEARINGS AND EVIDENCE.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any department or agency of the United States such information as the Commission considers necessary to carry out this title. Upon request of the chair of the Commission, the head of such department or agency shall furnish such information to the Commission, subject to applicable law.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as a department or agency of the United States.

(d) ADMINISTRATIVE SUPPORT.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis (or, in the discretion of the Administrator, on a nonreimbursable basis) such administrative support services as the Commission may request to carry out this title.

(e) ADMINISTRATIVE PROCEDURES.—The Commission may adopt such rules and regulations, relating to administrative procedure, as may be reasonably necessary to enable the Commission to carry out this title.

(f) TRAVEL.—

(1) IN GENERAL.—The members and staff of the Commission may, with the approval of the Commission, conduct such travel as is necessary to carry out this title.

(2) EXPENSES.—Members of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(g) GIFTS.—No member or staff of the Commission may receive a gift or benefit by reason of the service of such member or staff to the Commission.

SEC. 606. REPORT OF THE COMMISSION.

(a) IN GENERAL.—

(1) INTERIM REPORT.—Not later than 300 days after the date on which all members of the Commission are appointed under section 604(a), the Commission shall submit to the congressional intelligence committees an interim report setting forth the preliminary evaluations and recommendations of the Commission described in section 603(c).

(2) FINAL REPORT.—Not later than 60 days after the date of the submission of the report required by paragraph (1), the Commission shall submit a final report setting forth the final evaluations and recommendations of the Commission described in section 603(c) to each of the following:

(A) The President.

(B) The Director of National Intelligence.

(C) The Secretary of State.

(D) The congressional intelligence committees.

(E) The Committee on Foreign Relations of the Senate.

(F) The Committee on Foreign Affairs of the House of Representatives.

(b) INDIVIDUAL OR DISSENTING VIEWS.—Each member of the Commission may include that member's individual or dissenting views in a report required by paragraph (1) or (2) of subsection (a).

(c) FORM OF REPORT.—The reports required by paragraphs (1) and (2) of subsection (a), including any finding or recommendation of such report, shall be submitted in unclassified form, but may include a classified annex.

SEC. 607. TERMINATION.

(a) IN GENERAL.—The Commission shall terminate on the date that is 60 days after the date of the submission of the report required by section 606(a)(2).

(b) TRANSFER OF RECORDS.—Upon the termination of the Commission under subsection (a), all records, files, documents, and other materials in the possession, custody, or control of the Commission shall be transferred to the Select Committee on Intelligence of the Senate and deemed to be records of such Committee.

SEC. 608. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to carry out this title.

(b) AVAILABILITY.—Amounts made available to the Commission pursuant to subsection (a) shall remain available until expended.

TITLE VII—OTHER MATTERS

SEC. 701. EXTENSION OF NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

(a) EXTENSION.—

(1) IN GENERAL.—Effective on the date on which funds are first appropriated pursuant to subsection (b)(1) and subject to paragraph (3), subsection (a) of section 1007 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note) is amended by striking ''September 1, 2004,'' and inserting ''one year after the date on which all members of the Commission are appointed pursuant to section 701(a)(3) of the Intelligence Authorization Act for Fiscal Year 2010,''.

(2) APPLICABILITY OF AMENDMENT.—The amendment made by paragraph (1) shall take effect as if included in the enactment of such section 1007.

(3) COMMISSION MEMBERSHIP.—The membership of the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community established under subsection (a) of section 1002 of such Act (Public Law 107–306; 50 U.S.C. 401 note) (referred to in this section as the ''Commission'') shall be considered vacant and new members shall be appointed in accordance with such section 1002, as amended by subparagraph (B).

(4) CLARIFICATION OF DUTIES.—Section 1002(i) of such Act is amended in the matter preceding paragraph (1) by striking ''including—'' and inserting ''including advanced research and development programs and activities. Such review shall include—''.

(b) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

(2) AVAILABILITY.—Amounts made available to the Commission pursuant to paragraph (1) shall remain available until expended.

(3) REPEAL OF EXISTING FUNDING AUTHORITY.—Section 1010 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note) is repealed.

(c) TECHNICAL AMENDMENTS.—

(1) DIRECTOR OF CENTRAL INTELLIGENCE.—The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306) is amended by striking ''Director of Central Intelligence'' each place it appears and inserting ''Director of National Intelligence'' in the following provisions:

(A) Section 1002(h)(2).

(B) Section 1003(d)(1).

(C) Section 1006(a)(1).

(D) Section 1006(b).

(E) Section 1007(a).

(F) Section 1008.

(2) DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.—Paragraph (1) of section 1002(b) of such Act is amended by striking ''The Deputy Director of Central Intelligence for Community Management.'' and inserting ''The Principal Deputy Director of National Intelligence.''.

SEC. 702. CLASSIFICATION REVIEW OF EXECUTIVE BRANCH MATERIALS IN THE POSSESSION OF THE CONGRESSIONAL INTELLIGENCE COMMITTEES.

The Director of National Intelligence is authorized to conduct, at the request of one of the congressional intelligence committees and in accordance with procedures established by that committee, a classification review of materials in the possession of that committee that—

(1) are not less than 25 years old; and

(2) were created, or provided to that committee, by an entity in the executive branch.

TITLE VIII—TECHNICAL AMENDMENTS

SEC. 801. TECHNICAL AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 101—

(A) in subsection (a), by moving paragraph (7) two ems to the right; and

(B) by moving subsections (b) through (p) two ems to the right;

(2) in section 103, by redesignating subsection (i) as subsection (h);

(3) in section 109(a)—

(A) in paragraph (1), by striking ''section 112.;'' and inserting ''section 112;''; and

(B) in paragraph (2), by striking the second period;

(4) in section 301(1), by striking '' 'United States' '' and all that follows through ''and 'State' '' and inserting '' 'United States', 'person', 'weapon of mass destruction', and 'State' '';

(5) in section 304(b), by striking ''subsection (a)(3)'' and inserting ''subsection (a)(2)''; and

(6) in section 502(a), by striking ''a annual'' and inserting ''an annual''.

SEC. 802. TECHNICAL AMENDMENTS TO THE CENTRAL INTELLIGENCE AGENCY ACT OF 1949.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended—

(1) in paragraph (1) of section 5(a), by striking ''authorized under paragraphs (2) and (3) of section 102(a), subsections (c)(7) and (d) of section 103, subsections (a) and (g) of section 104, and section 303 of the National Security Act of 1947 (50 U.S.C. 403(a)(2), (3), 403–3(c)(7), (d), 403–4(a), (g), and 405)'' and inserting ''authorized under section 104A of the National Security Act of 1947 (50 U.S.C. 403–4a).''; and

(2) in section 17(d)(3)(B)—

(A) in clause (i), by striking ''advise'' and inserting ''advice''; and

(B) by amending clause (ii) to read as follows:

''(ii) holds or held the position in the Agency, including such a position held on an acting basis, of—

''(I) Deputy Director;

''(II) Associate Deputy Director;

''(III) Director of the National Clandestine Service;

''(IV) Director of Intelligence;

''(V) Director of Support; or

''(VI) Director of Science and Technology.''.

SEC. 803. TECHNICAL AMENDMENTS TO TITLE 10, UNITED STATES CODE.

Section 528(c) of title 10, United States Code, is amended—

(1) in the heading, by striking ''ASSOCIATE DIRECTOR OF CIA FOR MILITARY AFFAIRS'' and inserting ''ASSOCIATE DIRECTOR OF MILITARY AFFAIRS, CIA''; and

(2) by striking ''Associate Director of the Central Intelligence Agency for Military Affairs'' and inserting ''Associate Director of Military Affairs, Central Intelligence Agency, or any successor position''.

SEC. 804. TECHNICAL AMENDMENTS TO THE NATIONAL SECURITY ACT OF 1947.

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended—

(1) in section 3(4)(L), by striking ''other'' the second place it appears;

(2) in section 102A—

(A) in subsection (c)(3)(A), by striking ''annual budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities'' and inserting ''annual budget for the Military Intelligence Program or any successor program or programs'';

(B) in subsection (d)—

(i) in paragraph (1)(B), by striking ''Joint Military Intelligence Program'' and inserting ''Military Intelligence Program or any successor program or programs'';

(ii) in paragraph (3) in the matter preceding subparagraph (A), by striking ''subparagraph (A)'' and inserting ''paragraph (1)(A)''; and

(iii) in paragraph (5)—

(I) in subparagraph (A), by striking ''or personnel'' in the matter preceding clause (i); and

(II) in subparagraph (B), by striking ''or agency involved'' in the second sentence and inserting ''involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency)'';

(C) in subsection (l)(2)(B), by striking ''section'' and inserting ''paragraph''; and

(D) in subsection (n), by inserting ''AND OTHER'' after ''ACQUISITION'';

(3) in section 103(b), by striking '', the National Security Act of 1947 (50 U.S.C. 401 et seq.),'';

(4) in section 104A(g)(1) in the matter preceding subparagraph (A), by striking ''Directorate of Operations'' and inserting ''National Clandestine Service'';

(5) in section 119(c)(2)(B) (50 U.S.C. 404o(c)(2)(B)), by striking ''subsection (h)'' and inserting ''subsection (i)'';

(6) in section 701(b)(1), by striking ''Directorate of Operations'' and inserting ''National Clandestine Service'';

(7) in section 705(e)(2)(D)(i) (50 U.S.C. 432c(e)(2)(D)(i)), by striking ''responsible'' and inserting ''responsive''; and

(8) in section 1003(h)(2) in the matter preceding subparagraph (A), by striking ''subsection (i)(2)(B)'' and inserting ''subsection (g)(2)(B)''.

SEC. 805. TECHNICAL AMENDMENTS RELATING TO THE MULTIYEAR NATIONAL INTELLIGENCE PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 1403 of the National Defense Authorization Act for Fiscal Year 1991 (50 U.S.C. 404b) is amended—

(1) in the heading, by striking ''FOREIGN''; and

(2) by striking ''foreign'' each place it appears.

(b) RESPONSIBILITY OF DIRECTOR OF NATIONAL INTELLIGENCE.—Such section 1403, as amended by subsection (a), is further amended—

(1) in subsections (a) and (c), by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence''; and

(2) in subsection (b), by inserting ''of National Intelligence'' after ''Director''.

(c) FUTURE-YEARS DEFENSE PROGRAM.—Subsection (c) of such section 1403, as amended by subsection (b), is further amended by striking ''multiyear defense program submitted pursuant to section 114a of title 10, United States Code'' and inserting ''future-years defense program submitted pursuant to section 221 of title 10, United States Code''.

(d) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The heading of such section 1403 is amended to read as follows:

''SEC. 1403. MULTIYEAR NATIONAL INTELLIGENCE PROGRAM.''.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 2 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1485) is amended by striking the item relating to section 1403 and inserting the following new item:

''Sec. 1403. Multiyear National Intelligence Program.''.

SEC. 806. TECHNICAL AMENDMENTS TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.

(a) AMENDMENTS TO THE NATIONAL SECURITY INTELLIGENCE REFORM ACT OF 2004.—The National Security Intelligence Reform Act of 2004 (title I of Public Law 108–458; 118 Stat. 3643) is amended—

(1) in subparagraph (B) of section 1016(e)(10) (6 U.S.C. 485(e)(10)), by striking ''Attorney General'' the second place it appears and inserting ''Department of Justice'';

(2) in subsection (e) of section 1071, by striking ''(1)''; and

(3) in subsection (b) of section 1072, in the subsection heading by inserting ''AGENCY'' after ''INTELLIGENCE''.

(b) OTHER AMENDMENTS TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3638) is amended—

(1) in section 2001 (28 U.S.C. 532 note)—

(A) in paragraph (1) of subsection (c)—

(i) by striking ''shall,'' and inserting ''shall''; and

(ii) by inserting ''of'' before ''an institutional culture'';

(B) in paragraph (2) of subsection (e), by striking ''the National Intelligence Director in a manner consistent with section 112(e)'' and inserting ''the Director of National Intelligence in a manner consistent with applicable law''; and

(C) in subsection (f), by striking ''shall,'' in the matter preceding paragraph (1) and inserting ''shall''; and

(2) in section 2006 (28 U.S.C. 509 note)—

(A) in paragraph (2), by striking ''the Federal'' and inserting ''Federal''; and

(B) in paragraph (3), by striking ''the specific'' and inserting ''specific''.

SEC. 807. TECHNICAL AMENDMENTS TO THE EXECUTIVE SCHEDULE.

(a) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of Central Intelligence and inserting the following new item:

''Director of the Central Intelligence Agency.''.

(b) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the General Counsel of the Office of the National Intelligence Director and inserting the following new item:

''General Counsel of the Office of the Director of National Intelligence.''.

SEC. 808. TECHNICAL AMENDMENTS TO SECTION 105 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004.

Section 105(b) of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2603; 31 U.S.C. 311 note) is amended—

(1) by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence''; and

(2) by inserting ''or in section 313 of such title,'' after ''subsection (a)),''.

SEC. 809. TECHNICAL AMENDMENTS TO SECTION 602 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1995.

Section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (50 U.S.C. 403–2b) is amended—

(1) in subsection (a), in paragraph (2), by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence''; and

(ii) in subparagraph (B), by striking ''Director of Central Intelligence'' and inserting ''Director of National Intelligence''; and

(C) in paragraph (3), by striking ''Director of Central Intelligence'' and inserting ''Director of the Central Intelligence Agency''.

SEC. 810. TECHNICAL AMENDMENTS TO SECTION 403 OF THE INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1992.

(a) ROLE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.—Section 403 of the Intelligence Authorization Act, Fiscal Year 1992 (50 U.S.C. 403–2) is amended by striking ''The Director of Central Intelligence'' and inserting the following:

''(a) IN GENERAL.—The Director of National Intelligence''.

(b) DEFINITION OF INTELLIGENCE COMMUNITY.—Section 403 of the Intelligence Authorization Act, Fiscal Year 1992, as amended by subsection (a), is further amended—

(1) by striking ''Intelligence Community'' and insert ''intelligence community''; and

(2) by striking the second sentence and inserting the following:

''(b) INTELLIGENCE COMMUNITY DEFINED.—In this section, the term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).''.

Mrs. FEINSTEIN. It is my understanding the bill is passed. I thank the Senate for passage of this bill.

This is a bill which the Senate Select Committee on Intelligence reported out by a unanimous 15-to-0 vote on July 19. This is the Senate's second time approving an intelligence authorization bill for fiscal year 2010. The committee reported S. 1494 unanimously in July 2009, and the Senate passed it by unanimous consent in September 2009. The House passed its bill, its 2010 authorization bill, in February 2010.

The House and Senate Intelligence Committees then worked for months, together with the administration, to agree on a bill that would make a substantial contribution to national security and that would be able to pass both Chambers and become law with the President's approval. S. 3611 is that agreement.

I thank the White House for their efforts to come to an agreement on the legislation, as well as the efforts of the vice chairman, Senator BOND, and his staff. This is his last bill and, as such, I thank him very much for his cooperation in this matter, for the ability to work with him over this period of time.

I would also like to acknowledge the leadership of the distinguished chairman of the House Intelligence Committee, Mr. REYES.

Broadly speaking, the bill advances the cause of effective oversight of the intelligence community and contributes significantly to the Director of National Intelligence's ability to direct and lead the intelligence community as an integrated whole.

It is my understanding that the House will be back in session next week. I would urge them to take up this important legislation at that time.

Our committee filed a detailed report on S. 3611, which is available both in print and on our Web site to all Members of the Senate, our colleagues in the House, and the public as Senate Report 111–223.

The bill contains 106 sections divided into eight titles. Let me commend the reading of the bill and our report to all who may be interested in why it is essential that the Congress complete action on this needed and overdue legislation. In these remarks, I will only mention a few highlights.

This is the committee's second report of an intelligence Authorization for fiscal year 2010. We reported S. 1494 unanimously in July 2009 and the Senate passed it by unanimous consent in September 2009. The House passed its fiscal year 2010 in February 2010.

The House and Senate Intelligence Committees then worked for months, together with the administration, to agree on a bill that would make a substantial contribution to national security and that would be able to pass both Chambers and become law with the President's approval. S. 3611 is that agreement.

Broadly speaking, the bill advances the cause of effective oversight of the intelligence community and contributes significantly to the Director of National Intelligence's ability to direct and lead the intelligence community as an integrated whole.

To illustrate, with respect to oversight, the bill will complete an effort that the Senate began in 2004 to create a strong and independent statutory inspector general for the intelligence community. A principal focus of that community-wide IG will be on progress and problems with the integration of the efforts of the 16 components of the intelligence community. The bill also strengthens the CIA inspector general and provides a statutory basis for IGs in the major intelligence elements within the Department of Defense.

This strengthened IG system within the intelligence community will provide greater visibility for the leaders of the IC, including the DNI, into management, information sharing and information security, and other problems within the intelligence community. The reports of their investigations and audits will also be, as IG reports have been, an invaluable aid for congressional oversight.

Other parts of the bill will also directly aid congressional oversight. These include requirements that executive and legislative procedures on full and timely notifications to the intelligence committees be in writing and that written records of notifications to the intelligence committees of intelligence activities and covert actions also be in writing.

Importantly, the bill also requires that the head of each intelligence element certify annually on compliance with substantial congressional notification requirements that already exist in title V of the National Security Act.

The bill takes important steps to improve both executive and congressional oversight of intelligence community procurement and budget matters. In the coming years, all parts of the government will need to address the reality that appropriation levels will not rise as they have in the past. This means that controlling cost overruns and promoting sound long term budget planning is an essential part of national security. The bill takes important steps toward those objectives.

The bill grants to the Director of National Intelligence important authorities to manage the intelligence community. These include authorities concerning personnel management, acquisition authority, and information sharing. There may be more to accomplish in all of these respects and we have invited General Clapper, if he is confirmed as I hope and expect he will, not to be hesitant in asking for additional authority if he identifies a need for it.

As is detailed in the committee's report, there are 10 provisions in this legislation that enhance the DNI's authority and management flexibilities. Eight of those 10 provisions were requested by this administration or the prior one.

There is more in this broad ranging legislation, from large to small items. Indeed, the very length of the bill is testimony to the fact that we have gone 5 years without an intelligence authorization. From fiscal years 1979 to 2005, the Congress had enacted an authorization for every fiscal year. The

fiscal year 2010 bill is an opportunity, which we must not lose, to get back on track.

I will briefly note the reasons for the managers' amendment that the distinguished vice chairman, Senator BOND, and I have propounded.

Three provisions of S. 3611 as reported by our committee on July 19, sections 106, 333(c.), and 334 of S. 3611, have been enacted into law by provisions of the Supplemental Appropriations Act, 2010, sections 301, 308, and 3011 of Public Law 111–212, which the President signed into law on July 29. Accordingly, the managers' amendment deletes those now enacted provisions from S. 3611.

The managers' amendment also addresses requests from the Budget and Judiciary Committees. As requested by the Budget Committee, the amendment adds a pay-go provision. I should note that the Congressional Budget Office table that will be printed in the RECORD indicates that the bill makes no changes in the government's direct spending. As requested by the Judiciary Committee, the amendment clarifies that reports provided to the Congress under several sections of the bill will be provided to the Judiciary Committee.

This legislation reflects the negotiations with the House committee, the intelligence community, and the White House. Provisions that our committee, and the Senate, passed last September had to be removed due to veto threats or objections from the House of Representatives. I look forward to addressing some of those issues in future legislation.

Beginning with our distinguished vice chairman, Senator BOND, and acknowledging also the leadership of the distinguished chairman of the House Intelligence Committee, Mr. REYES, I would like to thank all of my colleagues for their work in producing a bill that will take important strides in improving the authority and oversight of the intelligence community through this 2010 bill, even as we recognize that there is more to achieve in authorization legislation for fiscal years 2011 and beyond.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I thank the chair of our committee. I thank her, her staff, for all of the good work that has gone into this bill, repeatedly, as she pointed out.

For too many years Congress has failed to pass an intelligence authorization bill that could be signed into law. I am very pleased to join with Senator FEINSTEIN, the distinguished chair of the Senate Select Committee on Intelligence, in achieving passage of S. 3611, the Intelligence Authorization Act for Fiscal Year 2010.

Over the past several months, we worked closely with the House Permanent Select Committees on Intelligence and Administration to reach a compromise text that could serve as a conference report for this bill. The bill now before this Senate and having passed the Senate contains all of the elements of the compromise. It has been agreed to in advance by representatives of the administration. But, unfortunately, the House has thus far declined to move the process forward, bringing this bill formally to conference.

The chair and I agreed that we would be able to move this process forward by having the Senate pass the compromise text for the House to consider when it returns next week.

The intelligence authorization bill before us is a good bill. It will give the intelligence community the flexibility and authorities it needs to function effectively and will ensure appropriate intelligence oversight by this committee.

I have often said that in creating the Director of National Intelligence, we gave him an awful lot of responsibility without all the authority he needed. Well, our bill attempts to address that problem by giving the DNI clearer authority and greater flexibility in overseeing the intelligence community.

There are also a number of provisions in this bill that I believe are essential for promoting good government. Too often, we have seen programs or acquisitions of major systems balloon in cost and decrease in performance. That is unacceptable. We are in difficult economic times and the taxpayers are spending substantial sums of money to ensure that the intelligence community has the tools it needs to keep us safe. If we don't demand accountability for how these tools are operated or created, then we are failing the intelligence community, and, ultimately, we are failing the American people.

So, for the past several years, I have sponsored amendments that require the intelligence community to perform vulnerability assessments of major systems and to keep track of excessive cost growth of major systems. This latter provision is modeled on the Nunn-McCurdy provision which has guided Defense Department acquisitions for years. I am happy to say that these provisions are part of this year's bill, too. I believe that these, and other good-government provisions, will encourage earlier identification and solving of problems relating to the acquisition of major systems. Too often, such problems have not been identified until exorbitant sums of money have been spent—and, unfortunately, at that point, there is often reluctance to cancel the project.

Similarly, the intelligence community must get a handle on its personnel levels. In these tough economic times, it is more important than ever to make sure that the intelligence community is appropriately resourced to ensure that its personnel can effectively perform their respective national security missions.

However, I am concerned about the number of contractors used by the intelligence community to perform functions better left to government employees. There are some jobs that demand the use of contractors, for example, certain technical jobs or short-term functions, but too often, the quick fix is just to hire contractors, not long-term support. And so, our bill includes a provision calling for annual personnel level assessments for the intelligence community. These assessments will ensure that, before more people are brought in, there are adequate resources to support them and enough work to keep them busy.

These are just a few of the provisions in this bill that I believe are important for the success of our intelligence collection efforts and equally important for ensuring sound oversight by the intelligence committee.

I commend Senator FEINSTEIN for her leadership in shepherding this bill through the committee and the Senate. I appreciate her willingness to work through the countless issues raised throughout this process. I also thank my colleagues for supporting this bill.

It is well-past time that Congress send an intelligence authorization bill to the President for his signature. Only by fulfilling our legislative function will we get back on track with performing effective and much-needed intelligence oversight.

I, again, extend and expand my thanks to the distinguished chair for making sure the Senate Intelligence Committee can work in a bipartisan manner, which we have done on this bill, and on lengthy oversight matters that we have undertaken out of view of public scrutiny, obviously, but spending many days, many hours in meetings, looking over the wide range of critical efforts that are needed by our intelligence community to keep our country safe.

Why does passing an authorization bill matter at this late date in the fiscal year? An annual intelligence authorization bill does more than just authorize funding for intelligence activities, funding that in many cases has already been appropriated and spent. But it is vital that the intelligence committees be able to provide direction for the expenditure of funds for the intelligence community. But by providing current and congressional guidance and statutory authority we can ensure that the intelligence community has the maximum flexibility, the capability it needs to function effectively, spend taxpayer funds wisely, and keep our Nation safe.

The Senate bill has the full support of the Senate. Senior administration has said they will recommend the President sign this compromise text into law. I urge, once again, the Speaker of the House of Representatives to bring up this bill and pass it when the House returns to session next week so we can get back on track with performing effective intelligence oversight.

Mr. LEAHY. Madam President. today the Senate passed a new version of the

Intelligence Authorization Act for Fiscal Year 2010 (S. 3611) with a manager's amendment to address key concerns of the Judiciary Committee. I appreciate the commitment of Senator FEINSTEIN, the chair of the Senate Select Committee on Intelligence, to work with me to strengthen this important legislation. The bill the Senate has approved recognizes the shared jurisdiction of the committee on the Judiciary and the Select Committee on Intelligence in several legislative areas.

Last fall, when an earlier version of this bill—S. 1494—was considered by the Senate, I recognized that several provisions in the bill fell under the jurisdiction of the Judiciary Committee. Senator FEINSTEIN and I engaged in serious negotiations concerning these provisions. We negotiated agreements regarding exemptions to the Freedom of Information Act, FOIA, as well as numerous reporting requirements, such as a significant, new requirement for the Federal Bureau of Investigation—FBI—an agency clearly under the jurisdiction of the Judiciary Committee, and an important new cybersecurity oversight provision.

Negotiations I undertook with Senator FEINSTEIN last fall on the earlier version of the bill narrowed the operational files FOIA exemption for information provided by intelligence agencies to the Office of the Director of National Intelligence, ODNI, and struck a FOIA (b)(3) exemption for terrorist identity information. Those agreements were preserved in the new version of the bill, S. 3611.

Senator FEINSTEIN has told me she is also committed to ensuring that the Judiciary Committee will receive reports required by the bill's section 337, Cybersecurity Oversight. I appreciate Senator FEINSTEIN's support for these improvements. The manager's amendment to the intelligence authorization bill agreed to today explicitly identifies the Judiciary Committee as a recipient of relevant reporting provisions.

The intelligence authorization bill includes several reporting requirements that involve areas of long-standing interest and jurisdiction of the Judiciary Committee. The new version of the bill, S. 3611, ensures that the Judiciary Committee is a recipient of those reports. Section 333 of the bill directs the Director of National Intelligence to provide a comprehensive report on all measures taken by the Office of the Director of National Intelligence and by elements of the intelligence community to comply with the provisions of applicable law, international obligations, and executive orders relating to the detention and interrogation activities of the intelligence community. These include compliance with the Detainee Treatment Act of 2005; the Military Commissions Act of 2006; common Article 3 of the Geneva Conventions; the Convention Against Torture; Executive Order 13492, relating to lawful interrogations; and Executive Order 13493, relating to detention policy options.

The managers' amendment to the intelligence authorization bill modifies section 333 to ensure that to the extent that the report addresses an element of the intelligence community within the Department of Justice, it shall be submitted, along with associated material, to the Judiciary Committees of the House and Senate. This reporting requirement is a cornerstone of the agreement I reached with Senator FEINSTEIN last year. I am pleased to see it retained in the bill we passed today.

I fought for years to obtain information about the Bush administration's detention and interrogation policies and practices, and the legal advice from that administration authorizing those policies and practices. The last administration refused to give this information to Congress, instead issuing secret legal advice that misconstrued our laws and international obligations with regard to the treatment of people in our custody. Years later we found out that the administration had sanctioned cruel interrogation techniques, including torture. It is imperative that the Judiciary Committee be fully informed of the extent to which the government is complying with our laws and international treaties relating to detention and interrogation in order to be able to conduct proper oversight and ensure that our government cannot shield policies that authorize practices in violation of our laws. The Judiciary Committee is an important partner in this oversight.

Section 405 of the bill establishes a new Office of Inspector General of the intelligence community to conduct independent investigations, inspections, audits and reviews on programs and activities conducted under the authority of the Director of National Intelligence. Under this new authority, the inspector general is required to submit a semiannual report to the Director of National Intelligence summarizing its activities. The amendment incorporated into S. 1494 last fall, and carried over to S. 3611, modifies the reporting provision to require the inspector general to submit reports that focus on government officials to the committees of the Senate and the House of Representatives with jurisdiction over the department that official represents.

Section 405 of the bill creates an entirely new inspector general with significant authority and responsibility in the intelligence community. That authority will implicate agencies within the jurisdiction of the Judiciary Committee, including the Department of Justice and components of the Department of Homeland Security. I believe this modification to the bill provides an important recognition of the Judiciary Committee's need to be involved in the investigations and activities of this new inspector general.

Another significant new provision is section 445 of the bill, Report and Assessment on Transformation of the Intelligence Capabilities of the Federal Bureau of Investigation, which creates a broad new reporting requirement for the FBI. The Judiciary Committee has always had primary oversight over the FBI. As the FBI takes on more responsibility in the areas of intelligence and national security, its policies and practices in these areas must be subject to the oversight of Congress. The Intelligence Committees have particular expertise that make them an important partner in this oversight. However, it is the Judiciary Committee that has the primary legislative and oversight responsibilities over the FBI.

I am very pleased that the bill passed today contains several important improvements that I recommended to strengthen FOIA. I am particularly pleased that the bill, as amended, does not contain a broad and unnecessary exemption to FOIA's disclosure requirements for terrorist identity information. That provision was included in an earlier version of the bill, but I worked to ensure it was struck it prior to passage of S. 1494 last fall. It is not included in S. 3611, the successor to S. 1494.

No one would quibble with the notion that our government can—and should—keep some information secret to protect our national security. But, in the case of terrorist identity information, our government has successfully withheld this sensitive information under the existing FOIA exemptions for classified and law enforcement information. In addition, the many instances of mistaken identities and other errors on terrorist watchlists and ''no-fly'' lists make it clear that FOIA can be a valuable tool to help innocent Americans redress and correct mistakes on these lists.

Lastly, as a result of my negotiations with Senator FEINSTEIN last fall, S. 3611 narrows the exemption to FOIA's search requirements for operational files information that the Nation's intelligence agencies share with the ODNI. The bill makes it clear that operational files that are already exempt from these search requirements retain this exemption under circumstances where the files are disseminated to the ODNI. This carefully crafted compromise will help ensure both effective information sharing among our intelligence agencies and the free flow of information to the American public.

I believe that S. 3611 and the managers amendment passed today recognize the value and significance of the shared jurisdiction in many areas of national security between the Judiciary and Intelligence Committees. The Judiciary Committee has long engaged in oversight and legislative activity regarding cyber threats and cybersecurity. Senator FEINSTEIN and I have worked together in the Judiciary Committee for many years on these issues, and we both recognize the shared jurisdiction and responsibilities of the Judiciary and Intelligence Committees

with regard to oversight of cyber matters and cybersecurity.

I appreciate Senator FEINSTEIN's cooperation in adopting these improvements. In a letter sent to me yesterday, August 3, 2010, Senator FEINSTEIN reiterated her commitment to work with the Judiciary Committee in the area of cyber matters. I ask unanimous consent to have her August 3, 2010 letter printed in the RECORD. I also ask unanimous consent to print in the RECORD an exchange of letters between Senator FEINSTEIN and myself dated September 15 and 16, 2009, that discussed Senate jurisdiction over the section in the bill that addresses cybersecurity oversight. In the earlier version of the bill, S. 1494, the section was numbered 340. In the new version of the bill, S. 3611, the cybersecurity oversight section is numbered 337.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. LEAHY. As Senator FEINSTEIN has described it, Section 337 of the bill is intended to provide a preliminary framework for executive and congressional oversight of cybersecurity programs, as defined in the section, to ensure that these programs are consistent with legal authorities, preserve reasonable expectations of privacy, and are subject to independent audit and review. Section 337 of S. 3611 creates several reporting requirements with regard to the executive and congressional oversight of cybersecurity programs. These include Presidential notifications to Congress, reports to Congress and the President from the head of a department or agency with responsibility for cybersecurity programs, in conjunction with the inspector general of that department or agency, and a joint report to Congress and the President from the inspector general of the Department of Homeland Security and the inspector general of the intelligence community on the status of the sharing of cyber threat information within 1 year. I look forward to continuing to work with Senator FEINSTEIN in the Judiciary Committee and in the Senate to ensure strong oversight and legislation with regard to cyber matters.

I am pleased the Senate today will pass the amended Intelligence Authorization Act for Fiscal Year 2010. The progress that Senator FEINSTEIN and I have made to improve this bill demonstrates the success we can have when we work together constructively.

EXHIBIT 1

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, September 15, 2009.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, Dirksen Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As you know, our staffs have been in discussions since the beginning of recess over various provisions of S. 1494, the Intelligence Authorization Act for Fiscal Year 2010, ordered reported from the Committee on July 22, 2009. Among the provisions at issue is Section 340, Cybersecurity Oversight.

Section 340 is intended to provide a preliminary framework for executive and congressional oversight of cybersecurity programs, as defined in the section, to ensure that these programs are consistent with legal authorities, preserve reasonable expectations of privacy, and are subject to independent audit and review.

Section 340 contains several reporting requirements. One requires the President to provide certain notifications to Congress. In addition, the head of a department or agency with responsibility for cybersecurity programs, in conjunction with the inspector general of that department or agency, is to submit to Congress and the President periodic reports on the program. Finally, the Inspector General of the Department of Homeland Security and the Inspector General of the Intelligence Community are jointly to submit a report to Congress and the President on the status of the sharing of cyber threat information within one year.

Under the provision as reported, notifications and reports under the section are to be submitted ''to the Congress.'' Vice Chairman Bond and I have consulted with the Senate parliamentarian to convey our recommendations for how referrals of notifications and reports under the section should be made.

As we have discussed before, cybersecurity is a matter of interest to many of the committees of the Senate. Of note is the longstanding interest in, and jurisdiction over, cyber matters by the Judiciary Committee. This includes but is not necessarily limited to the cybersecurity of the Justice Department and other departments and agencies under the Committee's jurisdiction, privacy interests of the American people, and legal dimensions of the government's cyber activities. Given the Judiciary Committee's role in these matters and the expectation that reports under Section 340 will touch on one or more of the Committee's areas of jurisdiction, it is my strong belief that documents provided to the Congress should be provided to the Judiciary Committee.

In addition, should the Intelligence Committee receive reports under this section that are within the jurisdiction of the Judiciary Committee but that are not provided to the Judiciary Committee, I will ensure that access to those reports is provided to Judiciary Committee members and staff as appropriate.

Thank you for your cooperation over this issue, and other provisions of the intelligence legislation.

Sincerely,

DIANNE FEINSTEIN,
Chairman.

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, August 3, 2010.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, Dirksen Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We exchanged letters last September about section 340 of S. 1494, the Intelligence Authorization Act for Fiscal Year 2010. As described in the report of the Select Committee on Intelligence, the purpose of section 340 is to establish a preliminary framework for executive and legislative oversight to ensure that the federal government's national cyber security mission is consistent with legal authorities and preserves reasonable expectations of privacy.

On September 16, 2009, you placed in the Congressional Record, at 155 Cong. Rec. S9451, my letter to you of September 15. Because section 340 provides for various reports or notifications to be submitted ''to the Congress,'' I wrote to convey to you my recognition of the Judiciary Committee's longstanding interest in, and jurisdiction over, cyber matters, and my belief that documents provided to Congress under section 340 should be provided to the Judiciary Committee. I also stated my commitment that should the Intelligence Committee receive reports under section 340 that are within the jurisdiction of the Judiciary Committee but are not provided to it, then I will ensure your committee's member and staff access to those documents as appropriate.

The Intelligence Committee has now reported a second FY 2010 Intelligence Authorization, S. 3611, which is based on the work of the House and Senate Intelligence Committees and the Administration to reconcile S. 1494 and H.R. 2701, the House intelligence bill. Section 337 of S. 3611 is the direct descendant of section 340 of S. 1494. The legislative history of section 340 of S. 1494, including my letter to you of September 15, 2009, is part of the legislative history of section 337 of S. 3611.

The recognition I expressed of the role of the Judiciary Committee in cyber matters, my belief in the right of the Judiciary Committee to receive reports under section 337, and my commitment to provide to your committee access to such reports in the event they are provided to my committee but not to yours, apply as much to section 337 of S. 3611 as they applied to section 340 of S. 1494.

I look forward to working with your committee, and other interested committees of the Senate, in establishing a strong basis for cyber security oversight.

Sincerely,

DIANNE FEINSTEIN,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 16, 2009.

Hon. DIANNE FEINSTEIN,
Chairman, Senate Select Committee on Intelligence, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN FEINSTEIN: Thank you for your letter today regarding S. 1494, the Intelligence Authorization Act for Fiscal Year 2010. I was happy to work with you to reach agreement on the amendment you are offering to the bill to include the Judiciary Committee as a recipient of relevant reporting provisions and to strike a proposed FOIA exemption and modify another FOIA provision. I appreciate your support for those improvements.

I had my first opportunity to review this legislation when it was hotlined on August 5. As you noted, our staffs have been in discussions over various provisions of S. 1494 that involve the jurisdiction of the Judiciary Committee and issues on which it shares an interest with the Senate Select Committee on Intelligence.

Our understanding also includes the commitment in your letter to me today to ensure that the Judiciary Committee receives reports required by Section 340, Cybersecurity Oversight. As you know as a member and former chair of the Judiciary Committee Subcommittee on Terrorism and Homeland Security, the Judiciary Committee has long engaged in oversight and legislative activity regarding cyber threats and cybersecurity. You and I have long worked together in the Judiciary Committee on these issues and I appreciate your recognition of the shared jurisdiction and responsibilities of the Judiciary and Intelligence Committees with regard to oversight of cyber matters and cybersecurity. I appreciate your commitment to ensure that the Judiciary Committee will receive reports received under the Cybersecurity Oversight provision.

As you have described it, Section 340 is intended to provide a preliminary framework for executive and congressional oversight of

cybersecurity programs, as defined in the section, to ensure that these programs are consistent with legal authorities, preserve reasonable expectations of privacy, and are subject to independent audit and review. Section 340 creates several reporting requirement with regard to the executive and congressional oversight of cybersecurity programs. These include Presidential notifications to Congress, reports to Congress and the President from the head of a department or agency with responsibility for cybersecurity programs, in conjunction with the inspector general of that department or agency, and a joint report to Congress and the President from the Inspector General of the Department of Homeland Security and the Inspector General of the Intelligence Community on the status of the sharing of cyber threat information within one year.

According to the legislative language, reports under the section are to be submitted ''to the Congress.'' As you noted in your letter, the Judiciary Committee has a ''longstanding interest in, and jurisdiction over'' cyber matters and cyber security. This includes criminal activities, cybersecurity matters handled by the Justice Department and other departments and agencies under the Judiciary Committee's jurisdiction, the privacy interests of the American people, and constitutional and legal dimensions of the Government's cyber activities, including all legal guidance. Thank you for your willingness to work together on this issue, and the other provisions of the intelligence legislation.

I look forward to continuing to work together with you in the Judiciary Committee and in the Senate to ensure strong oversight and legislation with regard to cyber matters.

Sincerely,

PATRICK LEAHY,
Chairman.

The PRESIDING OFFICER. The Senator from North Dakota.

COBELL SETTLEMENT

Mr. DORGAN. Madam President, as we conclude our work prior to the August break, we are working very hard to try to address the Cobell settlement and the Pigford settlement, these settlements are the result of lawsuits that were filed, negotiations that ensued, and eventually reaching agreement to settle these two cases.

I would like to talk briefly about the Cobell settlement. To start, I want to show a photograph, a picture of a woman named Mary Fish. I wonder how anyone serving in this Chamber or how anyone in this country would feel had they been Mary Fish. She was an Oklahoma Indian. She lived in a small, humble home, never had very much. But she had a piece of property, 40 acres, and she had six oil wells on her land—six oil wells on her land.

How she got ''her land'' dates back to 1887 when the Federal Government first divided up tribal lands and gave individual Indians separate parcels of land and then said to the Indians: You know what. We are going to give you separate parcels of land that will be yours. But, we are going to manage them for you. We will hold them in trust and provide income from your land to you.

So poor Mary Fish, an Oklahoma Indian, had six oil wells on her land and lived a humble life and died a few years ago waiting, waiting for justice, justice that she never received. The Federal Government never explained to Mary how much oil was being pumped from the wells on her land.

Even with all of the oil wells on her land, Mary made only a few dollars a year from six wells. At one point she got a check from the Federal Government for 6 cents. Another time she got a check from the Federal Government for $3. One time she got a check for $3,000. Another time, although oil was still being produced, one of the statements that Mary received showed a negative $5 in her account.

She died waiting for the government to account for the royalties on her land, and for this legislation that would settle this matter. She died waiting for justice.

So what is the Cobell settlement, and what does it have to do with Mary Fish and all the oil produced from her land. The Cobell settlement is an agreement reached by the Secretary of the Interior and the all of the plaintiffs in the Cobell lawsuit—individual Indians like Mary. I am going to speak about the Cobell settlement, and a couple of colleagues are going to talk about the Pigford settlement. We are here today talking about settling both of these issues.

The Cobell settlement established deadlines for the Congress to act. The Court wants to see this matter resolved. The current deadline for Congress is August 6. We have already missed six deadlines established by the federal court. And if Congress does not act, the parties will return back to litigation, litigation that has gone on now for almost 15 years in the federal courts.

As I indicated, this situation in the Cobell case resulted from a century of mismanagement of Indian trust accounts. I want to show a photograph of the way trust records of the accounts for the individual Indians were kept on one Indian reservation—rat-infested warehouses with boxes laying all over. They would not be able to find a piece of paper in this pile to save their souls. And this is how the government kept records for individual Indian trust accounts. The result is, so many Indians were cheated. Yes, there have been circumstances in the last century in which Indians were systematically cheated and looted. Grand theft occurred, a substantial amount of money was made off these lands. Someone else got it, the Indians did not. After all these years, it is long past the time for us to agree to settle these grievances.

The government has long known about the problem. In 1915, a government report identified ''fraud, corruption and incompetence in the management of these Indian trust accounts.'' That was in 1915. In 1992, a House report compared the federal government's management of Indian trust accounts to ''a bank that doesn't know how much money it has.''

Finally, in 1994, Congress passed a law requiring that the government account for the money it was managing for American Indians, and then 2 years later, where there was still nothing being done and no progress, Elouise Cobell filed a case asking the government to follow the law.

Elouise Cobell is a member of the Blackfeet Nation of Montana. She is quite a remarkable woman. Like many American Indians, she grew up hearing stories of government checks and how the checks never made any sense. The checks arrived once in a while and were in amounts no one understood or could explain.

In 1996, she filed a lawsuit. Her lawsuit said: Give me an accounting of the money that you have collected from my lands, and do the same for every other American Indian. That was in 1996.

We are now in the year 2010, and finally agreement has been reached by the U.S. Department of the Interior and the U.S. Department of Justice to settle these accounts. It was 10 years ago when the court ruled against the Federal Government. The Federal Court said the Federal Government was wrong; they mismanaged these accounts, and violated the trust. Yes, there has been corruption, incompetence, and mismanagement.

So 10 years ago, the Federal court ruled against the Federal Government, saying the Federal Government had lost, damaged, destroyed trust records, and the Federal Government admitted it could not account for these trust moneys. After all of this, the government had the nerve to spend taxpayers' money to appeal the court's decision. So it goes on and on and on. Millions have been spent in endless litigation with no settlement in sight.

Finally, last December, and agreement was reached in settlement talks with the Interior Department and the Indians that resulted a settlement and this legislation to approve the settlement.

I want to just mention a couple of other brief points. I know a couple of colleagues wish to make some comments today.

The judge, when hearing of the settlement between the Federal Government and the Cobell plaintiffs, said the agreement was a win/win and that justice is on hold. That is what this is about. It is about providing the funding to settle the Cobell case and provide some amount of justice.

Others will talk about settling the Pigford case.

I will very briefly say again a lot of American Indians have died waiting for this moment. There are other stories I want to share.

This is Susie White Calf. She is a Blackfeet Indian from Montana. This picture was taken in 2001, the same year the courts found the Federal Government had broken its responsibility to Indians. Six years later, she passed away, in 2007. She will not get justice.

But perhaps we can provide justice for tens of thousands of other Indians by doing the right thing.

I have other things to say, but I know some of my colleagues wish to say a few words. If I might, the Senator from Arkansas has to be away from the Chamber very briefly. She wanted to say a few words. Then I know that Senator KYL and some others wish to say some other words as well.

The PRESIDING OFFICER. The Senator from Arkansas.

PIGFORD II SETTLEMENT

Mrs. LINCOLN. Madam President, I want to say a special thanks to my colleague, Senator DORGAN, not only for yielding, but also, most importantly, for his incredible passion for justice. He has worked long and hard in this body and in the other, but certainly working hard for justice for those whose voices are often quieted. He does a tremendous job at it. I think we are all very grateful for that passion and for that plea for justice.

I come to the Senate floor today to urge with great passion my Senate colleagues to support another important piece of legislation; that is, to fund the racial discrimination settlement known as Pigford II between African-American farmers and the U.S. Department of Agriculture.

The time is long overdue to move beyond USDA's discriminatory past and begin to right the wrong of African-American producers and what they have experienced. We have a keen opportunity today to be able to move forward and to see, again, justice as has been described by Senator DORGAN in talking about moving forward and away from the past and the discrimination that occurred and putting an end to these settlements that have already been settled. We have spent the time and the energy and the resources to settle these arguments. Now we need to make sure those who have been wronged will be right.

Between 1981 and 1996, African-American farmers seeking farm loans and credit were discriminated against, denying them access to government programs and to capital. In some cases, these farmers were discouraged from even applying for loans. They were told they were ineligible or that application forms were unavailable. In other instances, loan applications were intentionally delayed to miss deadlines, continuing to disadvantage those African-American farmers. As a result of the discrimination, many of these farmers were unable to run successful businesses and sustained severe damages to their credit histories.

Despite these challenges, despite all of what they were presented with and what they were dealing with, some of these farmers are still farming today, embodying the essence of resilience and the industrious characteristic of all American farmers. We should be proud they are still farming today, and we should honor that by making sure we move this settlement forward and make sure these awards are granted to those who have been wronged.

Another fallout faced by African-American farmers is their shaken faith in the USDA and, by extension, the U.S. Government. Who can blame them—to have been wronged and to be found they were in the right and yet still not to be made whole? Many farmers have spent more than 20 years seeking recognition of the discrimination they experienced. While no settlement can completely compensate them for the anxiety, the anguish, and, of course, the humiliation they experienced, finally funding this settlement is a critical first step in restoring the USDA's credibility among minority farmers.

I hope my colleagues will understand how critically important this is to the embodiment of who we are as a people and a government to move this forward. While it is understood that a legal settlement agreement is rarely perfect, funding this agreement will provide much needed reconciliation for African-American farmers. It is an opportunity to restore their faith in their government, by renouncing a past riddled with discrimination and rightfully honoring the settlement.

Time is of the essence, as many Pigford claimants have passed away waiting for closure on this matter, just as Senator DORGAN mentioned Native Americans who have passed away waiting for justice. We simply cannot afford to delay this process any further. We have seen multiple opportunities and efforts to try to move forward. I hope today is an opportunity none of us will deny to move the issue forward.

In my State of Arkansas, I have heard the stories of hard-working farm families who, despite years of neglect and discrimination from their own government, continue pushing ahead. I have heard from farmers such as Mr. Charlie Knott, a hard-working Arkansan who sought farm loans in the 1980s but was misled and mistreated in that process. Mr. Knott was refused timely access to sufficient capital because of discrimination, limiting production and ultimately crippling his business.

When Mr. Knott fell ill, his children tried to take over the farm but were also met with resistance and neglect from their government, leading to destroyed credit ratings, a loss of 230 acres, as well as the family tractor and other farm equipment. After farming on the same land for over 100 years, the Knott family was forced to quit.

Adding insult to injury, the Knott children were once again denied access to the Pigford claim because of missed filing deadlines. The Knott children are determined to return to farming, to restore the family business and their dignity, and to uphold the legacy of their father, who fought for years not only to serve his family and community but to contribute to the strong legacy of American farming.

Farmers such as Mr. Knott deserve justice and gratitude from a nation that wouldn't be what it is today absent their sacrifices and contributions. Farmers such as Mr. Knott have suffered gross injustices. It is incumbent on the Members of Congress to demonstrate the leadership to correct this injustice and to pass this legislation. If not today, when? When will we do this? This action is long overdue. The time has come to take this step, to live up to our founding principles, to begin the healing process that is so needed, and to restore faith in our government. I urge my colleagues to support this measure today as we move forward and put it behind us, as we begin to heal and rebuild faith in our government.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I thank the Senator from Arkansas for what she has said. It really is unfortunate that we cannot get this Pigford legislation passed.

I know the distinguished Presiding Officer, the junior Senator from North Carolina, has been working on this very hard as well. In fact, she and I have cosponsored a piece of legislation to give justice in this area as well.

Today, we have an opportunity to finally take care of this situation of bringing justice to Black farmers who have been waiting for decades to settle their discrimination claims against the Department of Agriculture. Earlier this year, Secretary Vilsack was able to reach a settlement agreement with the Pigford II claimants who were denied a determination on the merits of their claims against the USDA for no reason other than they had filed late.

The government has an obligation to fund the settlement, which is subject to court approval, and Congress must act to provide relief for these claimants and do it quickly. The Black farmers have been asking for stand-alone consideration of this bill. That is what I was hoping to get done today.

I have nothing against what my colleagues are doing on the Cobell settlement as well.

I think it is fair to say that such appropriation for the Pigford settlement ought to be offset.

There is an advocate for the Black farmers—John Boyd. I have been working with him for a long period. He was working hard on this a long time before I was. We should be getting this resolved for the benefit of the farmers but also for the advocates, those people who have been working so hard finding ways to get it done. We thought now was the opportunity to get it done.

The farm bill we passed last year does one thing right: it focuses a considerable amount of resources on new and beginning farmers and ranchers. Many of the Pigford claimants were in that same boat 20 years ago. We have an opportunity to rectify that misjustice. We know USDA has admitted the discrimination occurred. Now

we are obligated to do our best getting relief to those who deserve it. It is time to make these claimants right and move forward into a new era of civil rights in the Department of Agriculture.

I look forward to the time we can get this done. I plead with my colleagues, as the Senator from Arkansas pleaded, to get this done right now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I add my voice in support of coming to closure on this important issue. I thank Senator DORGAN and Senator LINCOLN for their extraordinary leadership for the Pigford and Cobell claimants. We are very close to settling a grave injustice that has gone on in two communities, one the Native-American community and the other the African-American community. I surely hope we can find a way forward in the next few hours, before we leave, to get this done; if not, that it would be one of the first orders of business when we return.

Explanations have been made beautifully on both sides. I represent 1,000 African-American farmers. I am going to fight for them and advocate for them and continue to bring their cases before this body until we get justice.

People in Louisiana generally, of many different races, understand systematic injustice. Talking about oil moneys not coming the way they should, there are many people in Louisiana right now shaking their heads in great sympathy with the stories the Senator from North Dakota shared with us about Native Americans.

I support the Pigford settlement. I support the Cobell settlement. I hope we can find the $5 billion, approximately, so that it does not affect the deficit, paid for in a responsible way to end this discrimination and to provide some hope and support to these families.

I was proud to send Clarence Hawkins' name to run the USDA in Louisiana, the first African-American administrator to do so, former mayor of Bastrop. The President appointed him at my suggestion. We are making some headway in Louisiana to rectify past injustices.

Again, I thank Senators DORGAN and LINCOLN for their leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, Senator BARRASSO and I, as chairman and vice chairmen of the Indian Affairs Committee, have been working on this issue for a long while. Senator KYL, Senator BAUCUS—we have had discussions. Senator KYL had to leave the floor, but I believe he will return. He very much wants to find a way to resolve these issues, as do I and others.

This is not complicated. This is a case where the Federal Government said to American Indians in the late 1800s: We are going to break up these tribal lands and give you personal ownership of these lands. And then we will manage the lands for you and take care of it for you in trust, and the income that comes off those lands will be yours. We will manage your trust accounts.

The fact is, they took control of the lands and created trust accounts. And the Indians got bilked, looted. Grand theft occurred.

Let me show one more photograph. This fellow is still alive. His name is James Kennerly. He is a Blackfeet Indian, standing in front of his rather humble home. He is hoping that Congress will resolve this by approving the settlement. His father was a World War I veteran, wounded, disabled in combat. The family lives on land that has considerable oil and gas leases. Thousands of barrels a week were pumped off that land. Years later, the oil wells still continue to pump, but all the lease documents have disappeared. This family lives in a humble home despite having had oil interests on their property.

Another person waiting for justice, Johnson Martinez, a Navajo Indian in his seventies, lives in a rundown trailer house near Bloomfield, NM. He has no running water and no electricity. At night, he builds a fire to keep himself and his dogs warm. He lives yards away from where the gas pipelines cross his family's land. He lives off the right-of-way fees for the gas pipeline. One month, he got a check for $80. Sometimes he gets a check for a few cents. A court-appointed investigator found that non-Indians were receiving 20 times more than Navajo Indians such as Johnson Martinez were receiving in the same circumstances.

And then there is Esther and Sam Valdez—Navajo Indians—they live 100 feet from natural gas wells. They have been producing natural gas for a long while. Yet this family has trouble putting food on the table. They receive checks for $6 and $8. Sometimes the checks come, sometimes they don't. The Federal Government can never explain to them what happens to the money. This is grand theft.

For more than a century, American Indians were cheated. Yes, there is some incompetence here. That is the comfortable word. But there is also looting and theft involved in having these folks cheated.

The lawsuit was filed 15 years ago. Ten years ago, the Federal court said the Federal Government is completely without merit and violated its trust. The court found in favor of the plaintiffs, saying that they have been bilked. That was 10 years ago. But, the case continued in Federal court with more and more money spent on lawyers.

Finally, at long last, Interior Secretary Salazar and Attorney General Holder, and the plaintiffs in this case negotiated an agreement, and the Federal judge in the case said: This looks like justice to me. This settlement was sent to the Congress for approval and to provide the funding for this agreement.

I came to the floor to offer a unanimous consent request to see if at long last we might put the Cobell litigation behind us and do the fair thing. I understand a unanimous consent request would be objected to at this moment because of what is called the ''pay-for.'' So we have a disagreement about that. But I also understand from discussions we have held that there is the possibility and the potential that this afternoon we might find a way to reach agreement on the ''pay-for'' portion of this and have the Senate finally approve the Cobell settlement, and also the Pigford settlement so that we can move beyond on this.

In the situation that led to the Cobell case, there are people who should hang their head in shame, many of them now departed, who have bilked the Indians out of so much money over so many years.

I would finally say this about the Cobell matter and the American Indians involved. This is a chart that shows the 10 poorest counties in America, the 10 counties with the most significant poverty in our country. Madam President, 8 of the 10 counties have Indian reservations in them—8 of them. We know that. We know what is going on.

Then I talk about these people, American Indians, who live in humble homes with no money, with six oil wells on their land. Somebody is getting the money, but the Indians are not. Who is cheating them? Who cheated them a decade ago, five decades ago, ten decades ago? Will we ever settle our account here? Will this country ever deal responsibly with what I call a shame?

Well, my colleague, Senator BARRASSO, and I have worked on this a long while. He has had some concern about certain aspects of the settlement, but I do not think there is a disagreement between us at all about the need to move forward to resolve this issue. My hope is we can do that very soon.

As I said, I was intending to seek a unanimous consent request, but I think I will stop short of that at this moment because there is the potential, perhaps later this afternoon, for us to reach agreement on the ''pay-for'' and a couple of other elements and get a unanimous consent request agreed to, which would be a very significant achievement in this body today.

I know Senator BARRASSO from Wyoming wishes to seek recognition. Let me yield the floor so that might happen.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Wyoming is recognized.

Mr. BARRASSO. Mr. President, I appreciate the hard work done by my colleague from North Dakota and his commitment as chairman of the Indian Affairs Committee to try to come to a solution in the Cobell settlement.

He is absolutely right. We still need to work on some policy issues, as well

as some issues in terms of how this will be paid for. He and I both agree we need to settle the Cobell lawsuit. There has been much rhetoric. We both agree we need to settle the Cobell lawsuit.

At the President's insistence, and the House and the Senate majorities, they have repeatedly tried to get this bill enacted outside the regular process. This settlement has been inserted into various bills over the past several months that have absolutely nothing to do with American Indian issues. You ask yourself why. Well, perhaps folks wanted to avoid some scrutiny—scrutiny by Congress, by the press, and, most of all, by those who have been most affected, the stakeholders.

Two weeks ago, I came to the floor and offered an amendment to legislation that addressed some of the more egregious problems with the settlement. I am talking policy as well as pay-for issues. The majority leader dismissed my amendment, and he called it the ''beat up the lawyers'' amendment. Well, he called it that because one of the provisions in the amendment establishes a $50 million cap on presettlement attorneys' fees—$50 million. The settlement says it should be between $50 million and $100 million. My amendment said, let's keep it at that lower figure. Only in Washington, DC, would anyone ever call a $50 million cap on attorneys' fees—$50 million of attorneys' fees—as beating up the lawyers.

Well, because attorneys' fees were capped at $50 million, the majority leader objected to both the Cobell and the Pigford settlements.

There was and still is a good reason for that cap. Every Member of this body should read a couple of op-eds on this Cobell settlement. One was in the August 1 edition of The Hill, the other in today's August 5th edition. The August 1 article: ''Cobell settlement worth doing right, together.'' The one from today: ''Unconscionable Cobell.''

Mr. President, I ask unanimous consent that both these articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hill's Congress Blog, Aug. 2, 2010]

COBELL SETTLEMENT WORTH DOING RIGHT, TOGETHER

(By Kimberly Craven)

Today, the Senate will be asked to approve by unanimous consent settlement of the proposed Cobell lawsuit (Cobell v. Salazar). Senators are not being advised that the proposed settlement is constitutionally dubious and greatly expands the original litigation. It authorizes a mandatory class of plaintiff with no regard to the due-process rights of individuals to opt. It creates a new class to settle land and natural resource mismanagement claims which were never part of the original litigation and not been part of the 14–year-long Cobell lawsuit which, we have been told, sought only an accounting of individual Indian money (IIM) accounts.

If Congress approves it, the settlement will consist of two classes: those of the historical accounting class and the new ''un-litigated'' class—the trust mismanagement class. The first class will receive $1,0oo and any traditional safe-guard of opting-out will be denied this class. The new second class will receive $500 and a formula based on the top 10 sums that have filtered through a person's IIM account.

Creation of the new class has been disturbing to many tribes and American Indians. The government will be authorized to pay more than $3.4 billion without even filing an Answer to the new Complaint of land mismanagement claims. What it means is that if you're a Native person whose land has been flooded or damaged, timber destroyed, mineral royalties underpaid, soil poisoned, grass lands over-grazed by your lessee or if you've just been the victim of trespass, your claims will be settled for $500 and a formula amount that bears no resemblance to actual damages or loss.

Many American Indians think this entire settlement, although cloaked in righteous language, has been cobbled together for the primary purpose of permitting the Administration to fulfill a campaign promise. This settlement will permit the attorneys to claim as much as $100 million in attorney fees with a side agreement they are not even required to document the time spent on the case for the first fourteen years. Personally, I find it disturbing that one of the plaintiff attorneys served on the Obama campaign, transition team, and posted pictures of himself on Facebook partying at the White House holiday party around the time the settlement was reached, and now is rumored to be up for 10th Circuit Court of Appeals nomination. The lead plaintiff has been very upfront that some Indians will get hundreds of thousands of dollars and is on record as saying, ''Some people will be very, very rich.'' I think we know who some of those people might be. The litigation was filed in a Court of Equity where only an accounting (an equitable action) could be ordered and money damages could not be awarded. The seven attorneys will share in $100 million and the lead plaintiff will also be entitled to up to $15 million in ''reimbursements'' for ''repayable grants,'' surely an oxymoron even in Washington-speak, plus an undisclosed amount in ''incentive fees for the four lead plaintiffs.''

As I wrote this opinion piece, I researched elements of an unfair class action lawsuit and found this information at www.classactionlitigation.com/faq. Elements include ''any settlement where the release being demanded as a condition of the settlement is extremely overbroad and encompasses claims that were neither pursued in the class complaint nor subject to true adversarial litigation prior to the settlement and virtual nonexistence of discovery by the class counsel who proposes a settlement.'' This surely meets those thresholds with no discovery, judicial record, or due process for the proposed second class.

Both the Affiliated Tribes of Northwest Indians and the Great Plains Tribal Chairmen's Association are on record as wanting changes to the settlement. Sen. John Barrasso (R–Wyo.) has recommended many of these changes to address the fairness, restoration, due process, and other infirmities in the settlement proposed today and many Indian people appreciate his efforts in his leadership role as Vice Chairman of the Senate Indian Affairs Committee. Having worked for a Republican Senator, Sen. Daniel J. Evans (R–Wash.), who also served in this capacity, I know firsthand that Indian issues are not partisan in nature. If this is worth doing to the tune of $3.4 billion, then it's worth doing right together.

[From the The Hill's Congress Blog, Aug. 5, 2010]

UNCONSCIONABLE COBELL

(By Richard A. Monette)

A few facts about the Cobell settlement to be voted on in Senate today:

Number of published court opinions in the case: 80-plus;

Amount awarded to plaintiffs by courts at present: $0;

Amount to attorneys under settlement: $100 Million (through Dec. 7, 2009);

Amount to each account holder under settlement: $1,000.00;

Number of accounts with less than $15: 107,806;

Total amount of money in accounts with less than $15 (small accounts): $15,210.51;

Average balance in 107,806 small accounts: $7.09;

Total to be paid under settlement to small accounts: $107,806,000.

The Senate is asked today to give approval, sight-unseen and by unanimous consent, to a $3.4 billion ''settlement'' of a 14-year-old lawsuit brought by five individuals on behalf of all American Indians who have money or land held in trust by the United States. $2 billion of this amount will be earmarked to pre-fund an existing Bureau of Indian Affairs program for 10 years. The amount awarded by the courts to date after more than 10 trials is exactly zero dollars and zero cents. If approved by the Congress, and subsequently by the courts, the remainder of this money will be parceled out by formula in the form of reparations without regard to any individual's actual losses or damages.

The only individuals who will be permitted to present actual clams are the attorneys and the five named individual plaintiffs. The five named plaintiffs are authorized up to $15 million as ''reimbursements'' for ''repayable grants,'' plus an undisclosed amount as ''incentive fee awards.'' The lawyers will be authorized to claim up to $100 million off the top, plus their ''normal hourly rates'' for as long as it takes to settle up with some 300,000 individuals, more than 83,000 of whose whereabouts are unknown. Much smaller mass settlement awards have taken more than 10 years to close out.

More than 100,000 of these individuals have account balances of less than $15. Each of them will receive a check for $1,000, or an amount more than 6,600 percent of their current balance. Those individuals with more than $1 million in their accounts will receive $1,000 also, or less than one-tenth of 1 percent of their current balances. There is neither rhyme nor reason to this scheme.

The $2 billion, pre-funded BIA program completely usurps the authority of the Appropriations Committees for 10 years. This settlement also confers jurisdiction on a federal district court that does not presently have it; rewrites the Federal Rules of Civil Procedure for this case to authorize the court to exercise the conferred jurisdiction; and presents the court not with a case or controversy as required by Article III of the Constitution, but with a pre-packaged financial program simply to administer. The sponsor of this measure in the Senate stated that no other committee (i.e., Judiciary) needs to review this measure before it is presented for a vote.

Proponents claim this settlement will ''turn the page'' on a dark chapter. Some who are familiar with the litigating history beyond this case of the lead counsel and lead plaintiff think this settlement is more likely only to fuel a war chest for subsequent, similarly entrepreneurial and extortionate litigation. No senator should think this settlement approximates ''justice'' that has somehow escaped the attention of the federal

judges who have actually presided over the 14–year history of this case.

Mr. BARRASSO. So there are issues of policy dealing with transparency, dealing with the production of records by the attorneys who are involved in this. When you read one of these editorials, the one in today's Hill, ''Unconscionable Cobell,'' written by a law professor at the University of Wisconsin-Madison:

Number of published court opinions in the case: 80-plus

Amount awarded to plaintiffs by courts at present: $0

Amount to attorneys under settlement: $100 Million. . . .

Amount to each account holder under [this] settlement:

We are talking now about those who have been affected by this—

$1,000.00

What an incredible disparity.

Well, if we were all to take the time to look through these two editorials, the changes to the settlement I have been proposing would not only seem reasonable, they would be absolutely necessary. They point out several real problems with the settlement, including the way the attorneys' fees are handled. I am continuing to work with my colleagues on dealing with that. These are the blunt facts.

So I agree with my colleague from North Dakota, the problems with the Cobell settlement are by no means insurmountable. They can and they must be resolved. In fact, I do not think it would be difficult to resolve the differences we have regarding the Cobell settlement. We can sit down, and we plan to do that, to discuss the issues directly. I think we can get beyond this impasse, and that is what I am committed to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, as I indicated, I intend to withhold the unanimous consent request because it would clearly be objected to. There are some people who disagree with the method by which this settlement would be paid for.

But I also wish to mention that I have some hope that later today, finally at long last, we may be able to come to the floor of the Senate with an agreement that would be able to withstand the unanimous consent request. If we do that before we break, we would have resolved a very longstanding issue, not just 15 years of litigation, or a century of mismanagement, but also since last December, when this agreement was reached and the Congress was given time to approve it, but then that deadline had to be extended six times. At long last, perhaps we will be able to decide we can do this together.

I very much appreciate the work Senator BARRASSO is doing and Senator KYL and Senator BAUCUS and others. My hope is that later this afternoon I will be able to come to the floor with such a unanimous consent request.

Mr. CARDIN. Mr. President, I rise today to talk about the Pigford II settlement pending full action by the U.S. Senate.

We all know that farming is a difficult occupation. The hours are long, the weather is unpredictable, and the challenge of competing in a global marketplace is intense. Tens of thousands of Black farmers have had to face all those normal challenges. Tragically, they have also had to deal with a challenge that was unique to them based solely on race. The U.S. Department of Agriculture, USDA, was discriminating against them.

More than 12 years ago, Black farmers across America brought a class action suit against the USDA for racial discrimination. The history of that discrimination is a sad one, and it is well documented. Farmers, like all businesses, need access to loans. They need to borrow money for expensive equipment and they need funding to help them when droughts strike or when markets collapse. The Congress has recognized this need for decades, and we have established special loan programs in the USDA to support these special needs. But when it came to lending, tens of thousands of Black farmers were the victims of systemic discrimination. During the 1980s and 1990s, the average processing time for a loan application by White farmers was 30 days; the average time for a loan application by Black farmers was 387 days. Black farmers had to wait 12 times as long to receive a loan. This discrimination earned the USDA the regrettable nickname ''the Last Plantation.''

Black farmers finally sought justice through a class action lawsuit in 1997. More than 20,000 farmers initiated claims citing racial discrimination in the USDA farm loan programs. Two years after the action was initiated, the U.S. District Court for the District of Columbia entered a consent decree approving a class action settlement to compensate these farmers for years of racial discrimination by the USDA. Each farmer who could prove discrimination was entitled to damages. Out of the initial 20,000 farmers, 15,000 were meritorious in the claims they brought.

As the legal process continued, additional farmers began to join the class action and filed their own claims. Approximately 80,000 farmers eventually brought claims. Unfortunately, many of these farmers did not know about the class action suit, and by the time they learned of its existence, the filing deadline had passed.

In 2008, Congress recognizing the injustice of stopping 80 percent or more of the farmers who potentially suffered discrimination by our government—decided to take action and created a new cause of action for farmers previously denied access to justice. In the 2008 farm bill, with bipartisan support, Congress included $100 million for payments and debt relief as a downpayment to satisfy the claims filed by deserving claimants denied participation in the original settlement because of timeliness issues.

After years of litigation and negotiation between the Department of Justice, which represented the USDA, and lawyers for the farmers, a settlement was finally reached in February 2010. The Pigford II settlement agreement will provide $1.25 billion, which is contingent on appropriation by Congress, to African-American farmers who can show they suffered racial discrimination in USDA farm loan programs. Once the money is appropriated farmers can pursue their individual claims through the same nonjudicial process used in the first case.

To address this funding need, President Obama included $1.15 billion in additional funding for his fiscal year 2010 and fiscal year 2011 budgets. Both Chambers of Congress have worked to pass appropriations to fulfill the settlement agreement since February. The House of Representatives has passed funding language for the Pigford case twice; once as part of the war supplemental and the other on a tax extenders bill. But the Senate has not been able to do the same. Despite the majority leader's efforts in finding ways to pay for the legislation and move the legislation for full Senate consideration, we have been unable to proceed to a rollcall vote. This bill has come before the Senate a half dozen times. There are no known objections to the settlement, yet we have failed to pass the funding therefore denying the process for funding to these farmers who were discriminated against by our own government.

We must move to appropriate these funds. The settlement that was reached is only valid until August 18, 2010. Failure to appropriate the money by then could cause the agreement to be voided. William Gladstone once said that ''justice delayed is justice denied.'' Let us not be in the business of delaying and denying justice for African-American farmers. Let us be in the business of allowing the justice system to work and provide them with adequate redress. I urge my colleagues to support this funding.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I think my friends and colleagues on the other side have blocked out some time. If they would not mind, I would be very grateful if I could take 5 or 6 minutes to make some comments about the Kagan nomination. I see heads nodding affirmatively, so I appreciate it.

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Resumed

The PRESIDING OFFICER. The Senate will proceed to executive session to

consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Elena Kagan, of Massachusetts, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise this afternoon to express my very strong support for the nomination of Solicitor General Elena Kagan to serve as an Associate Justice on the U.S. Supreme Court. I would like to thank Chairman LEAHY and Ranking Member SESSIONS for their work during the Judiciary Committee's recent hearings, as well as Majority Leader REID for moving Solicitor General Kagan's nomination through the Senate confirmation process as he has.

There are very few powers exercised by this body that are more important than its constitutionally mandated duty to give advice and consent on the President's judicial nominations. The very essence of our Nation's government rests on the supremacy of the rule of law, and the Constitution is the highest embodiment of that principle. The men and women whom we confirm to this Court are more than just judges. As the chief interpreters of that seminal document, the Constitution, they are guardians of the supremacy of the rule of law, upon which the integrity of our entire system of justice has been built.

It is, therefore, no surprise that nominees to our Nation's highest Court are subjected to such an intense level of scrutiny during the Senate's confirmation process. Nevertheless, the Constitution does not lay out a precise roadmap for how to do this. Therefore, each Senator must decide for him or herself what criteria to use when evaluating the merits of an individual Supreme Court nominee.

For my part, I have used the same, simple three-part test for Supreme Court nominees since 1981, when I voted to confirm Sandra Day O'Connor as the Court's first female Justice. Indeed, this is the 13th Supreme Court nomination I have considered during my 30-year tenure in the Senate—from Justice O'Connor to Elena Kagan today.

First, does the nominee have the technical competence and legal experience to do the job of a Justice on the U.S. Supreme Court?

Second, does the nominee have the proper character and temperament to serve on the High Court?

Third, does the nominee's record demonstrate respect for and adherence to the principles underlying our legal system—that of equal justice under the law?

For anyone who has read about her life or watched her performance during the confirmation hearings held by the Judiciary Committee earlier this summer, I believe it is abundantly clear that Elena Kagan passes all three of these tests with flying colors.

On the question of Solicitor General Kagan's competency and experience, I think there is little doubt that we are dealing with a superbly qualified nominee.

Since her graduation from Harvard Law School in 1986, Elena Kagan has enjoyed an illustrious legal and academic career.

After her graduation, Solicitor General Kagan had the honor of clerking for two extremely distinguished and highly influential Federal judges: U.S. Court of Appeals for the District of Columbia circuit judge Abner Mikva, with whom I served in the House of Representatives, and has been a great friend of mine for many years; and Thurgood Marshall, the Nation's first African-American Supreme Court Justice.

Subsequently, after nearly a decade of legal work in the private sector, as a professor at the University of Chicago Law School, and as an Associate Counsel in the White House under the administration of President Clinton, Ms. Kagan returned to her prestigious alma mater, serving first as a professor of law and then as dean of the Harvard Law School.

In an auspicious return to public service, Elena Kagan became the Federal Government's chief lawyer before the Supreme Court last year when she was confirmed by this body as our Nation's 45th Solicitor General—a position often referred to, I might add, as the Court's ''10th Justice'' because of the extensive legal knowledge and close working relationship with the Federal bench it requires.

I realize some of my colleagues have questioned Solicitor General Kagan's nomination because of her lack of judicial experience—that because Solicitor General Kagan has never been a judge in either a State or Federal court she cannot be an effective Supreme Court Justice.

I would, however, gently remind my colleagues that there is absolutely no constitutional requirement that a Supreme Court nominee have served previously as a judge. In fact, there is no requirement to be a lawyer to serve on the Supreme Court of the United States. Since our country's founding, well over one-third of the 111 individuals who have served on our Nation's highest Court never put on a judge's robe before their confirmation.

Indeed, William Rehnquist, who served as Chief Justice from 1986 until his death in 2005, had no prior work experience as a judge when he was first appointed to the Court by President Nixon in 1971.

Nor did Justice Robert Jackson, a very close and dear personal friend of my father who served with him at the Nuremberg Trials in 1945 and 1946. Robert Jackson served as U.S. Attorney General under Franklin Roosevelt before being appointed to the Supreme Court in 1941.

I would, therefore, submit to my colleagues that there are other important measures of the quality of a Supreme Court nominee besides the depth of his or her experience on the bench. Solicitor General Kagan's impressive list of career accomplishments and extensive base of legal knowledge will, I believe, hopefully put those unfounded doubts over her experience to rest.

Moving on to the two remaining parts of my test, Elena Kagan once again proves she would make an excellent addition to our Nation's highest Court.

As to her character, her graceful performance before the Judiciary Committee and extensive list of enthusiastic recommendations from Democrats, Republicans, and others across the entire spectrum reveal her to be a person of the utmost integrity, professionalism, and sound judgment. They also reveal, I think, a key aspect of her legal philosophy—a deep and abiding respect for the rule of law and our Nation's cherished principle of equality under the law.

As I said previously, Supreme Court Justices are not just judges, they are stalwarts of our Nation's democratic values, guardians of the idea that the rule of law should always transcend the rule of men. Each of the Federal judicial nominees confirmed in this body has the ability to shape every facet of the law and, in a larger sense, American society in general. As a result, it is absolutely critical, in my view, that we have members of the Supreme Court whose first obligation, above all else, is to safeguard those guiding constitutional principles that form the foundation of our democratic system of government and to fight for the principle of equal justice under law.

I firmly believe that, when confirmed, Solicitor General Kagan will hew closely to those critically important values and work to ensure they are protected.

Once again, I wish to thank Chairman LEAHY, our colleague Senator SESSIONS, the ranking minority member, and the members of the Judiciary Committee, who I think gave her a very fair, competent, and thorough hearing during the nomination process. I also wish to commend Majority Leader REID for his hard work during this process. I urge my colleagues to join those of us who believe this is a quality nominee who will serve our country well as an Associate Justice of the United States Supreme Court.

Mr. President, I thank my colleagues on the other side for giving me a few minutes to express my views on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I ask unanimous consent to participate in a colloquy with a number of my Senate colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, we wish to enter into a discussion this

afternoon about a very critical issue in this confirmation process, and that is the second amendment and the right to keep and bear arms as provided for in our Constitution; the threat that now exists to that right that is plainly stated in the Constitution, and why we think it is worthy of serious consideration.

I will say that most Americans are totally unaware, perhaps, that the second amendment and the power of the second amendment hangs by a mere thread. Two five-to-four decisions recently have affirmed the second amendment, but had that vote been different—one Justice voting a different way—the second amendment would not apply to the District of Columbia. It would not be considered a right that would apply even to a Federal Government entity such as the District of Columbia as a result of the Heller case.

A more recent case in Chicago, McDonald v. the City of Chicago, dealt with whether the second amendment actually applies to the States and does it only apply to the Federal Government. That was a big deal. If it does not apply to the States, then any State in any city—and many cities are perfectly willing to do this—would have the power to ban firearms entirely, even though the Constitution plainly says you have the right to keep and bear arms. This was the effect of that decision.

I see my colleague Senator WICKER from Mississippi here. I wish to ask him if he would share with us: Does he believe Ms. Kagan's record would provide us any insight into her views on the second amendment? Because she would be one of the votes that would be critical as we go forward in the future as to whether that amendment still has power and force.

Mr. WICKER. I thank the ranking member for that question. I would answer: Yes, indeed, her record, taken together with her committee testimony, tells us a lot about Ms. Kagan's insight and feelings about the second amendment.

Let me agree with my colleague from Connecticut, however, and say I don't believe it is necessary for someone to have judicial experience to be an effective member of the Supreme Court. Clearly that is not called for in the Constitution. However, in a situation such as this, where the nominee has never written a judicial opinion of her own, where she has hardly any experience at all in the courtroom, I do think it is appropriate—and actually necessary—for us to examine her life experience and see what insights we can gain on her views on the second amendment.

I would also say this: The debate is drawing to a close. The issue is probably not in doubt, but I think we owe it to the RECORD, we owe it to our constituents, we owe it to the American people to outline our concerns with regard to the second amendment to the Constitution, to the second article in the Bill of Rights. So I ask my colleagues to indulge me by going through some of the life experiences this nominee has.

Ms. Kagan began her law career clerking for a very antigun judge, Abner Mikva, who later brought Ms. Kagan to the White House to serve as his deputy. Judge Mikva once likened the National Rifle Association to ''a street crime lobby.''

Next, Ms. Kagan's own hostility to the second amendment rights became evident during her time as a law clerk for Justice Thurgood Marshall where as a clerk she wrote that she was ''not sympathetic'' to the argument that the DC handgun ban violated an individual's second amendment rights. This is disappointing and troubling. In this memo she didn't cite text, precedent, or analyze the law or look to the Constitution. Ms. Kagan inserted her personal beliefs and said: I am not sympathetic to this individual right argument.

The case that comment involved was Lee Sandidge. A business owner was arrested and convicted in the District of Columbia for possessing ammunition and an unregistered pistol without a license. The law provided up to 10 years in jail for this offense. Mr. Sandidge's second amendment claim—the one that Ms. Kagan was not sympathetic toward—challenged the very same DC total gun ban that was struck down later by the Supreme Court in the Heller decision. Ms. Kagan's lack of sympathy for Sandidge's claim demonstrates she failed to recognize that we have an individual right as citizens to bear arms. I am very pleased that the Supreme Court has now recognized this on two occasions, in Heller as well as this year, in 2010, in McDonald.

Then Ms. Kagan embarked on what can only be described as a quest against gun ownership and second amendment rights during her years in the Clinton White House. She worked extensively on gun issues during President Clinton's administration which was well known for such gun control efforts. The record leaves no doubt that Ms. Kagan was a key player in shaping Clinton White House restrictive gun policies. During those years, she coauthored policy memos that advocated increased restrictions on lawful gun owners, including legislation requiring background checks for all secondary market gun purchases, a gun tracing initiative, and a call for a new gun design ''that can be shot only by authorized adults.'' According to the records of the Clinton Presidential Library, Ms. Kagan also drafted an Executive Order restricting the importation of certain semiautomatic rifles that were not covered by statute. In other words, she authored an Executive Order that went beyond the statute in her quest against gun ownership.

At the time of the import ban, a senior staffer who worked in the Clinton domestic policy shop that was run by Ms. Kagan, described the administration's plan as follows: ''We are taking the law and bending it as far as it can to capture a whole new class of guns.'' This was the office our nominee ran during that administration.

In addition, Ms. Kagan appears to have been in charge of the Domestic Policy Council's effort to respond to the Supreme Court's 1997 ruling in Printz v. the United States. The Printz case struck down parts of the 1994 Brady handgun law on tenth amendment grounds. According to the Clinton Library, even after the Supreme Court had ruled, the Clinton administration, with Ms. Kagan involved, worked to preserve unconstitutional provisions considered in many legislative and executive branch responses to the Court's decision.

I would reiterate what my friend from Alabama has said. The right of every American—the individual right we have to keep and bear arms under the second amendment to the Constitution—hangs by a single vote, and I am concerned that personal sympathies and a strong record of opposition to the second amendment would influence the way this person would act as a judge.

But there is one other thing, and I wish to ask my friend from Nevada about this. During her testimony before the Judiciary Committee, Ms. Kagan stated she had never had an occasion to look at the history on which Heller is based, and, therefore, she could not say whether she believed there is a preexisting individual, fundamental right to keep and bear arms.

Here is a talented and intelligent and articulate and brilliant law student and law professor and staffer who worked extensively on the issue of second amendment rights for years, and she taught constitutional law at one of the most prestigious institutions in this country, yet she stated in her testimony that she had never had occasion to look at the history on which this was based and, therefore, she could not say whether there was a fundamental right to keep and bear arms. I think her credibility was quite damaged by that statement.

I ask my friend Senator ENSIGN whether he was surprised when Ms. Kagan made that statement based on her extensive experience and interaction involving this issue?

Mr. ENSIGN. As a matter of fact, I was surprised. I think she did a real disservice to her prior employers, Justice Marshall, President Clinton, by not studying the history of the second amendment before she provided them with legal advice. I also think she did a disservice to her students, one that a professor of constitutional law should understand.

Ms. Kagan confirmed the importance of studying founding documents when interpreting second amendment rights when she said during her Solicitor General hearing:

> The individual rights view and the collective rights view present cogent and sometimes powerful arguments. And I have come

away thinking that immersion in the primary sources, which I have never attempted, would be necessary to choose between them with any degree of confidence.

That is what she said. She confirmed this when I met with her as well. Yet the choice between the individual and collective rights view was crucial to her work for Justice Marshall in the Sandidge case and was certainly important to her work during the Clinton administration.

Mr. THUNE. Would the Senator from Nevada yield for a question on that?

Mr. ENSIGN. Yes.

Mr. THUNE. I heard my colleague say—and I would be interested in having him confirm—didn't Ms. Kagan teach constitutional law and would it not have been appropriate at that time for her to have looked at the Founding Fathers' intent on the second amendment?

Mr. ENSIGN. As a matter of fact, she did teach constitutional law. I suspect that in the course of her career, she came to understand where the Founders included these words in the second amendment in the Bill of Rights:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

I don't think there was a lack of time or certainly a lack of ability to find this source material, but I suspect it may be more of her unwillingness to accept and ultimately admit that the Constitution and the second amendment run contrary to her political beliefs. I find this extremely troubling.

I also think it shows this nominee's tendency to rely on her own personal beliefs and to read these into her decisions instead of the intent of the Framers of the Constitution.

Mr. THUNE. Mr. President, I say to my friend from Nevada, it is troubling—very troubling, and maybe even telling—that the President would ask us to confirm an individual who admittedly has not reviewed the justification for the second amendment in the Bill of Rights.

Mr. ENSIGN. I think my friend from South Dakota makes an excellent observation. This admission of her failure to study the history surrounding the second amendment is also in stark contrast to her emphasis on the importance of students studying international law at Harvard Law School.

When Solicitor General Kagan became dean of the Harvard Law School, she spearheaded a sweeping overhaul of the academic curriculum to require law students to take an international and comparative law course during their first year.

When asked, ''What specific subjects or legal trends would you like [Harvard] to reflect?'' she responded:

First and foremost, international law. . . . we should be making clear to our students the great importance of knowledge about other legal systems throughout the world. For 21st century law schools, the future lies in international and comparative law, and this is what law schools today ought to be focusing on.

She also said:

Our goal, then, has been to . . . better equip graduates to be proactive and creative problem solvers . . . to work with a global perspective, whether the particular problem involves a local contract dispute, or an international treaty.

Thanks to Dean Kagan, international law is a required course at Harvard Law School for first-year law students. However, constitutional law—U.S. constitutional law—is not only not a first-year requirement—in fact, somebody graduating from Harvard Law School can graduate without ever taking U.S. constitutional law.

Mr. SESSIONS. If the Senator will yield, this is a troubling thing. Justice Scalia has been a fierce critic of this, pointing out: What country do you pick? Do judges get to pick their own?

It seems to me, from what the Senator said, it is clear that the President's nominee to our highest Court in the United States has felt that the world of international law is more important than studying our own Constitution.

Mr. ENSIGN. That is the way it appears to me. This is another example of where her personal beliefs come in to affect the way she is going to be as a judicial activist.

Mr. SESSIONS. I agree. I think we must study what our Constitution says, what the people who wrote it meant, and what rights the people retained for themselves when they created it and gave certain limited rights to the Federal Government. I do believe the history of the second amendment is important. What is the history surrounding the founding of our country and the drafting of the second amendment?

Mr. ENSIGN. I am glad the Senator from Alabama asked that critical question. I think it is so important for Americans, people in this body, but especially our Supreme Court Justices, to understand.

We have to remember that the founding generation had just finished fighting the Revolution against a tyrannical government. They knew the true value of having an armed citizen population.

Thomas Paine wrote in ''Thoughts on Defensive War'' in 1775:

Arms discourage and keep the invader and plunderer in awe, and preserve order in the world, as well as property. . . . Horrid mischief would ensue were the law-abiding deprived of the use of them.

Thomas Jefferson once said in a 1787 letter to William Smith:

And what country can preserve its liberties, if its rulers are not warned from time to time that this people preserve the spirit of resistance? Let them take arms. . . .

Patrick Henry said:

Are we at last brought to such an humiliating and debasing degradation that we cannot be trusted with arms for our own defense? Where is the difference between having our arms under our own possession and under our own direction, and having them under the management of Congress? If our defense be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?

In fact, if you only take a cursory look at the 20th century, every single government that has perpetrated genocide has first disarmed its citizens. It is my understanding that every known dictator who has come to power has followed this course.

Mr. SESSIONS. Well, did our Founding Fathers actually know this? What was their intent with regard to preserving the right to keep and bear arms when this language went into the Constitution?

Mr. ENSIGN. I know that our Founders certainly looked at writings of prominent philosophers when debating the importance of the right to keep and bear arms.

William Blackstone, whom the Supreme Court has called the ''preeminent authority on English law for the founding generation,'' cited the right to keep and bear arms as ''one of the fundamental rights of Englishmen,'' calling it ''the natural right of resistance and self-preservation—the right of having and using arms for self-preservation and defense.''

Judge St. George Tucker, who wrote the first commentary on the Constitution in 1803, describes the second amendment as ''the true palladium of liberty.''

He continued:

The right to self-defence is the first law of nature: in most governments it has been the study of rulers to confine the right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

Judge Tucker also said:

If, for example, a law passed by congress, prohibiting the free exercise of religion . . . or abridging the freedom of speech, or of the press; or the right of the people to assemble peaceably, or to keep and bear arms; it would, in any of these cases be the province of the judiciary to pronounce whether any such act were constitutional. . . . The judiciary, therefore, is the department of the government to whom the protection of the rights of the individual is by the constitution especially, confided, interposing its shield between him and the sword of usurped authority, the darts of oppression, and the safety of faction and violence.

I would like to ask my colleague from Mississippi, what did Ms. Kagan say about this natural right of self-defense?

Mr. WICKER. I simply look to her own testimony. I think it is troubling—particularly for a law professor and somebody who dealt with the issue for decades—when asked at her hearing whether she personally believes there was a right to self-defense that existed before the Constitution, she said she ''didn't have a view of what are natural independent of the Constitution.''

Maybe Solicitor General Kagan was tired by that time. Maybe she had been told by her handlers—the people at the Department of Justice—that it is best

to simply not answer that. But I say to my colleagues, we are endowed by our Creator with certain inalienable rights. We don't get them from the Constitution. Those rights are there. Certain rights are enumerated, including the second amendment rights, in the Constitution. For a Justice of the Supreme Court not to understand that causes me problems, and it causes me to think that she just doesn't have a very well-founded view of the second amendment.

Mr. ENSIGN. Well, I think her statement was shocking. It also proves she doesn't believe the second amendment codifies the preexisting natural right to self-defense.

Her statement is in stark contrast with the belief of our Founders, who fervently believed that the right to keep and bear arms was a natural right. Our Founders discussed natural rights in one of the founding documents, the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

Yet Ms. Kagan doesn't ''have a view of what are natural rights independent of the Constitution.'' The failure to recognize the natural right to self-defense as articulated by our Founders and expressed in the Bill of Rights, I believe, is deeply disturbing.

The Constitution doesn't create these inalienable rights, as the Senator from Mississippi said. It recognizes and protects these rights that are considered bestowed upon us by our Creator.

Mr. WICKER. The Senator is correct. The phrase ''a right of the people'' is used two other times in the Constitution and the Bill of Rights—in the first amendment's assembly and petition clause, the fourth amendment's search and seizure clause, and a very similar phrase is used in the ninth amendment, where the Founders stated that ''the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.''

In all three instances, the Framers were referring to individual rights and not to collective rights. Nowhere in the Constitution does a ''right'' attributed to ''the people'' refer to anything but an individual right. It is the same with the second amendment.

This has been affirmed in the Heller case. Judge Sotomayor, when testifying before us, said she thought that was settled law. The decision this year, in which she dissented, makes me wonder about that, and it gives me grave concern, with a 5-to-4 Court, about what might happen to precedent and what I believe now is settled law.

Let me ask the ranking member, during Ms. Kagan's hearing, she was questioned about her statement that she believes precedent trumps original intent. What does this mean with regard to the second amendment rights, based on the pre-Heller precedent?

Mr. SESSIONS. It is a troubling statement. I think, clearly, it allows her to justify voting—if confirmed to the Supreme Court—to eviscerate the second amendment. There are some earlier cases before the 14th amendment was even passed, or before the first 10 amendments, the Bill of Rights, were applied to the States in any systematic way that you could rely on as precedent, which could indeed trump, in her words, the original intent of the Constitution.

What did the people ratify? They ratified the Constitution that, in fact, just before the Founders signed it, they said ''we do ordain and establish this Constitution for the United States''—not some other judicial opinion 100 years later.

I think it raises troubling questions about where she stands on that. In the light of Heller and McDonald, which were razor-thin 5-to-4 decisions, made within the last 2½ years, we have to acknowledge that the Supreme Court is not, with clarity, committed to the plain application of the second amendment.

Mr. THUNE. If I might ask the Senator from Alabama this—because he is the ranking member on the Judiciary Committee. I know he has dealt with numerous nominees to the Supreme Court in the past, as well as probably hundreds of other judicial nominees. Does the Senator recall how often those nominees had a record on second amendment rights?

Mr. SESSIONS. Well, most nominees have not had a record on it, but it is interesting, and perhaps noteworthy, that President Obama, who himself has not been a strong supporter of the second amendment rights, and many of his supporters and Cabinet members are openly hostile to it, the two nominees for the Supreme Court he has submitted, Justice Sotomayor and Kagan, have had records that indicate a hostility to it. Even though Judge Sotomayor, in her testimony, indicated she considered this settled law—the Heller decision—her decision less than a year later in the Chicago McDonald case, on a similar but somewhat different issue, was not consistent with the belief that the Supreme Court had settled the question in Heller. So this was a troubling thing. I think the Attorney General of the United States, Eric Holder, has argued very vociferously to restrict gun rights.

This is the top law enforcement officer in the country. I do believe this is a matter of some concern, in fact, that we may be moving into a period in which the government, the big city in Washington, the elites who control this, who come out of an environment where they are not comfortable with guns, are oblivious and insensitive to the right that I believe was critical to our Founders in ratifying the Constitution. They wanted to know that they had a right to keep and bear arms, and it was important to them that the right was in the Constitution.

I ask Senator THUNE, have any of the outside groups that are concerned about these issues spoken out about this nomination?

Mr. THUNE. They have. I simply say to my colleague from Alabama, in his remarks he noted the pattern we are starting to see that exists with regard to—the Senator from Alabama mentioned the Attorney General of this administration and their nominees to the Supreme Court. What that has done is galvanized those at the grassroots level who are very concerned about what they see happening and how it might threaten and put in danger the second amendment right that many of them have enjoyed and believe is something that ought to be protected in the future—it ought to be protected by the Supreme Court, it ought to be protected by the Congress, it ought to be protected by the President of the United States.

We see some of these grassroots people who are concerned about this issue give voice to their concerns through organizations such as the NRA, for example, and Gun Owners of America. I wish to point out, if I may, that both of these organizations have written letters in opposition to Ms. Kagan's nomination.

I ask unanimous consent to have printed in the RECORD these letters.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL RIFLE ASSOCIATION OF AMERICA,
Fairfax, VA, July 1, 2010.

Hon. PATRICK LEAHY,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Hon. JEFF SESSIONS,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: We are writing to announce the National Rifle Association's position on the confirmation of Solicitor General Elena Kagan as Associate Justice of the United States Supreme Court.

Other than declaring war, neither house of Congress has a more solemn responsibility than the Senate's role in confirming justices to the U.S. Supreme Court. As the Senate considers the nomination of Solicitor General Kagan, Americans have been watching to see whether this nominee—if confirmed—would respect the Second Amendment or side with those who have declared war on the rights of America's 80 million gun owners.

During confirmation hearings, judicial nominees make carefully crafted statements regarding issues with which they do not personally agree. They often speak in terms of ''settled law'' or ''I understand the right''. When those statements are contradicted by an entire body of work over a nominee's career, however, it would be foolhardy to simply take them at face value. In Ms. Kagan's own words, ''you can look to my whole life as to what kind of justice I would be.'' We agree.

As she has no judicial record on which we can rely, we have only her political record to review. And throughout her political career, she has repeatedly demonstrated a clear hostility to the fundamental, individual right to keep and bear arms guaranteed under the U.S. Constitution.

As a clerk for Justice Thurgood Marshall, Ms. Kagan said she was ''not sympathetic'' to a challenge to Washington, D.C.'s ban on handguns and draconian registration requirements. As domestic policy advisor in the Clinton White House, a colleague described her as ''immersed'' in President Clinton's gun control policy efforts. For example, she was involved in an effort to ban more than 50 types of commonly-owned semi-automatic firearms—an effort that was described as: ''taking the law and bending it as far as we can to capture a whole new class of guns.'' And as U.S. Solicitor General, she chose not to file a brief last year in the landmark case McDonald v. Chicago, thus taking the position that incorporating the Second Amendment and applying it to the States was of no interest to the Obama Administration or the federal government. These are not the positions of a person who supports the Second Amendment.

During her confirmation hearings last year, Justice Sonia Sotomayor repeatedly stated that the Supreme Court's historic Heller decision was ''settled law''. Even further, in response to a question from Chairman Leahy, she said ''I understand the individual right fully that the Supreme Court recognized in Heller.'' Yet last Monday in McDonald, she joined a dissenting opinion which stated: ''I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as 'fundamental' insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes''.

We would also note that both Heller and McDonald were 5–4 decisions. The fact that four justices would effectively write the Second Amendment out of the Constitution is completely unacceptable. Ms. Kagan has repeatedly declined to say whether she agrees with the dissenting views of justices Stevens, Breyer, Ginsburg and Sotomayor, which leaves unanswered the very serious questions of whether she would vote to overturn Heller and McDonald or narrow their holdings to a practical nullity.

This nation was founded on a set of fundamental freedoms. Our Constitution does not give us those freedoms—it guarantees and protects them. The right to defend ourselves and our loved ones is one of those. The fundamental, individual right to keep and bear arms is another. These truths are what define us as Americans.

Any individual who does not believe that the Second Amendment guarantees a fundamental right and who does not respect our God-given right of self-defense should not serve on any court, much less receive a lifetime appointment to the highest court in the land. Justice Sotomayor's blatant reversal on this critical issue requires that we look beyond statements made during confirmation hearings and examine a nominee's entire body of work. Unfortunately, Ms. Kagan's record on the Second Amendment gives us no confidence that if confirmed to the Court, she will faithfully defend the fundamental, individual right to keep and bear arms of law-abiding Americans.

For these reasons, the National Rifle Association has no choice but to oppose the confirmation of Solicitor General Elena Kagan to the U.S. Supreme Court. Given the importance of this issue, this vote will be considered in NRA's future candidate evaluations.

Thank you for your attention to our concerns. Should you have any questions or wish to discuss further, please do not hesitate to call on us personally.

Sincerely,

WAYNE LAPIERRE,
Executive Vice President, NRA.
CHRIS COX,
Executive Director, NRA–ILA.

GUN OWNERS OF AMERICA,
Springfield, VA, August 5, 2010.

DEAR SENATOR: You will soon vote on the confirmation of Elena Kagan to the U.S. Supreme Court.

During her confirmation hearings, Kagan ducked and dodged questions about the Second Amendment and refused to declare whether she believes the Second Amendment protects an individual right.

Kagan insisted that the Supreme Court decisions in Heller and McDonald should be treated as precedent and ''settled law,'' but this in no way precludes her from ruling that almost any gun law—including gun owner registration, purchasing limits, waiting periods, private sale background checks, and more—is consistent with the Constitution.

Recall the confirmation hearings of Sonia Sotomayor, the newest Supreme Court Justice. Sotomayor assured the Senate, and the American people, that she accepted the Court's ruling in Heller that the Second Amendment protects an individual right.

Yet, in the McDonald case, Sotomayor joined the dissent in writing that ''I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as 'fundamental' insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes.''

Ms. Kagan has made the same promises to the Senate, but the available evidence portrays her as a forceful advocate of restrictive gun laws and as a person driven by political considerations rather than the rule of law.

While Ms. Kagan does not have a record of judicial opinions, her views on the Second Amendment are no mystery. Some considerations that have come to light since her nomination include:

While serving in the Clinton administration, Ms. Kagan drafted an executive order to ban certain semi-automatic firearms;

Ms. Kagan suggested that the President could issue another executive order—bypassing Congress—to ban gun purchases without prior approval from the federal government;

As a law clerk, Elena Kagan advised against the Supreme Court considering Sandidge v. United States in a case that questioned the constitutionality of the D.C. gun ban, writing that she was ''not sympathetic'' to the gun owner's Second Amendment claims; and,

Kagan was part of the Clinton team that pushed the firearms industry to include gun locks with all gun purchases and was in the Clinton administration when the President pushed legislation that would close down gun shows.

Elena Kagan poses such a threat to the Second Amendment that it would be better for the Supreme Court to begin its 2010–2011 session with only eight Justices, than for this radical nominee to be confirmed.

On behalf of over 300,000 members of Gun Owners of America, I urge you to ''NO'' on this nominee's confirmation.

Sincerely,

JOHN VELLECO,
Director of Federal Affairs.

Mr. THUNE. Mr. President, I continue by saying that after reviewing Ms. Kagan's record of testimony at the confirmation hearing, Gun Owners of America concluded:

. . . the available evidence portrays her as a forceful advocate of restrictive gun laws and as a person driven by political considerations rather than the rule of law.

The NRA went on to write:

. . . Ms. Kagan's record on the Second Amendment gives us no confidence that if confirmed to the Court, she will faithfully defend the fundamental, individual right to keep and bear arms of law-abiding Americans.

For these reasons, the National Rifle Association has no choice but to oppose the confirmation of Solicitor General Elena Kagan to the U.S. Supreme Court. Given the importance of this issue, this vote will be considered in the NRA's future candidate evaluations.

Yes, the answer to the question of the Senator from Alabama is both the NRA and Gun Owners of America have opposed not only this nomination but also Justice Sotomayor's nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD the NRA's letter in opposition to the Sotomayor nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL RIFLE ASSOCIATION OF AMERICA,
Fairfax, VA, July 23, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.
Hon. MITCH MCCONNELL,
Republican Leader, U.S. Senate The Capitol, Washington, DC.

DEAR LEADER REID AND LEADER MCCONNELL: We are writing to express the National Rifle Association's opposition to the confirmation of Judge Sonia Sotomayor as Associate Justice of the United States Supreme Court.

From the outset, the National Rifle Association respected the confirmation process and hoped for mainstream answers to bedrock questions. Unfortunately, Judge Sotomayor's judicial record and testimony during the Senate Judiciary Committee hearings clearly demonstrate a hostile view of the Second Amendment and the fundamental right of self-defense guaranteed under the U.S. Constitution.

We are particularly dismayed about the U.S. Court of Appeals for the Second Circuit's recent decision in the case of Maloney v. Cuomo, in which Judge Sotomayor refused to follow Supreme Court precedent by conducting a proper incorporation analysis of the Second Amendment, concluding instead that the right to keep and bear arms does not protect all law-abiding Americans living in every corner of this nation.

In addition, Judge Sotomayor was a member of the panel in the case of United States v. Sanchez-Villar, where (in a summary opinion) the Second Circuit dismissed a Second Amendment challenge to New York State's pistol licensing law. That panel, in a terse footnote, cited a previous Second Circuit case to claim, ''the right to possess a gun is clearly not a fundamental right.''

It is only by ignoring history that any judge can say that the Second Amendment is not a fundamental right and does not apply to the States. The one part of the Bill of Rights that Congress clearly intended to apply to all Americans in passing the Fourteenth Amendment was the Second Amendment. History and congressional debate are clear on this point.

We believe any individual who does not agree that the Second Amendment guarantees a fundamental right and who does not

respect our God-given right of self-defense should not serve on any court, much less the highest court in the land. Given the importance of this issue, the vote on Judge Sotomayor's confirmation will be considered in NRA's future candidate evaluations.

Thank you for your attention to our concerns. Should you have any questions or wish to discuss further, please do not hesitate to call on us personally.

Sincerely,

WAYNE LAPIERRE,
Executive Vice President, NRA.
CHRIS COX,
Executive Director, NRA–ILA.

Mr. THUNE. Mr. President, the NRA wrote in that case:

. . . Judge Sotomayor's judicial record and testimony during the Senate Judiciary Committee hearings clearly demonstrate a hostile view of the Second Amendment and the fundamental right of self-defense guaranteed under the U.S. Constitution.

Mr. ENSIGN. Mr. President, I ask my friend from South Dakota, why is it so significant that both of these groups have opposed her nomination?

Mr. THUNE. I say to my colleague from Nevada, it comes down to their horrible record on gun rights. It made it impossible for these two organizations to conclude that they would be impartial constitutional judges on this issue even though they tried to convince Senators otherwise during their confirmation hearings.

These groups had their concerns about Justice Sotomayor validated on June 30, 2010, when she ruled again that the second amendment is not a fundamental right. Justice Sotomayor assured Senators during her hearing that she believed the second amendment guaranteed an individual right to keep and bear arms. But then in her first ruling on the second amendment as a Supreme Court Justice, she joined the minority opinion in McDonald v. Chicago and failed to protect this individual right, as confirmed by the majority of the Court, for citizens living in the 50 States.

Specifically, at Justice Sotomayor's hearing, she said that she ''understood the individual right fully that the Supreme Court recognized in Heller'' and ''knew how important the right to bear arms is to many Americans,'' and that she did not consider the right ''unfundamental.''

This is in stark contrast to the opinion she signed onto in McDonald that I said—this is a quote from the McDonald opinion:

I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as fundamental, insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes.

I know that many in this body, especially those who supported her confirmation, were surprised by what is seemingly a 180-degree turn.

While I had hoped we could trust her word, I was concerned that her record did not fit her statements at the hearing. I had concerns that her true feelings were much more hostile toward the second amendment right than what she was letting on.

Specifically, I had concerns with two different cases she decided as a circuit court judge, including one after the Supreme Court already recognized the second amendment was an individual right, where she held in that case that the second amendment was ''clearly not a fundamental right'' and did not apply to the States.

There were some Senators at the time who were not as concerned by this record as I was and some of the others of us in the Chamber were and went so far as to say—this is a quote from one of our colleagues:

I do not see how any fair observer could regard her testimony as hostile to the second amendment personal right to bear arms, a right she has embraced and recognized.

That is something said by one of our colleagues in the Senate during the Sotomayor confirmation.

While what Justice Sotomayor said during the hearing certainly gave the impression that she believed in the individual right to keep and bear arms, her prehearing record demonstrated her true beliefs.

I am here today to urge those Members who proclaim to strongly support the second amendment not to be fooled a second time. Ms. Kagan was asked about the second amendment on a number of occasions at her hearing, and each time her response was merely a mimic of Justice Sotomayor's statements on the second amendment at her hearing.

Ms. Kagan would go no further than to acknowledge that the important Supreme Court decisions in Heller and McDonald are ''precedent'' and ''settled law entitled to all the weight the precedent usually gets.''

I believe there is no question that Ms. Kagan will follow in the footsteps of Justice Sotomayor and revert to the beliefs demonstrated by her anti-second amendment record rather than her posturing during her confirmation hearing.

That is the reason the NRA and other groups that treasure the fundamental right to keep and bear arms, such as Gun Owners of America, oppose her nomination, just as they did Justice Sotomayor's.

The only question that remains for us in the Senate is whether pro-second amendment Senators who voted for Justice Sotomayor have learned their lesson and will vote against the Kagan nomination.

I say to my colleagues from Nevada and Alabama, as the old saying goes: Fool me once, shame on you; fool me twice, shame on me. For the sake of gun owners across the country, I hope they will not be fooled again.

I say to my colleagues from Nevada and Alabama, with all the unanswered questions that remain after the Heller and McDonald cases, are there not lots of reasons why those grassroots people across this country—those gun owners, those people who care profoundly about the right to keep and bear arms—ought to be concerned? For example, what is a sensitive place? Who needs to register? There are going to be registration laws that are put in place. How is the issue of microstamping and the mandates and requirements that might be associated with that going to impact this fundamental second amendment right?

Mr. ENSIGN. Mr. President, I ask the ranking member about the McDonald case, and maybe he can go into some details about the McDonald case and the significance of that when it comes to future decisions.

Mr. SESSIONS. The McDonald case was a hugely important case. It dealt for the first time in recent memory with the question of whether the second amendment, which had been held in Heller to apply to the Federal Government, whether it passed through the 14th amendment to apply to all the States—and cities are creatures of States, so whether it applied to cities.

This is a big deal because it is not generally so much the Federal Government that is willing to deny gun rights, but certain States and certain cities seem very aggressively willing to deny people's second amendment rights.

The question for the Court was: Is it a fundamental right in the Bill of Rights, a stated fundamental right, and if it is fundamental, it passes through the 14th amendment and all States must comply with it, just as States must comply with the right to free speech and other rights in the Constitution.

By a razor thin 5-to-4 majority, the Supreme Court in McDonald held that it is a fundamental right and does apply to the States, and no State, therefore, and no city can deny an individual right of an American citizen to keep and bear arms. This is a big, important case.

Justice Sotomayor—who suggested otherwise in her testimony—as Senator THUNE said, her record suggested she would rule that way, rule with the four that it did not apply to the States. It is a big deal.

Mr. ENSIGN. In the McDonald case, as I understand, there were several restrictions put on citizens when it came to their second amendment right: paying a $100 processing fee and a $15 fee for each gun registered; undergo and pass a firearms safety test which consists of 4 hours of training and 1 hour target range practice, which, by the way, costs about $100 for each one of those activities; undergo and pass a vision test, if you do not have an Illinois driver's license; provide fingerprints; be at least 21 years of age or 18 years with parents' permission; wait 45–120 days for processing; own only one operational firearm; and reregister every 3 years.

I ask the ranking member, why are these restrictions necessary?

Mr. SESSIONS. The question becomes: Does it impact a fundamental

right? At some point it does. We decided you cannot put a poll tax on people to say you have to pay money for your right to vote. People do not have to pay for the right to speak out about advocate beliefs because you have a right to free speech.

I do think these restrictions, as they increase, can reach a point of denial of people's individual right to keep and bear arms. We want to be sure that a judge not only recognizes it is a constitutional individual right but that the judge recognizes that some of these restrictions we accept and are legitimate go too far.

Mr. ENSIGN. I will add, concluding my remarks, that this issue is of critical importance. Without the second amendment, the rest of the Bill of Rights can go away. That is what our Founders recognized. Our colleagues, before they vote on Solicitor General Kagan, need to understand that. That is why this colloquy is so important today. We have brought out some very important points.

It was an honor to be with my colleagues to discuss Solicitor General Kagan's views on the second amendment and how that potentially could impact her decisions in the future.

Mr. THUNE. Mr. President, I close by saying as well, I think in all cases, you have to judge people not by what they say but by what they do. Clearly, the record would suggest, as it did with Justice Sotomayor, a certain hostility toward the second amendment right. Obviously, statements at the Judiciary Committee hearings suggesting an openness to this or acknowledging settled law or precedents or all those sorts of things were meaningless in regard to the Chicago case with regard to Justice Sotomayor.

If we look at the long history of Ms. Kagan with regard to this issue, I think we can conclude where she is going to end up.

It is a critical issue because these are 5-to-4 decisions. These are very narrow decisions that strike at the very heart of a fundamental constitutional right that people in this country deserve to have their leaders, both elected leaders and people on the Court, protect. I am very concerned about where that is headed with this nominee.

I yield to the Senator from Alabama.

Mr. SESSIONS. I thank my colleagues for this nice and valuable discussion. I will say that one of the unjustifiable actions of the judicial activist philosophy that is too much afoot in America today is their willingness to completely be oblivious to plain constitutional rights, things that are flatly stated, and then to create rights that do not exist.

For example, the Constitution gives the right to free press, but we had Solicitor General Kagan arguing before the Supreme Court in defense of this campaign finance bill that a corporation could be prohibited from producing a pamphlet before an election that might be critical of a politician. I mean, that is what the first amendment was about. It wasn't about pornography or flag burning, for heaven's sake. It was about political speech, plainly in the Constitution. Yet we had four members of the Supreme Court—a vote in an opinion recently—who said the government could ban the pamphlets. Actually, another lawyer for the government argued you could ban books.

The Supreme Court, by a 5-to-4 majority did, in fact, say that you could take a man's private drugstore—the government could—and give it to another man who had a competing drugstore; in other words, taking private property for private use. The Constitution says you can't take private property except for public use under condemnation. A plain violation, 5-to-4 approved.

By two 5-to-4 decisions—the narrowest of margins—we had the plain constitutional right that Americans have to keep and bear arms hang by one vote. We have another example of a judge in California yesterday declaring that the Constitution somewhere says a State must declare that a union between same-sex couples has to be defined in the same way and recognized in the same way as a marriage, even after California had a referendum in which millions of Californians voted differently. A single judge, with no clear constitutional authority at all—in fact, no real constitutional authority—declared that invalid and wiped it out.

So I would suggest that people who are using this court to promote their agendas need to be careful. Don't think you can play with the first amendment. Don't think you can play with the second amendment. Don't think you can play with the constitutional right to have your property not taken by the government except for public use. If you can start wiping those rights out, what right next will the Court come and take? What right next will the central government come and take from you?

So if you love this Constitution and respect it and believe it is a great bulwark for freedom, prosperity, and liberty, I suggest there is only one way to handle it, Mr. President: enforce it as written whether you like it or not.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I want to address the nomination of Solicitor General Kagan to serve on the U.S. Supreme Court. Earlier this week, I discussed my opposition to the nomination, but at that time I didn't go into any depth about my concerns with regard to her participation in the military recruiting policy that banned the U.S. military from the Office of Career Services at Harvard Law School.

While this incident has been discussed a lot, I think it is very important to establish for the record exactly what happened. I believe a due respect for the men and women of our military and the gravity of this debate demand a full review of the facts behind what Elena Kagan did as dean of the Harvard Law School to exclude and stigmatize the U.S. military.

Harvard Law School adopted an antidiscrimination policy in 1979. This policy states that any employer that wished to use the Office of Career Services at the law school had to sign a statement affirming that it does not discriminate on various bases, including sexual orientation. The military—not just because of its policy but because of the policy of the Congress and the law that we passed—could not sign this statement because of the don't ask, don't tell policy adopted during the Clinton administration.

In 1993, when a Democratic Congress and the Clinton administration changed the military's outright ban on gays in the military to adopt this don't ask, don't tell policy, Harvard took the position that the military was still not in compliance with its antidiscrimination policy. As a result of Harvard's policy, from 1979 through 2002, the U.S. military was barred from recruiting individuals at the Harvard Law School's Office of Career Services, where everyone else who was recruiting on campus was allowed to conduct interviews and recruit potential candidates.

While this ban on the services of the Office of Career Services was in effect, the Harvard Law School Veterans Association essentially took the place of the Office of Career Services and established an off-campus interview forum for law students interested in serving their country in the U.S. military. So because they were banned from the Office of Career Services, the military had to look for an alternative venue or forum provided by the Harvard Law School Veterans Association in order to conduct those interviews.

But then something very important happened. In 1995, Congress enacted another law, popularly known as the Solomon Amendment. The Solomon Amendment said you cannot receive Federal funds—if you are an educational institution—if you, in effect, prohibit military recruiting on your campus. In other words, they could have continued their policy of discrimination against the military, but they would have been denied Federal funds under the plain wording of the Solomon Amendment passed in 1995.

The Secretary of Defense, under the Solomon Amendment, has to make a finding that the school is not offering access to military recruiters that is ''equal in quality and scope to the access that the school provides other employers.'' That was the 1995 law. In 2002, the Secretary of Defense of the United States found that Harvard's exclusion of military recruiters from the Office of Career Services was not ''equal access.''

In response to this Federal law and the finding by the Secretary of Defense, Ms. Kagan's predecessor, Robert

Clark, essentially capitulated and gave the military access to the Office of Career Services in 2002. So Dean Robert Clark, Dean Kagan's predecessor, rather than be denied Federal funds to Harvard by violating the Solomon Amendment and denying access to military recruiters to the Office of Career Services, decided in 2002 to change Harvard's policy. Thus, when Ms. Kagan became dean of the law school in the spring of 2003, the military had full access to the Office of Career Services to recruit interested candidates for military service.

For a while, Dean Kagan maintained the military's access to the Office of Career Services in compliance with the Solomon Amendment. But it is clear that Dean Kagan did not like that because she voiced her political opposition to the don't ask, don't tell policy—in other words, the law enacted by Congress and to which the Department of Defense was accountable for enforcing—in an e-mail she sent to all of Harvard's law students saying that she ''abhorred'' the ''don't ask, don't tell policy'' and she considered it ''a moral injustice of the first order.''

In January 2004, Dean Kagan joined 53 other members of the Harvard law faculty in filing a friend of the court brief supporting a challenge to the Solomon Amendment in the Third Circuit Court of Appeals. So even though she maintained access for a while, inherited that policy under her predecessor, in 2004, when a lawsuit was filed to challenge the Solomon Amendment, Dean Kagan and other Harvard Law School faculty joined in a friend of the court brief to try to strike down the Solomon Amendment.

In November of 2004, a split panel on the Third Circuit Court of Appeals actually held that the Solomon Amendment was reasonably likely to be unconstitutional and sent the case back to the district court with instructions to issue an injunction halting the Solomon Amendment's enforcement.

Now, this is very important because the Third Circuit is one of our circuit courts of appeal in the United States, but it is not the U.S. Supreme Court. By that I mean when it makes a decision, its decision only applies to the territory or that part of the United States that is within the Third Circuit. That is important because Harvard is not in the Third Circuit. Harvard is in the First Circuit. So in effect, the Third Circuit panel's decision had no legal effect on Harvard Law School.

Nevertheless, the very next day, after the Third Circuit issued its decision, Dean Kagan changed the Harvard Law School policy to once again bar the military from using the services of the Office of Career Services. In other words, she was not compelled to do so by law but exercising her discretion as dean, she chose to reinstate this policy of barring military recruiters from the Office of Career Services.

Then, in January of 2005, the Third Circuit issued an order staying its enforcement pending a decision by the U.S. Supreme Court. After this, of course, the Third Circuit ruling did not even have any effect even in the Third Circuit, much less in the jurisdiction in the circuit with jurisdiction over Harvard. But even after the order was stayed, Ms. Kagan continued the policy of barring military recruiters from the Office of Career Services.

While her policy barring military recruiters from the Office of Career Services was in effect, Dean Kagan approached the Harvard Law School Veterans Association and asked them to serve as an alternate channel for military recruiting at Harvard Law School. In 2005, the law school veterans declined, writing:

> Given our tiny membership, meager budget, and lack of any office space, we possess neither the time nor the resources to routinely schedule campus rooms or advertise extensively for outside organizations, as is the norm for most recruiting events.

In short, the law school veterans told Dean Kagan that the separate access she wanted them to offer the military would not be equal because they didn't have the ability to match the resources of the Office of Career Services.

In May 2005, the Supreme Court of the United States then said they were going to hear an appeal of the Third Circuit's decision, and they granted the writ of certiorari to the Defense Department's appeal of that case to review their finding on the Solomon Amendment. Over the summer of 2005, the Defense Department notified Dean Kagan that it would rescind Harvard's funding—in other words, it would deny Federal funding to Harvard pursuant to the Solomon Amendment—if she continued to deny the military access to the Office of Career Services.

Faced with this ultimatum, on September 20, 2005, Dean Kagan finally ended her 10-month unlawful denial of access and announced that pending the Supreme Court's decision she would lift the ban and give the military access to the Office of Career Services. But in the meantime, she filed another friend of the court brief, this time in the Supreme Court of the United States, arguing the Solomon Amendment should not apply to her actions barring the military from the Harvard Law School's Office of Career Services.

Ultimately, the Supreme Court unanimously rejected Dean Kagan's position and unanimously upheld the Solomon Amendment.

To recap: Dean Kagan's ban on military recruiters lasted for 10 months—from November of 2004 through September of 2005. During that entire span of time, the Department of Defense position was always—was always—that the ban violated the congressionally passed Solomon Amendment. Never in that span of time did the Supreme Court, the First Circuit, or any other court with jurisdiction over Harvard adopt Dean Kagan's view regarding the scope or enforceability of the Solomon Amendment. In that span of time, only a split panel of the Third Circuit held that the Solomon Amendment was unenforceable, and for all but 2 months of that time, the Third Circuit's order was stayed.

Despite all of this, Dean Kagan persisted in barring military recruiters from the Office of Career Services and insisted that the military could obtain separate but equal access to Harvard Law School through alternate routes. Dean Kagan held that the Supreme Court's position ran afoul of the Solomon Amendment, the findings of the Secretary of Defense, and ultimately the legal judgment of the entire Supreme Court. I believe these are the undisputed facts of the case.

So why do Ms. Kagan's actions matter? I would argue that they matter for two reasons. First is the message her actions sent about her lack of respect for the U.S. military at Harvard Law School during her deanship. Ms. Kagan claims she holds the military in the highest respect, but I have to ask you, this notion that you are going to provide separate but equal access to interviewing services is not one that shows respect. It is one that provides an unnecessary and really reprehensible stigma on the U.S. military, which had no control over a policy passed by Congress under the Solomon Amendment.

Of course, she did this at a time when hundreds of thousands of young men and women deployed to Iraq and Afghanistan were wearing the uniform of their country to protect their fellow citizens and the rule of law. Dean Kagan's actions in taking every step legally possible to relegate the military to what she herself believed was separate but equal status placed an unmistakable stigma on the military during a time of war.

I believe her decision to stigmatize the military is reason enough to oppose her nomination to a lifetime seat on the U.S. Supreme Court, but her actions as dean are troubling for another reason as well. I believe her actions as dean indicate strong evidence that, as a Justice, someone sitting in judgment on the U.S. Supreme Court, she would tend to advance her political preferences rather than take a traditional approach of a judge in following the law.

Many of our colleagues have pointed out correctly that Ms. Kagan has never been a judge. While that is not a requirement to serve on the Supreme Court, this lack of judicial experience makes it difficult to tell whether Ms. Kagan would adopt a judicial activist philosophy if she takes a seat on the Court. Because she has never held the job of a judge—we don't have any record to judge her by—we must look to the jobs she has held and the actions she has taken to see how she is likely to perform her job as a member of the U.S. Supreme Court.

In the 10 months during which she banned the U.S. military from the Harvard Law School campus, I believe Dean Kagan showed a willingness to

bend the law and facts to advance her own political goals of protesting the don't ask, don't tell policy and, as I said, stigmatizing the military in the process. Despite the lack of any binding authority, she adopted an interpretation of the Solomon Amendment so tenuous that it could not garner the vote of a single Justice on the U.S. Supreme Court, and she did so for the express purpose of advancing her objections to a policy she said she abhorred.

Bending the law and the facts to reach a preferred result is exactly what judicial activists do, and there is a pattern in Ms. Kagan's legal career of bending the law and facts to advance her preferred policy results. So while Ms. Kagan has never been a judge, she has established a disturbing pattern of doing what judicial activists do. Ms. Kagan's actions in her previous jobs showed she is very likely not to embrace the role of a judge who decides cases based on the Constitution as written and the law as passed by Congress that she is responsible for enforcing if they are, in fact, constitutional but, rather, she gives every indication of someone who believes it is within her role and prerogative as a Justice to basically make the law rather than to enforce the law as written. No Member of this Chamber should be surprised if, for the rest of her life as a Supreme Court Justice, Ms. Kagan does not merely follow the law as written but, rather, bends the law to advance her progressive political agenda.

Our Constitution is too precious and the Supreme Court is too powerful for us to accept without question a President's nominee to the Supreme Court. The Framers of the Constitution recognized the importance of this appointment and the power given to a Supreme Court Justice, who serves for life without any political accountability to the electorate. That is why they gave us the responsibility to give our advice and consent.

The nomination and confirmation of a Supreme Court Justice is really a two-step process. First, the President makes his nomination. The President can nominate anyone the President wants who meets the qualifications of the Constitution. But then it is our responsibility to exercise our constitutional duty to provide advice and consent.

I believe Ms. Kagan has failed to embrace the traditional view of judging that I believe all judges must adhere to at the risk of, rather, them becoming a lawmaker, which is incompatible with the role of a Justice. I believe a judge who assumes a role of being a policymaker or a lawmaker is, in essence, a lawbreaker.

Indeed, Ms. Kagan's career up to this point shows a willingness to bend the law and the facts to advance her own beliefs, and I fear this trend will continue in an activist tenure on the Supreme Court. For these reasons, I oppose her nomination and will vote no.

Mr. BENNET. Mr. President, I rise in strong support of the President's nomination of Solicitor General Elena Kagan to be Associate Justice of the U.S. Supreme Court.

The Senate has no more important responsibility than to advise and consent on nominations to our Nation's highest Court. It will be an honor on behalf of the people of my State to cast my vote to confirm Elena Kagan.

Ms. Kagan is a distinguished lawyer with a remarkable legal background. She brings very diverse experiences to the Court that I believe will add to the important perspective of the high Court as it reviews cases of critical importance to the American people.

Throughout her career she has been a legal trailblazer and a role model. She will be the fourth woman to serve on the high Court, and for the first time in history, three women will be serving on the bench when oral arguments are heard this fall. Her nomination marks an historic milestone of progress for women in the legal profession and in serving as leaders for our Nation.

A graduate of Harvard Law School, Ms. Kagan began her career as a law clerk to former Supreme Court Justice Thurgood Marshall, who like her, served as Solicitor General prior to being promoted to the high Court. Justice Marshall made history as the first African-American Solicitor General at the time and Ms. Kagan has followed suit as the first female Solicitor General.

Following her clerkship, Ms. Kagan worked in the private sector where she handled first amendment, commercial and criminal litigation. She then served in the highest ranks of academia as a law professor. This ultimately led to her becoming dean at the Harvard Law School, one of our nation's most prestigious institutions. Her ascension to dean marked the first time in Harvard Law School's 186-year history that a woman held this position. As dean, Ms. Kagan bridged ideological divides among faculty, recruiting professors from across the ideological spectrum, managing the largest and most prestigious law school in our nation and improving the quality of life for students.

Prior to becoming dean, Ms. Kagan served in high legal and policy positions in the Clinton administration, where she learned the operations of the executive and legislative branches of our government, which will help the Court better understand how policy judgments are made and the effect that the decisions of our government and courts have on the lives of everyday Americans.

Most recently, Ms. Kagan has dutifully served our Nation as the U.S. Solicitor General. The Solicitor General is often referred to as the 10th Justice because of the frequency that he or she appears before the Court on behalf of the United States. This experience exposed Ms. Kagan to nearly every case that has come before the current Court and she has had to weigh all of the same legal considerations as the current Justices prior to deciding the position of the U.S. Government. Few positions provide better preparation for the high Court.

While she has not previously served as a judge, though she was previously nominated to be one, I see her varied background as an asset. We need different life experiences on the Supreme Court. If confirmed, Ms. Kagan will be the first nonjudge since former Chief Justice William Rehnquist was nominated by former President Richard Nixon.

Her mix of professional experience will help ensure that we do not have a Court out of touch with the American people. Ms. Kagan has taught the law in the classroom, practiced in the public and private sector, worked in the judiciary as a clerk and crafted the policies of the executive branch. Everywhere she has worked, Ms. Kagan has excelled. Her experience is the kind of experience we should aspire for all of our justices to have before serving on the high Court.

The Supreme Court is too important to not hold our justices to high standards of intellect and achievement—a standard Ms. Kagan meets. It is our best and brightest who should serve in these important positions. We need Justices who respect precedent, hew closely to the text of the law and do not pursue an agenda from the bench.

We do not need activist judges whether they come from the right or left. The American people do not want an ideologically driven Supreme Court that is pursuing a political agenda. We want a Court that respects precedent and helps resolve the legal questions of our time as they affect our daily lives.

I would like to close by thanking outgoing Justice John Paul Stevens for his service to our country. Justice Stevens presided on the Court during a period of great change and accomplishment for our nation. He is a member of the Greatest Generation and is a true patriot for his service during World War II. Justice Stevens has been an intellectual heavyweight on the bench and provided a voice of reason even while we have seen the Court drift so heavily in favor of the most powerful interests. He has left large shoes to fill and will be missed.

President Obama has nominated someone who can fill these shoes. Because of the breadth and diversity of her experience, Elena Kagan has a profound understanding of the law and effect the Supreme Court has on the lives of all Americans. She is an intellectual heavyweight in her own right and will help the Court bridge the divides of recent years.

I am proud to commit my vote in favor of this nominee.

Mr. HARKIN. Mr. President, I am proud to support the confirmation of Solicitor General Elena Kagan as the next Associate Justice of the United States.

Solicitor General Kagan is eminently qualified to serve on our Nation's highest Court. As a student, she excelled at

Princeton, Oxford and Harvard Law School. She has stellar legal credentials that have been recognized by liberal and conservative lawyers alike. And, throughout her career, including as a professor of law, as a key advisor to President Clinton, as dean of Harvard Law School, and as Solicitor General, she has demonstrated a great mind and intellect.

Moreover, Solicitor General Kagan will bring important diversity to the Court. First, when the Senate confirms her, she will be only the fourth woman to serve on the Court; and for the first time in history, three women will serve on the Supreme Court together.

Second, Solicitor General Kagan's experiences as someone who has worked in the legislative and executive branches will provide a vital perspective that is currently lacking among the Justices. In fact, for the first time in history, the current Court is comprised entirely of Justices who were promoted directly from the lower Federal courts. While judicial experience is important, it is also important to recognize that some of our most consequential Justices—Louis Brandeis, Felix Frankfurter, Earl Warren, Robert Jackson and William Rehnquist, to name just a few—did not have prior judicial experience. I am glad the President recognized how crucial it is to have on the bench Justices with varied life experiences.

Mind you, I am hopeful that next time the President will look to one of the many qualified lawyers who did not graduate from Harvard or Yale, or one who resides east of the Appalachian Mountains. But nominating someone from outside the Federal courts is a refreshing change.

As I evaluate Solicitor General Kagan's qualifications, an additional factor is important for me: she clerked and learned from two judges for whom I have enormous respect—Judge Abner Mikva and Justice Thurgood Marshall. These two jurists exhibited a deep and abiding passion for justice, and each strived throughout his career to ensure that ''equal justice under law'' is more than an ideal chiseled on a marble facade, but a concrete reality for all our citizens.

In her opening statement before the Judiciary Committee, Solicitor General Kagan noted:

> My first real exposure to the Court came almost a quarter century ago when I began my clerkship with Justice Thurgood Marshall. Justice Marshall revered the Court—and for a simple reason. In his life, in his great struggle for racial justice, the Supreme Court stood as the part of government that was most open to every American—and that most often fulfilled our Constitution's promise of treating all persons with equal respect, equal care, and equal attention.

In a 1993 law review article, she expressed a fondness for Justice Thurgood Marshall's vision of constitutional interpretation, which she described as ''demand[ing] that the courts show a special solicitude for the despised and disadvantaged.'' She described this vision as ''a thing of glory.'' I am hopeful that Solicitor General Kagan will follow in the best traditions of Judge Mikva and Justice Marshall and continue to strive to make our Nation's laws more just.

Considering her outstanding intellect and credentials, there simply is no doubt Solicitor General Kagan should be confirmed.

However, for me, there is another, equally important, consideration. I also believe that Solicitor General Kagan will be an important and needed voice on the Court to ensure that appropriate respect and deference is given to Congress, and proper effect is given to our most important statutes, such as the Americans with Disabilities Act, the Civil Rights Act, and the Age Discrimination in Employment Act, so all Americans receive the fullest protections of the law.

Too often debate regarding the Supreme Court seems to focus on a handful of divisive cultural issues. Indeed, many of my colleagues on the other side of the aisle have come to the floor to focus on gays in the military, abortion and guns. To be sure, these issues are important. But, what typically get overlooked in a debate like this are the many technical, statutory cases—often involving esoteric legal principles—that nonetheless have a tremendous impact on the everyday lives of ordinary Americans.

Unfortunately, the sad truth is that, in case after case, often in narrow 5–4 decisions, today's Court has too often slammed shut the courthouse door in the face of these ordinary Americans. The Court has used arcane legal doctrines and strained readings of Federal statutes to prevent citizens from vindicating their civil rights and consumer protections. The result is that many people who suffer grievous wrongs are not able to bring meritorious lawsuits, and to hold corporations and the government accountable.

In case after case, the Court has undermined vital protections and sided with the powerful against the powerless—for instance, in cases such as Ledbetter v. Goodyear, Gross v. FBL Financial, and Riegel v. Medtronic. In doing so, the Court has repeatedly ignored the clear intent of Congress in passing important laws.

In the ''Sutton trilogy'' the Court repeatedly misread the Americans with Disabilities Act and narrowed the scope of individuals deemed eligible for protection under that landmark statute. The result of these decisions was to eliminate protection for countless thousands of Americans with disabilities. These flawed, harmful decisions were reversed in the last Congress when we unanimously enacted the ADA Amendments Act.

Similarly, in June, 2009, the Supreme Court decided Gross v. FBL Financial, Inc. In a case involving an Iowan, Jack Gross, the Court made it harder for those with legitimate age discrimination claims to prevail under the Age Discrimination in Employment Act. In doing so, it reversed a well established, 20-year-old standard, consistent with that under title VII of the Civil Rights Act, that a plaintiff need only show that membership in a protected class was a ''motivating factor'' in an employer's action. Instead, the Court held that a plaintiff alleging age discrimination must prove that an employment action would not have been taken against him or her ''but for'' age. In other words, the plaintiff must now prove that age discrimination was not a cause or a motivating factor, but that it was the determinative cause of an adverse employment action. Proving ''but for'' cause is extremely difficult and will greatly limit potentially meritorious suits involving discrimination Congress sought to prevent.

In doing so, the Court did not even address the question on which it granted certiorari. As Justice Stevens noted in dissent, ''I disagree not only with the Court's interpretation of the statute, but also with its decision to engage in unnecessary lawmaking. The Court is unconcerned that the question it chooses to answer has not been briefed by the parties or uninterested amici curie. Its failure to consider the views of the United States, which represents the agency charged with administering the [Age Discrimination in Employment Act], is especially irresponsible.''

In University of Alabama v. Garrett, a case whose oral arguments I personally attended, the Court limited the rights of people with disabilities. In doing so, it ignored numerous congressional hearings and a task force which collected evidence through 63 public forums around the country attended by more than 7,000 persons. In United States v. Morrison and Kimel v. Florida Board of Regents, the Court completely ignored extensive congressional fact-finding and struck down parts of the Violence Against Women's Act and the Age Discrimination in Employment Act, respectively.

The contrast with Solicitor General Kagan is stark. She repeatedly made clear her approach to judging: respect for congressional intent and for long standing precedent. She consistently made clear that a judge's personal views should play no role in interpreting a statute and ''the only question is Congress's intent.'' Unlike some current members of the Court, moreover, she made clear that where the text of a statute is ambiguous she will look to legislative history—''a judge should look to other sources, should look to the structure of the statute, should look to the history of the statute in order to determine Congress's will.'' After her confirmation hearing and based on my personal meeting with her, I am convinced she will give full effect to our most important statutes.

Finally, as I listen to the debate surrounding Solicitor General Kagan's confirmation, I find it remarkable that conservatives continue to accuse every

Democratic appointed nominee of being ''activist.'' It is a tired bumper sticker slogan that not only has no meaning but is divorced from reality.

In fact, what is clear from this debate is that it is the conservatives who want to use the courts to achieve a desired political result and to thwart the democratic will of the people, as expressed through their elected representatives.

For example, the ranking member of the Judiciary Committee, Senator SESSIONS, noted his concern that Solicitor General Kagan ''will bring to the bench a progressive activist judicial philosophy which holds that unelected judges are empowered to set national policy from the bench.''

I find it ironic that this charge is bandied about by the same people most eager to have the courts strike down as unconstitutional the recently enacted health care reform bill. To strike down this law would require an unelected judge to ignore the clear language of the Constitution, reverse precedents that go back to John Marshall, disregard extensive fact-finding by Congress, and overturn a decision of a majority of both Houses of Congress and the President of the United States. That would be the height of judicial activism, the height of ''making national policy from the bench.''

The reality, is that, the Rehnquist and Roberts Courts have invalidated more laws than any previous Courts.

It is conservatives who not only want the Court to make national health care policy, but also to limit the ability of Congress to keep the corrupting influence of corporate spending out of our democracy, as the Court did in Citizens United.

It is conservatives who second guess decisions by Congress, including a unanimous Senate, to ensure the rights of all Americans to vote, as the Roberts Court suggested in Northwest Austin Municipal Utility District No. One v. Holder.

It is conservatives who want the judiciary to second guess decisions made by local sheriffs in keeping guns out of the hands of criminals.

It is conservatives who want the judiciary to second guess local zoning decisions, environmental and land use regulations.

It is conservatives who want the courts to invalidate efforts by Congress and local governments to eliminate racial discrimination.

Given the current Court's repeated disregard for Congress and for our efforts to expansively protect American citizens, I believe it is imperative that the next justice be someone who respects precedent, strives to apply congressional intent and purpose, and understands the importance of this nation's landmark civil rights protections. Based on her record and after meeting her, I am confident Solicitor General Kagan will be that type of jurist.

Solicitor General Kagan clearly has the intellect, experience and judgment to be an outstanding Justice. I am proud to support her nomination.

Mr. FEINGOLD. Mr. President, I want to speak briefly about the nomination of Elena Kagan to be an Associate Justice of the U.S. Supreme Court.

First, I commend the chairman of the Judiciary Committee and his staff for their efforts to make this confirmation process so thorough and transparent. The committee had the opportunity to review nearly 200,000 pages of internal memos and emails from Ms. Kagan's service as a law clerk to Justice Thurgood Marshall and as a White House aide during the Clinton administration—making the examination of her record one of the most thorough and searching in history. I appreciate that President Obama and President Clinton did not raise claims of executive privilege to try to stop the release of documents, which was a refreshing change and a practice that I hope future Presidents will follow in years to come.

All but a tiny fraction of these documents were made available online, granting extraordinary access to the public. I said after last year's hearings for Justice Sotomayor that Chairman LEAHY had set a new standard for transparency and public access to Supreme Court nomination hearings, and in these proceedings he did it again. I commend him and his staff for their tremendous work over the past few months.

There is no question that Elena Kagan is eminently qualified for a position on the Supreme Court. She has an impressive education, she has worked at the highest levels of government, and she has served as dean of a top law school. During the hearings, she demonstrated a keen mind, thoughtful analysis, and a wide-ranging command of the law. She has developed a reputation as someone who can reach out to those with whom she may not agree and work together, and that skill should prove very valuable on the Court. I believe that because she has not previously been a judge, she will bring a different and important perspective to a Court that is otherwise entirely populated by former appellate judges.

I appreciated Solicitor General Kagan's efforts to improve the confirmation process by being forthcoming in her answers. Fifteen years ago she quite fairly criticized the process in an article, arguing that the American people deserved more substantive discussions of the law. While I can't say that she quite lived up to the high standard that she set for nominees in 1995, I do believe that she tried to answer our questions as openly and comprehensively as she could, given what the confirmation process has become.

I came away from the confirmation process convinced that Elena Kagan understands the appropriate relationship between the courts and Congress. As she explained at the Judiciary Committee hearing, her work with Congress during her time at the White House taught her a healthy respect for the political branches and how difficult it can be for Congress to pass legislation. I hope that she will keep this in mind before she votes to overturn a bill that Congress may have spent years drafting and debating.

But while this deference is important, Solicitor General Kagan also demonstrated that she recognizes the critically important role of our judicial system in serving as a check on the other branches of government—in ''policing constitutional boundaries,'' as she put it. She spoke eloquently about the early experiences of Justice Marshall and his efforts to eradicate Jim Crow laws and racial segregation. She explained that what was so incredible about his struggle for equality was that ''the courts [took] seriously claims that were not taken seriously anyplace else. . . . In other words, it was the courts' role to make sure that even when people have no place else to go that they can come to the courts and the courts will hear their claims fairly.'' She said this was a miraculous thing about courts, and I agree with her. With regard to executive power, she emphasized that ''no person, however grand, however powerful, is above the law.'' She also talked about ''the importance of adhering to the law, no matter the temptations, no matter the pressures that one might be subject to in the course of one's career.'' These insights indicate that she will take seriously the Court's role in safeguarding individual rights and protecting the rule of law.

In addition to informing the committee about the nominee, the hearings also taught us more about the Supreme Court. We have heard a lot in recent years about ''judicial activism.'' But I think the hearings helped underscore that activism is in the eye of the beholder. As Justice Souter explained in a recent speech, the truth is that the Supreme Court has to decide hard cases—cases in which a judge cannot simply read the words of the Constitution and objectively evaluate the facts. That is, a judge cannot simply act as an umpire. Judges often have to choose between positive values in the Constitution that are in tension with each other, he noted.

Justice Souter reminded us that facts may look very different in different historical contexts. The quintessential example of this is the Court's historic decision in Brown v. Board of Education to overturn Plessy v. Ferguson—a case that by current standards would surely qualify as judicial activism but that is one of the most revered in our nation's history. What this shows us is that judging is not a ''robotic enterprise,'' as Solicitor General Kagan told the Senator from Minnesota, Ms. KLOBUCHAR. Judging is hard and it does, in fact, require judgment. But, Justice Souter explained, ''we can still address the constitutional

uncertainties the way [the Framers] must have envisioned, by relying on reason, by respecting all the words the Framers wrote, by facing facts, and by seeking to understand their meaning for living people.'' I believe Elena Kagan will fulfill that vision admirably.

So I will vote to confirm Elena Kagan to be an Associate Justice of the U.S. Supreme Court. I look forward to her confirmation as only the fourth woman in history to serve on our Nation's highest Court, and I expect she will serve with distinction—and with good humor, which she demonstrated throughout this arduous process—for many years to come.

Mr. CONRAD. Mr. President, I rise today to express my support for the confirmation of Elena Kagan to serve as the next Associate Justice of the Supreme Court.

Having carefully examined her record, monitored her confirmation hearings, and personally met with her, Solicitor General Kagan is clearly qualified to serve on the Court. Given her tremendous educational accomplishments at Princeton, Oxford, and Harvard, as well as her success as a constitutional and administrative law scholar at Chicago and Harvard, there is little question that she is intellectually qualified for the job.

General Kagan has had an impressive career, having clerked for Supreme Court Justice Thurgood Marshall, worked as the first female dean of Harvard Law School, and served as the first female Solicitor General of the United States. During that time, she has impressed all with whom she has worked with both her character and her talent.

Some of my colleagues are concerned that previous Federal judicial experience is not among her list of accomplishments. Historically, however, large numbers of our Supreme Court nominees have not had prior judicial experience. The last Supreme Court nominee appointed without any such experience served was former Chief Justice William Rehnquist.

Indeed, the outgoing Court represents the first time in history when all nine Justices had Federal judicial experience. That is what prompted Justice Antonin Scalia to say that he was ''happy to see that this latest nominee is not a federal judge.'' I share that view, and welcome the unique academic perspective that General Kagan will bring to the Court.

Others with concerns about General Kagan have pointed to her treatment of military recruiters as the dean of Harvard Law School or memos she wrote when she was an advisor in the Clinton administration. In addition to the explanations provided to me by General Kagan during our meeting, I am reassured about these controversies by the fact that she has received strong support from legal minds across the political spectrum.

General Kagan has earned high praise from conservatives like Jack Goldsmith and Miguel Estrada, as well as from every former Solicitor General since 1985, including Ted Olson and Ken Starr. These are not people who make such endorsements lightly. They would not speak well of someone who is outside the mainstream.

When considering my vote on nominees to the Supreme Court, my key test is whether or not the President's nominee is qualified to serve on the Court, not whether I agree with everything he or she have ever done. As Senators, we must examine the record, accomplishments, intellect, and character of each judicial nominee put before us, and determine whether each individual is worthy to serve on the bench. This is the standard I used when I voted to confirm Chief Justice John Roberts, Justice Samuel Alito, and Justice Sonia Sotomayor. And that is the standard I am using in voting to confirm Elena Kagan.

Mr. UDALL of New Mexico. Mr. President, I rise today to talk about Solicitor General Kagan's experience. Over the past few months, there has been a lot of talk from our friends across the aisle about whether Ms. Kagan is qualified to be our country's 112th Supreme Court Justice.

They say she has never been a judge. How conveniently they forget that some of the most well-respected Justices in the history of the Supreme Court also brought life experiences outside the ''judicial monastery,'' which President Obama so ably encouraged us to look beyond. Former Chief Justice William Rehnquist is one example. Former Justice Lewis Powell, Jr., is another.

They also conveniently forget that just a few decades ago, most Justices had little or no judicial experience. In fact, it is General Kagan's diversity of life experiences that, in my opinion, make her exceptionally qualified for the High Court. President Obama said one of the primary reasons he nominated General Kagan was because of her ''understanding of law—not as an intellectual exercise or words on a page—but as it affects the lives of ordinary people.'' I couldn't agree more.

The inscription that greets visitors to the Supreme Court building just across the street reads: ''Equal Justice Under Law.'' That inscription is at the heart of the experience General Kagan would bring as the newest member of the High Court.

That experience includes a reputation as one of the Nation's foremost legal minds; as a legal advisor to two Presidents; as the first woman to serve as Dean of Harvard Law School; and as the Nation's first female solicitor general.

It also includes more personal experiences, many of which mirror the lives of the American people she has committed her own life to serve.

She is the child of immigrants. She is the daughter and sister of public schoolteachers, and she has been a teacher herself. She is an advocate for her students. And she is a proponent of discussion and debate that educates, respects and improves upon the lives of all it impacts.

It is because of all of these experiences—as President Obama said on the day he introduced her—that General Kagan will make the Nation's highest Court ''more inclusive, more representative, more reflective of us as a people than ever before.''

I am confident that Solicitor General Kagan has the experience that will make her a stellar Justice, and I look forward to casting my vote in favor of her confirmation to the Supreme Court.

Mrs. LINCOLN. Mr. President, I come here today to discuss one of the most important duties we exercise as Senators the confirmation of a United States Supreme Court Justice.

As a U.S. Senator, I have a responsibility under the Constitution to determine if nominees to the Supreme Court are qualified for the job. In making this determination, I consider a nominee's knowledge of the Constitution and the law as well as their ability to be deliberate and to hear every case that comes before them impartially and without personal bias.

I believe Ms. Kagan passes that test and that she is qualified to serve on the U.S. Supreme Court.

I have made this decision after carefully reviewing the Judiciary Committee record on her nomination and visiting with Ms. Kagan personally on two occasions to discuss her nomination. I was impressed with her knowledge, humility, and candidness, and I believe she was as forthcoming in our conversations as any individual whose Supreme Court nomination I have considered.

As Solicitor General for the United States, Elena Kagan served as the Federal Government's lawyer in chief, representing all Americans, including Arkansans, before the U.S. Supreme Court.

A passion for public service and the law has been the driving force behind her career. Elena Kagan is the first woman to serve as Solicitor General, and the first woman to serve as the Dean of Harvard Law School. She previously worked in the Clinton White House as Deputy Assistant to the President for Domestic Policy and as Associate Counsel to the President. She spent several years in private practice after serving as a law clerk for the U.S. Court of Appeals for the District of Columbia, and for Justice Thurgood Marshall on the U.S. Supreme Court.

I believe the fact that Elena Kagan has not worked as a judge will benefit the Court. She will bring a fresh voice and unique perspective to the discussion on cases that come before the Court. There is already a persuasive precedent for a nominee with no judicial experience to serve on the U.S. Supreme Court. In fact, 41 Supreme Court justices, including Chief Justice William Rehnquist, had no experience

serving on a lower federal or state court. And many former justices who also did not previously work in the judicial branch have similar backgrounds to that of Solicitor General Kagan.

Since Ms. Kagan was nominated for this position in May, I have heard from many Arkansans both for and against her confirmation. In terms of the concerns that have been raised by those who oppose her confirmation, I have examined her record regarding those issues and have spoken to the nominee on two occasions to discuss those matters further. After careful thought and consideration in fulfilling my responsibility to judge her fitnesss for this position, I have found nothing that I believe disqualifies her from being confirmed.

There is no doubt Elena Kagan holds the Constitution and the Court's precedents in high regard. During her nomination hearings, Elena Kagan responded to numerous questions about a variety of issues. In response to one question regarding recent Supreme Court rulings involving the Second Amendment, she stated, ''there is no question that the Second Amendment guarantees Americans the individual right to possess and carry weapons in case of confrontation.'' Further, General Kagan explicitly said that the recent Heller and McDonald decisions that secure a fundamental and individual right to own a firearm for self protection is ''settled law.'' Ms. Kagan has personally assured me she has no desire or intention of working to overturn either decision.

It is true Ms. Kagan has not promised how she would decide future Second Amendment cases that may come before the Court. Neither Justice Roberts nor Justice Alito made any pledges or promises in that regard either during their confirmation hearings. To do so would betray one of the basic foundations of our system of government which is a fair minded and independent judiciary. Further, after reviewing the Judiciary Committee hearing record for Ms. Kagan, Justice Roberts and Justice Alito, in my view Ms. Kagan was as, if not more, forthcoming regarding her views on the Second Amendment than the two most recent nominees made by a Republican President.

One final comment General Kagan made to me during our last conversation about the Second Amendment was her desire to join Justice Scalia on one of his hunting trips to get better acquainted with her colleagues on the Court if she is confirmed. Sounds like a good idea to me.

Elena Kagan has also shared with me her deep respect and honor for the military and the men and women in uniform who risk their lives to defend our freedoms. Her father was a veteran, and she has taken with her the reverence for the military he instilled in her. In 2007, Elena Kagan was invited to speak at West Point military academy, where she spoke to cadets about fidelity to the Constitution and the rule of law. General Kagan said she accepted this invitation, something she rarely does, as an opportunity to thank the senior cadets for their contributions and service to our country.

Both in our personal conversations and in her testimony before the Senate Judiciary Committee, Ms. Kagan has explained her actions as Dean of Harvard Law School regarding military recruiting.

The bottom line for me is that Elena Kagan never denied military recruiters access to students on campus and that she holds the men and women in uniform who fight to defend the freedoms we cherish as Americans in high regard. Evidence of this is supported by military veterans themselves associated with the law school who have spoken favorably of Ms. Kagan's treatment of students in the military and the military in general. A group of Harvard Law School Iraq War Veterans published a letter stating that Kagan, ''has created an environment that is highly supportive of students who have served in the military.''

It is also worth noting that Solicitor General Kagan is supported by a long and distinguished list of law associations, organizations, members of Republican and Democratic administrations, unions, advocates and professionals. The list of supporters even includes every former Solicitor General since 1985, including Ted Olsen and Ken Starr.

As I have said with previous Supreme Court nominees selected by two different Presidents, I won't agree with every decision that he or she makes. However, the standard for evaluating Supreme Court nominees should be whether he or she is qualified for the job and is prepared to place the law and the integrity of our Constitution ahead of any personal or political beliefs he or she may have. I believe Ms. Kagan meets that standard which is why I will support her confirmation.

Mr. WYDEN. Mr. President, I rise in support of the nomination of Solicitor General Elena Kagan to serve as Associate Justice of the United States Supreme Court. A lifetime appointment to the highest Court in the land is a serious matter, and confirming each Justice is one of the most solemn duties of any Senator.

When I sat down with her, I was struck by Ms. Kagan's obvious intelligence and candor. It was also obvious that her wealth of professional experience has given her a real reverence for our country's rule of law. As the confirmation process went on, I paid close attention to the answers Ms. Kagan gave to my colleagues on the Judiciary Committee in her hearing. What comes across loud and clear when one listens to Ms. Kagan is that she has a strong belief in the Constitution and an understanding of its purpose to serve and protect the American people.

Throughout the arduous process of being a Supreme Court nominee, Ms. Kagan has impressed me at every turn with her intellect, integrity, and independence. These are fundamental traits our Nation needs in every member of the highest Court in the land.

But being a Supreme Court Justice requires more than surviving the confirmation process. If confirmed, Ms. Kagan would be ruling on the most important and urgent matters facing our Nation. Her voice would carry with it the rich and varied background of professional experience that would sound a note of true intellectual independence.

Although some have found fault with the fact that she has never served as a judge, I have never believed that lack of prior judicial experience should stop someone from serving with distinction on the Court. After all, some of our greatest jurists had no experience as a judge—Justices John Marshall, Louis Brandeis, Felix Frankfurter, and William Rehnquist among them. In place of that singular legal experience, Ms. Kagan brings expertise that she has earned in all three branches of government, as well as the private sector as an attorney in private practice and as the dean of Harvard Law School.

In talking with Ms. Kagan, I came away confident that she well understands the proper role of a judge and will not attempt to legislate from the bench. I discussed with Ms. Kagan her views and approach to some of the important issues the Court will address in upcoming years, such as national security, the limits of executive power, and the protection of civil liberties.

I also spoke with Ms. Kagan about an issue of particular concern to Oregonians one which they have endorsed twice at the ballot box—the right to control end-of-life decisions. Oregon voters twice approved death with dignity ballot measures. I have long believed that their decision should be respected by the courts, and I am pleased the Supreme Court has agreed with that view. While not taking a position on specific questions that could come before the Court, Ms. Kagan reassured me that she sees this as Oregonians do. She believes end-of-life decisions are protected by constitutional privacy rights, and she believes the Federal Government should not contravene State laws that protect individual rights on this issue.

Finally, I was also comfortable with the way Ms. Kagan explained her views on a frequently litigated constitutional issue, the limits of congressional power to act under the commerce clause. Ms. Kagan's answers assured me she has a very thorough and nuanced understanding of commerce clause jurisprudence and that she will rule on commerce authority cases with both deference and wisdom.

I am convinced, based on everything I have heard, that Ms. Kagan possesses the intellect, integrity, and independence to serve as an extraordinary Justice on the Supreme Court. With the retirement of Justice Stevens, Ms. Kagan certainly has large shoes to fill.

But I have no doubt she is more than up to the task, and our country's laws will be safely guarded in her hands. That is why Elena Kagan has my support, and I will vote to confirm her as an Associate Justice of the Supreme Court.

Mr. BEGICH. Mr. President, I am pleased to support the nomination of Solicitor General Elena Kagan as Associate Justice on the U.S. Supreme Court. By any objective standard, Elena Kagan offers a well-rounded combination of academic legal expertise and real world application of law and public policy. The President has nominated Ms. Kagan to a job she may hold for three decades or more, and in which she will have the opportunity to touch the lives of Americans in countless ways. So just being an intelligent and hard-working public servant is not enough for this vital position. That is why I have taken my time and my responsibility seriously, to thoroughly review her record before deciding to support her.

Decisions by the Supreme Court have immediate impacts on the lives of everyday Americans when the rulings are handed down. These decisions may continue to play a role in the lives of Americans for generations. Considering my vote on a Supreme Court nominee, a task I will perform soon for the second time in my brief Senate career, is a duty I take very seriously.

I approach this decision from the perspective of a government chief executive. It is the constitutional role of the President to nominate Supreme Court justices. In the case of a nominee to the Federal courts, especially to the Supreme Court, this choice is not about a President's ability to carry out a stated agenda. Rather, justices on the highest court in the land are there to protect and interpret the Constitution, so the highest standards must be applied.

In my meeting with Solicitor General Kagan, I found her to be intelligent and engaging, and open to hearing my thoughts on what is important to Alaskans. I listened as Ms. Kagan described the way she approached legal issues, and heard from her an approach to the law and the Constitution that indicated she will not be an activist judge. I agree with my colleague from South Carolina, Senator LINDSAY GRAHAM, who said the job of a senator is not to second guess the President's judgment in selecting Supreme Court nominees, but to determine if the candidate is qualified, of good character and understands the difference between being a judge and a politician. Ms. Kagan is such a person.

For me as an Alaskan, there were some issues I needed to make front and center in our discussion, especially the rights we enjoy and which the Supreme Court has recently spoken to under the second amendment of the Constitution.

Alaskans take their second amendment rights very seriously. In a State where the daily life for many includes subsistence hunting, personal protection and basic survival, our right to keep and bear arms is not an academic question. It is a fundamental part of our lives. The State of Alaska has gone so far as to pass laws requiring firearms be kept in survival gear carried in private airplanes. Unlike much of the ''Lower 48,'' the wilderness in Alaska is reachable within minutes from even our largest cities. Even in the greater Anchorage area encounters with wildlife are commonplace and serious injuries occur regularly. That is why firearm ownership and use in Alaska transcends the debates in Washington over what the second amendment means.

Much of the opposition to Ms. Kagan's nomination has focused on what some charged was her alleged lack of support for second amendment rights. Some oppose Ms. Kagan's nomination because she worked for Justice Thurgood Marshall and President Bill Clinton. When she was asked by Judiciary Chairman LEAHY if, after the Supreme Court's decisions in Heller and McDonald that the second amendment secures an individual's fundamental right to own a firearm and use it for self-defense, Ms. Kagan's response could not have been more clear: ''There is no doubt, Senator LEAHY. That is binding precedent and entitled to all respect to binding precedent in any case. That is settled law.'' Instead of second-guessing or making assumptions about her views, I am taking Ms. Kagen at her word.

Even before the Court's decision in McDonald applied the reasoning of Heller beyond the District of Columbia, Ms. Kagan was clear about the fundamental nature of the rights protected by the Second Amendment. During her confirmation hearing to be Solicitor General, Ms. Kagan responded to a question about the meaning of Heller from Senator GRASSLEY: ''There is no question, after Heller, that the second amendment guarantees Americans the individual right to possess and carry weapons in case of confrontation.''' In subsequent questioning, Ms. Kagan responded regarding Heller that she would give that decision and its reasoning ''the full measure of respect that is due to all constitutional decisions of the Court.''

What Elena Kagan said about the second amendment, especially in light of the Heller and McDonald decisions that I supported, cannot be considered anti-gun, or anti-second smendment.

In our meeting, I also asked Ms. Kagan about unique status of Alaska Native people and issues. I pointed out that Alaska is home to nearly half the 562 federal recognized tribes in the United States and that Alaska Natives comprise nearly 20 percent of our State's population. Ms. Kagan admitted to being no expert in ''Indian law,'' but expressed a willingness to learn about the challenges and opportunities facing Alaska Native people. She also expressed support for encouraging the courts to adopt procedures making it easier for people whose first language may not be English to understand court proceedings.

Another significant issue for Alaskans is the Supreme Court's decision in the Exxon Valdez case. Thousands of Alaskans were damaged by that oil spill, yet Exxon took every possible advantage in the U.S. court system to delay payment of damages as long as they could. As a result, an estimated 20 percent of those damaged by the spill died before they could collect any compensation. Ms. Kagan agreed with the tragedy of that case and expressed frustration with it dragging on so long.

Mr. President, because of what I have learned in looking at the career and record of Ms. Kagan, and reviewing her statements and testimony on matters that are important to the people of Alaska I am privileged to serve, I am pleased to confirm Elena Kagan as an Associate Justice on the U.S. Supreme Court.

Ms. SNOWE. Mr. President, I rise today to speak to the nomination of Solicitor General Elena Kagan to be the next Associate Justice of the Supreme Court of the United States. After a careful and considered review of her testimony before the Senate Judiciary Committee, her overall record, and my personal meeting with her in May, I have concluded that General Kagan should be confirmed as the next Associate Justice of the Supreme Court.

General Kagan would succeed Justice John Paul Stevens who has served our country as a decorated war veteran, a distinguished Federal appellate judge, and a Supreme Court Justice for nearly 35 years. I appreciate his service to our Nation, and believe that all of us in public service can learn from his dignified manner and sound advice to ''understand before disagreeing.''

As with the previous nominees to the Court that I have had the responsibility to review, I have not arrived at my decision lightly. It has been said that, of all the entities in government, the Supreme Court is the most closely identified with the Constitution—and that no other branch or agency has as great an opportunity to speak directly to the rational and moral side of the American character; to bring the power and moral authority of government to bear directly upon the citizenry.

The Supreme Court passes final legal judgment on the most profound social issues of our time. The Court is uniquely designed to accept only those cases that present a substantial and compelling question of Federal law; cases for which the Court's ultimate resolution will not be applied merely to a single, isolated dispute—but, rather, will guide legislatures, executives, and all other courts in their broader development and interpretation of law and policy. Ours is a government of liberty and order, of State and Federal authority, and of checks and balances, and the remarkable challenge of calibrating these fundamental balance

points is entrusted ultimately to the nine Justices.

To help meet this extraordinary challenge, any nominee for the Court must, as I stated for previous nominees under both Republican and Democrat administrations, have a powerful intellect, a principled understanding of the Court's role, and a sound commitment to judicial method. A nominee must have the capacity to engender respect among the other Justices in order to facilitate the consensus of a majority. And to warrant Senate confirmation, the nominee must have a keen understanding of, and a disciplined respect for, the great body of law that precedes her.

It is with these high standards that we should also evaluate the record of General Kagan to serve as the Court's 112th Justice. General Kagan is a distinguished graduate from Princeton, Harvard, and Oxford Universities where she earned several distinct honors. She served as a law clerk to two judges, United States Court of Appeals Judge Abner Mikva and United States Supreme Court Justice Thurgood Marshall. General Kagan then worked in private practice as an associate at a leading D.C. law firm and a law professor at two of the Nation's most regarded law schools.

General Kagan has also served as a special counsel for the Senate Judiciary Committee; a lawyer in the Office of the Counsel to a President; a policy advisor to a President; and dean of the Harvard Law School. Most importantly, she has served as the 45th Solicitor General of the United States where she has participated in six oral arguments and overseen briefs and certiorari petitions in approximately 100 cases.

For her work as Solicitor General, Ms. Kagan has won the support of every one of the 10 Solicitors General who have served since 1985, including 5 Republican appointees. She has also earned the support of over 50 deputy and assistant solicitors general who have served over the last 42 years.

As these highly skilled professionals have noted, the ''job of Solicitor General provides an opportunity to grapple with almost the full gamut of issues that come before the Supreme Court and requires an understanding of the Court's approach to numerous issues from the criteria for certiorari review to the Justices' approach to oral argument. The constant interaction with the Supreme Court that comes with being the most-frequent litigator before the Court also ensures an appreciation for the rhythms and traditions of the Court and its workload.''

Prior to her 15 months as Solicitor General, Ms. Kagan had relatively little experience as an active practitioner. The American Bar Association's principle expectation for a Federal appellate nominee is ''at least'' 12 years experience actually practicing law, and even now she continues to fall short of that. This is due in part to the fact that she does not appear to have performed any amicus curiae or pro bono work while serving as a law professor.

Such practical experience often helps the Justices remain connected to the effect of their decisions on the lives of everyday people. All Supreme Court Justices, regardless of judicial philosophy, weigh the Constitution's text, history, context and precedents when deciding the landmark cases. Active practice of law experience helps with that process because, as prior Justices and distinguished scholars alike have observed, the Justices' decisions in landmark cases are inevitably ''channeled and constrained by who [they] are and what they have lived through.''

General Kagan has not given us the clearest insight into those experiences that she has ''lived through'' that will ''channel and constrain'' her sense of constitutional boundaries. At the same time, I find that her experience in working at the highest levels of all three branches of government will provide her with valuable insights as she approaches her work on the Court. I also accept her comments from our personal meeting that she did indeed have a ''formative experience'' as a young lawyer in learning that ''behind legal questions are real people with real lives.''

As regards General Kagan's lack of prior judicial service, I do not find that to be disqualifying. Nearly 40 Justices have served on the Court without prior judicial experience, including in more recent times Louis Brandeis, Hugo Black, Robert Jackson, Earl Warren, Lewis Powell, and William Rehnquist. Especially on the current Court where all of the existing members come from the Federal appellate courts, General Kagan should bring a new and different perspective.

This brings us to the additional factors we must consider when providing our consent on a President's nominee for Associate Justice—judicial temperament, methodology, integrity and philosophy. By their very nature, these attributes are often challenging to measure, but they can be assessed through a careful analysis of a nominee's complete record.

With regard to the first consideration, judicial temperament, we all agree that it is absolutely essential that a judge be fair, open-minded and respectful. Our citizens simply must have confidence that a judge who weighs their legal claims does so with an even temperament. A judge must be truly committed to providing a full and fair day in court, while projecting a sincere equanimity and respect for the law. When these attributes are not clearly present in our judges, the public justifiably begins to lose faith in the integrity of our courts.

By all accounts, whether from conservative former Solicitors General Ken Starr and Ted Olson, and Assistant Solicitor General Miguel Estrada, General Kagan has a clear reputation for a sound judicial temperament. She projected poise throughout this process, during her hearing and in our personal meeting. Likewise, she has testified and spoken about the necessity of courts to provide a ''level playing field,'' of maintaining a fidelity to the law, and of the essential requirement not to prejudge any case, stating during her hearing that judging is about ''what the law says, whether it's the Constitution or whether it's a statute . . . the question is always what the law says . . . it's what the text of the Constitution says . . . what the law says, not a judge's personal views.''

Turning to the considerations of judicial methodology and integrity, General Kagan does not have a judicial service record to review. We can, however, examine her scholarship. Here, she has six scholarly articles, two scholarly book reviews and a variety of other commentaries. I have some concern that this collection is, by academia's standards, not especially prodigious, and that General Kagan did not continue her scholarship during her six years as Harvard's dean.

Her eight scholarly publications do, however, tackle the difficult subjects of Presidential power, the delegation doctrine, and hate speech. In particular, her Presidential Administration and Chevron's Non-delegation Doctrine article from 2001, as well as The Changing Faces of First Amendment Neutrality article from 1992, demonstrate both close attention to complicated legal detail and careful legal analysis—skills essential for the difficult work of the Court.

We can also review her approach to judicial methodology from her answer to my request to identify three of the Court's constitutional opinions—majority, concurring or dissenting—that in her view exemplify sound judicial methodology. First, General Kagan chose Justice Oliver Wendell Holmes' 1905 dissenting opinion in Lochner v. New York. In that case, the Court invalidated a State law prohibiting an employer from requiring a baker to work more than 60 hours per week. The Court reasoned that the statute ''necessarily interferes with the right of contract between the employer and employees,'' a right that is ''part of the liberty of the individual'' protected by the 14th amendment.

General Kagan cited this opinion as a ''concise and persuasive formulation of the proper role of the judiciary in relation to the political branches of government,'' highlighting these passages:

> I strongly believe that my agreement or disagreement [with the law] has nothing to do with the right of a majority to embody their opinions in law. . . . The Constitution is . . . made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States. [Justices should not use their office] to prevent the natural outcome of a dominant opinion, unless it can be said that a rational

and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law.

Next, General Kagan selected a 1927 concurring opinion in Whitney v. California where the Court unanimously upheld a conviction for conduct threatening to overthrow our government by unlawful means. Calling the concurrence an ''inspiring example of a commitment to protecting constitutional rights'' and a ''stirring reminder of the value of freedom of speech in our society, including its importance to democratic self-governance,'' General Kagan cited her admiration for this paragraph:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.

Finally, General Kagan identified a 1952 concurring opinion in Youngstown Sheet & Tube Co. v. Sawyer. There, the Court held that President Truman exceeded his constitutional authority when he ordered the Secretary of Commerce to take possession of most of the Nation's steel mills in the face of a labor strike during the Korean war. Respecting a concurring opinion as the ''definitive framework for evaluating the constitutionality of presidential action,'' General Kagan observed that:

Two aspects of the opinion are notable. First, Justice [Robert] Jackson's opinion is a classic formulation of the propositions that executive authority is not unlimited even in wartime and that the President is not above the law. That is all the more remarkable given that its author had served in the Executive Branch for much of his career, including as Solicitor General and Attorney General. Second, Justice Jackson refused to oversimplify constitutional analysis. . . . [H]is analysis depended in large measure on an assessment of relevant historical practices and political processes. That analysis was resolutely legal in its nature; it was not based on the Justice's political preferences or personal views. But the analysis took into account the full complexities of constitutional interpretation in its relation to modern governance. That is what has given Justice Jackson's concurrence its staying power and has made it the Court's principal precedent on executive power.

These three replies by General Kagan are informative. Together they argue for a limited judicial role, and demonstrate her command of the philosophical underpinnings of core constitutional doctrine and her insight into the necessity of aligning those theories with the functional ''complexities of modern governance.'' They also convey an awareness of, and therefore perhaps a capacity for, judicial statesmanship. As Justice Felix Frankfurter once noted, ''breadth of vision'' and ''capacity to transcend one's own experience'' are often the defining qualities that matter most in guiding a Justice's work on landmark cases.

As regards her views on substantive subjects of law, conservative attorneys such as Charles Fried, Michael McConnell and Paul Clement have agreed that General Kagan is in the mainstream. For example, she has affirmed forcefully that stare decisis is a critical command for the Court. As she wrote to the committee, that command requires a careful inquiry into whether the precedent has ''been found unworkable, whether subsequent legal developments have left the rule an anachronism, or whether premises of fact are so far different from those initially assumed as to render the rule irrelevant or unjustifiable.'' Moreover, she testified that:

The entire idea of precedent is that you can think a decision is wrong. You can have decided it differently if you had been on the court when that decision was made. And nonetheless you are bound by that decision. That's—if the doctrine of precedent enabled you to overturn every decision that you thought was wrong, it wouldn't be much of a doctrine. . . . I think when the court looks as though it's flipping around and changing sides just because the justices have changed, that's bad for the credibility of the institution and it's bad for the system of law.

General Kagan has also stated that the Constitution protects a right of privacy and that Roe v. Wade is not only ''settled law'' but has been ''doubly settled'' by Planned Parenthood v. Casey. Likewise, she has stated that foreign law should not have precedential weight in ''any but a very, very narrow set of circumstances,'' such as limited cases involving ''ambassadors'' or the ''law of war.'' And finally, she has testified, as noted above, that Youngstown Sheet & Tube remains the ''determinative'' governing standard in assessing Presidential wartime powers.

With respect to the second amendment, in my view, as a long-time, ardent supporter of second amendment rights, I have carefully examined General Kagan's work as the President's attorney a decade ago on a variety of legislation affecting gun ownership rights. This is a fair question and, here, General Kagan testified as follows:

The work that I did in the Clinton White House was all work . . . before Heller was decided, and so we really . . . did not consider . . . regulations through the Heller prism . . . because Heller didn't exist at that time. . . . What President Clinton was trying to do back in the 1990s and what I as his policy aide was trying to help him do, was to propose a set of regulations that had very strong support in the law enforcement community, that had actually bipartisan support here in Congress to keep guns out of the hands of criminals, to keep guns out of the hands of insane people. It was very much an anti-crime set of proposals that I worked on back then in the '90s.

A former White House colleague corroborated General Kagan's testimony: ''In all these cases, [President] Clinton had already settled views on these questions. Our job was to make sure the government's policy reflected what he wanted. He'd already made up his mind on most of these contentious issues.''

As several members of the committee during General Kagan's hearing noted, this same point—that a lawyer's job is to represent the client's views, and not the lawyer's own views—was also made by Justices Roberts and Alito when they were asked during their confirmation hearings about advice they gave while serving as executive branch attorneys. Both nominees testified that their executive branch legal counsel reflected ways to advance their elected client's, not their own personal, legal interests and policy preferences.

With respect to the fact that, more recently, General Kagan did not file a brief for the United States in McDonald v. City of Chicago—McDonald did present an important question regarding the interplay of the second and 14th amendments, and I joined an amicus brief in support of Mr. McDonald's claim to incorporate the second amendment through the 14th amendment, so that the protections of the second amendment would apply not just against Federal acts, but against the acts of State and local governments as well. Here, several observations are warranted.

First, McDonald presented only the question of whether the second amendment applied to State and local governments, and not what the scope of the protections of the amendment is. As a result, McDonald, unlike Heller, presented no implications for the constitutionality of Federal gun laws. Accordingly, the United States was not a party in the case.

Second, the issue of incorporation is by its very nature one of primarily State and local, and not Federal, concern. This explains the amicus brief signed by 38 States in this case. This also explains why the Solicitor General's Office has a tradition of not weighing in on incorporation cases. General Kagan wrote to the committee in response to a supplemental question that:

It has long been the practice of the Office of the Solicitor General not to file an amicus brief in cases concerning the application of a constitutional provision to the states (so-called incorporation cases). Although incorporation cases raise important issues of constitutional interpretation, and may matter

greatly to individual citizens, those issues do not implicate the responsibilities and obligations of the federal government under the Constitution. Incorporation cases therefore do not fall within the category of cases in which the Office of the Solicitor General files amicus briefs: those where the federal government itself has a clear and specific interest in the resolution of the case.

This response is consistent with the reported statement of former Solicitor General Erwin Griswold, who was uniquely appointed by a Democratic President, President Johnson, and retained by his Republican successor, President Nixon. In 1970, General Griswold reportedly wrote that incorporation cases are rarely of direct interest to the Federal government because ''fundamental considerations of federalism militate against executive intrusion'' into issues of State and local law.

Further, although former Solicitor General Paul Clement did appear in Heller for the United States, under the Bush administration, Heller was not an incorporation case. Moreover, the broader question presented by Heller, unlike McDonald, did implicate the basic scheme of Federal firearms regulations.

Yet even then, General Clement argued in Heller for a somewhat narrower ruling regarding personal rights. He also argued for a somewhat higher level of judicial scrutiny of challenges to regulation of such rights in order to ensure that the longstanding existing Federal laws—like possession of machine guns, possession by convicted felons, or possession on Federal property—that his office is required to defend were protected. A majority of the Court ultimately respected and accepted General Clement's concern in both Heller and McDonald. As Senator CORNYN noted at the hearing, Justice Alito wrote for the majority in McDonald that:

We made it clear in Heller that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill, . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.' We repeat those assurances here; . . . incorporation does not imperil every law regulating firearms.

Perhaps most importantly, General Kagan testified repeatedly that both McDonald and Heller are settled law. As regards McDonald, General Kagan said, ''I do think that . . . decision [McDonald] [is] settled law; entitled to all of the weight that any precedent of the Supreme Court has; [and] . . . can only be overturned if there is strong evidence the ruling [among all of the other stare decisis factors] is unworkable.''

On Heller, she said: ''I think that Heller is settled law and Heller has decided that the Second Amendment confers such an individual right to keep and bear arms. I have absolutely no reason to think that the court's analysis was incorrect in any way. I accept the court's analysis and will apply it going forward.'' She also said that Heller's finding that a personal right of possession is ''deeply rooted in this Nation's history and traditions'' is a ''central part of the rationale'' of Heller and, again, is ''settled law.''

Moreover, she testified that she has ''never believed that the president had the power to prohibit [the sale of firearms] without legislative authorization. . . . In fact, that's one [issue] that Heller and McDonald don't effect, that the president didn't have that power before and doesn't have that power after.'' She also testified that ''the Second Amendment question, as defined by Heller, was so peculiar to our own constitutional history and heritage that . . . foreign law didn't have any relevance.''

Turning to another important issue, I also share the concern for how General Kagan approached the issue of military recruiting at Harvard Law School. Under the Solomon amendment, universities like Harvard that receive Federal funding are required to permit military recruiters on campus. Opposing the military's don't ask, don't tell policy, General Kagan was one of several deans to relegate military recruiters to a less preferred position by withholding Office of Career Services' sponsorship.

General Kagan also participated in a lawsuit challenging the Solomon amendment as unconstitutional. Had she prevailed in that suit, colleges and universities across the country could have denied the military on-campus access to students across the country. Fortunately, the Supreme Court summarily and unanimously rejected this challenge in 2006 in Rumsfeld v. F.A.I.R.

General Kagan continues to defend her decision as a difficult mediation of competitive on-campus interests. But the prevailing recognition here is that the Nation was fully engaged in two wars designed to advance national security, and so I continue to be troubled that General Kagan chose to relegate the military rather than her institution's financial or policy interests.

Reviewing the final consideration of judicial philosophy, General Kagan has spoken directly to the important but appropriately limited role that the Court plays in our constitutional scheme of government. She recognizes that the Court is the ''least accountable'' of our governmental institutions and that the Court is not ''self-starting.'' Citing Alexander Bickel and his 1961 seminal article, General Kagan stated in our personal meeting that the ''passive virtue'' of the Court rests in what it does not do, and that the Court should work hard ''not do more than is called for'' and ''not go too far.'' Likewise, she said in her questionnaire that ''I think it is a great deal better for the elected branches to take the lead in creating a more just society than for courts to do so.''

We recently witnessed what happens when the Court does not adhere to such decision-making restraints. We are all familiar with Citizens United v. F.E.C. where the Court overruled a mere 7-year-old precedent to strike down the electioneering communications provision of the Bipartisan Campaign Finance Reform Act.

There, the majority effectively converted on its own motion an as-applied challenge into a facial challenge through its order for re-argument. According no deference to our 100,000-page factfinding record that took Congress over 10 years to assemble, and further dismissing the commands of stare decisis, the majority then rejected the relatively recent 1990 precedent of Austin v. Michigan Chamber of Commerce and the very recent 2003 precedent of McConnell v. F.E.C. Instead, the majority inflated the precedential value of the majority's very recent—only decided in 2006—and readily distinguishable F.E.C. v. Wisconsin Right to Life and eschewed arguments to decide the case on narrower statutory grounds. Consequently, and in striking contrast to claims of ''judicial modesty,'' the majority then struck down the electioneering communications provision of BCRA on the broadest of grounds.

Even granting that General Kagan was an advocate in the case, I was pleased to hear her say in our personal meeting that the Citizens' majority ''did not respond in the right way. Congress had gone through an enormous record and the Court had ruled only a few years earlier. From where I sat, the Court was wrong.''

I also agree with Justice Stevens' dissent in Citizens that the activist ''path'' taken by the Citizens'' majority will ''do damage'' to the Court itself. Citizens is not, of course, the only recent case in which Justices and scholars from across the political spectrum have viewed the Court's majority as overreaching. Indeed, opinions in Montejo v. Louisiana, Gross v. FBL Financial Services, Ashcroft v. Iqbal, and related commentaries have all expressed the same concern.

Finally, I note that, if confirmed, General Kagan will become the fourth female Justice ever to serve on the Supreme Court. She will follow Sandra Day O'Conner and join Justices Ruth Bader Ginsburg and Sonia Sotomayor. General Kagan has already become the first woman to serve as Solicitor General of the United States, and the fact remains that it does make a difference who women and girls see at the pinnacles of government and industry. As Justice Ginsburg observed at the time of Justice Sotomayor's nomination, ''women belong in all places where decisions are being made.''

Ultimately, when the Framers accorded us the special role of confirming judicial nominees that we are exercising here today, having delegated the power of nomination to the Office of the President, and having recognized that elections to that office may affect the overall composition of the Court, the Framers expressly intended that

we review judicial nominees not by their affiliations, but by their qualifications. This is why Alexander Hamilton wrote in Federalist 76 that the Senate should deprive a duly elected President of his or her nominee only for ''special and strong reasons.''

In reviewing the record of General Kagan's scholarship, the to, evidence of her reputation, and her responses to the committee and other Members throughout this process, I find in that General Kagan has a very capable intellect and a deep respect for the rule of law. She has a command of the important but limited role of the courts, and a demonstrated commitment to stability in the law. It is therefore my conclusion that Solicitor General Elena Kagan is qualified to serve as the next Associate Justice of the Supreme Court.

Ms. CANTWELL. Mr. President, it is with great pride that I express my strong support for the nomination of Solicitor General Elena Kagan to be the next Associate Justice of the United States Supreme Court. A trailblazer in many ways, Solicitor Kagan was the first female to serve as Solicitor General of the United States and the first female Dean of Harvard Law School, one of the most prestigious legal educational institutions in our Nation. Her nomination as Solicitor General garnered the bipartisan support of every Solicitor General who served from 1985 to 2009, including Charles Fried, Ken Starr, Drew Days, Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement, and Greg Garre, a testament to her ability to build bridges across partisan lines and her fidelity to law above politics.

Solicitor Kagan brings a wealth of historic legal experience to the position of Associate Justice, including serving as law clerk to Justice Thurgood Marshall, the first African-American to serve on the Supreme Court, working as an associate at the law firm of Williams & Connolly, teaching as a law professor at the University of Chicago and Harvard University, and acting as policy counsel to President Clinton and special counsel to the Senate Judiciary Committee. In these capacities she handled legal and policy issues ranging from public health, to education, to war crimes, to campaign finance and welfare.

Solicitor Kagan's experience with different branches of government equips her with a unique perspective on the law and the challenges the Court will face in the coming years. Her confirmation honors the legacy of Justice John Paul Stevens, the outgoing Justice, who was well known for his service of dignity and intellect, without regard for partisan divides.

If we confirm her—and I am confident we will—Solicitor Kagan will be only the fourth woman in history to serve on the Supreme Court, and will be the third woman to sit on the current Court, the highest number of female justices to serve at one time.

Solicitor Kagan's confirmation will be an inspiration for generations of female lawyers and legal scholars to come, and will make an indelible impression on this country's legal landscape. Today, women comprise only 19.2 percent of federal district court judgeships, and 20 percent of federal appellate judgeships, highlighting the need for increased gender representation on our Nation's highest courts. Solicitor Kagan's confirmation is only a step towards reducing this gender disparity in our Nation's judiciary.

I followed closely Solicitor Kagan's hearings, and I am impressed by Solicitor Kagan's commitment to respect the rule of law. The hearings for Solicitor Kagan, who testified for more than 17 hours and answered over 540 questions, were thorough and fair. In her opening statement, Solicitor Kagan observed that, ''the Supreme Court's role in our society is to act as a safeguard to the rule of law by maintaining a commitment to impartiality, principle, and restraint; and the role of a Supreme Court justice is to approach each case with even-handedness and fair-mindedness, to ensure that everyone who comes before the Court receives a fair shake.''

Solicitor Kagan also expressed her admiration for Justice Thurgood Marshal; under whom she clerked, for his view of the Supreme Court as a means of access to justice for those left without redress after unfair treatment. Her expressed judicial philosophy of impartiality and fairness, to individuals of all classes, income levels, and interests, is a critical component to the High Court in a climate where we see increasing judicial activeness and partiality to special interests.

Solicitor Kagan's experiences as a scholar and policy advisor unquestionably qualify her for a position on the Supreme Court. I find it disingenuous that several of my conservative colleagues have attacked Solicitor Kagan's lack of judicial experience. The last two of the previous four chief justices of the Supreme Court, William Rehnquist and Earl Warren, had no judicial experience when first nominated to the Court. Nor did, Felix Frankfurter, Louis Brandeis, and John Marshall, known as the ''Great Chief Justice.'' Over one-third of the past 111 Supreme Court justices had no judicial experience when they were first nominated. Rather than being a product of the judicial monastery, Solicitor Kagan brings a real world perspective on the role of a justice, with a view to the practical contexts and implications of the Court's decisions. Solicitor Kagan's two decades of experience working in every branch of government exceptionally qualify her as an Associate Justice, and as one of the top legal thinkers in the country.

My conservative colleagues have also criticized Solicitor Kagan's enforcement of Harvard Law School's anti-discrimination policy. Solicitor Kagan did not assert her own personal agenda and oppose military recruitment on campus, as several of my colleagues have alleged. Instead, as Dean, Kagan was charged with enforcing an anti-discrimination policy in effect at Harvard since 1979 that prevented organizations discriminating against selected individuals from recruiting through the school's office of career services. Kagan's enforcement of this policy was consistent with her predecessors, Dean Robert Clark and Harvard President Larry Summers. However, Kagan ensured that military recruiters still had access to students. Kagan noted, ''[M]ilitary recruiters had access to Harvard students every single day I was dean . . . I'm confident that the military had access to our students and our students had access to the military throughout my entire deanship.'' Solicitor Kagan's work to ensure student access demonstrates her support of our military and her encouragement of the brightest students' involvement in our Armed Services.

Solicitor's Kagan's widespread support is a testament to her impact on not only her colleagues and peers, but also upon a large number of those in the legal profession. The American Bar Association, after conducting an investigation over several weeks that included peer reviews, concluded that Solicitor Kagan merited its highest rating of unanimously ''well qualified.'' To merit the Committee's rating of ''well qualified,'' a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence, and judicial temperament.

In addition, Solicitor Kagan has received support from Democrats and Republicans and a range of civil rights, non-profit, and advocacy organizations, including the National Women's Law Center, the National Partnership for Women and Families, Earthjustice, the American Bar Association, the Alliance for Justice, the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund, the National Association of Women Judges, the Hispanic Bar Association, the Service Employees International Union (SEIU), and the Leadership Conference on Civil and Human Rights (LCCR). Solicitor Kagan is also endorsed by her colleagues in academia, and a group of over sixty-nine law school deans across the country expressed their written support for her nomination to the Senate Judiciary Committee in a June 15, 2010 letter. Her supporters also include her former students, including one, a former law clerk to Justice Antonin Scalia, who called Solicitor Kagan, ''a person of utmost integrity, extraordinary legal talent and relentless generosity.''

Solicitor Kagan's intellectual aptitude and commitment to justice was demonstrated early in her life. She was born in New York City, NY, the daughter of a school teacher and a public

housing lawyer. She graduated from Princeton University, received a Masters in Philosophy from Worcestor College of Oxford University, and received her law degree magna cum laude from Harvard Law School. She then clerked for Justice Thurgood Marshall, was an associate with Williams & Connolly, and then counsel to President Clinton, as Associate Counsel, Deputy Assistant to the President for Domestic Policy, and Deputy Director for the Domestic Policy Counsel. She led the Clinton administration's inter-agency effort to analyze all legal and regulatory aspects of the Attorney General's tobacco settlement and then participated actively in the development and congressional consideration of tobacco legislation. She also handled legislative issues involving constitutional issues, including separation of powers, governmental privileges, freedom of expression, and church-state relations.

As Dean of Harvard Law School, she joined other deans in opposing an amendment to strip the courts of the power to review detention practices, treatment and adjudications of guilt and punishment for detainees at Guantanamo Bay, Cuba. This reflects a fair view, with an eye to checks and balances on different branches of government.

In her first case as Solicitor General, Solicitor Kagan argued before the Supreme Court on behalf of the government in the Citizens United v. FEC case. As Solicitor Kagan notes, however, her role as Solicitor General was to argue on behalf of the country, not to advance her personal beliefs.

In my meeting with her, Solicitor Kagan confirmed her commitment to protecting the right to privacy enshrined in our Constitution. I believe she will preserve that right.

Solicitor Kagan is uniquely qualified to serve as Associate Justice because she not only possesses an impressive intellectual capacity and commitment to fairness, but also because she is committed equal justice. As she remarked in her opening statement, ''Equal Justice under the Law. It means that everyone who comes before the Court—regardless of wealth or power or station—receives the same process and the same protections . . .''

Solicitor Kagan demonstrates a readiness to serve on our Nation's Highest Court and I am confident that she will make a fine justice who will not only uphold the Constitution and legal precedent of the country, but continue to preserve one of the most treasured tenets of our legal system, equal access to justice for all Americans.

Mr. LEVIN. Mr. President, earlier this week I spoke on the Senate floor, calling for the confirmation of Solicitor General Elena Kagan to the position of Associate Justice of the Supreme Court. I added my voice to a chorus of bipartisan praise for her qualifications and abilities to be a Supreme Court Justice, joining supporters such as Miguel Estrada, Assistant Solicitor General in the George H.W. Bush administration; former Solicitors General Kenneth Starr and Drew S. Days and a number of my Republican colleagues, including Senator LINDSEY GRAHAM and Senator JUDD GREGG. These voices across the political spectrum recognize Elena Kagan's years of practical, pragmatic experience, and value, in the words of Professor Michael McConnell, director of the Constitutional Law Center at Stanford Law School, her ''fidelity to legal principle even when it means crossing her political and ideological allies.''

Despite her abilities and her tremendous legal career, Solicitor General Kagan continues to be the subject of baseless attacks. For instance, the National Rifle Association, NRA, has taken out full page advertisements in multiple newspapers and has aired national television commercials claiming Elena Kagan is unfit for the Supreme Court because of her supposed opposition to the second amendment rights of Americans. The NRA's charges are unfounded and are refuted by the nominee's own words during her confirmation hearing before the Senate Judiciary Committee.

For example, in regard to the Supreme Court's 2008 Heller decision, which ruled that the second amendment protects an individual's right to possess a firearm for private self-defense purposes in a Federal enclave, and the Supreme Court's recent McDonald decision, which applied the Heller holding to the States, the NRA has said that Solicitor General Kagan has left unanswered ''very serious questions of whether she would vote to overturn Heller and McDonald.'' Perhaps the NRA lobbyists were not watching her confirmation hearing when she replied to a question from Senator TOM COBURN saying, ''I very much appreciate how deeply important the right to bear arms is to millions and millions of Americans. And I accept Heller which made clear that the second amendment conferred that right upon individuals, and not simply collectively.'' In addition, in response to a related question from Senator CHARLES GRASSLEY, Solicitor General Kagan said ''those decisions are settled law . . . I will follow stare decisis with respect to Heller and McDonald as I would with any case.''

It seems pretty clear, contrary to the NRA's claims, that Solicitor Kagan has answered questions concerning her position on the second amendment rights of Americans, and she will defend those rights.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask unanimous consent that there now be 1 hour remaining for debate with respect to the Kagan nomination for the U.S. Supreme Court, with 15-minute blocks controlled as follows: Senator SESSIONS, Chairman LEAHY, Leader MCCONNELL, and Senator REID of Nevada; that upon the use of the allotted hour, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid on the table, the President be immediately notified of Senate's action, and the Senate then resume legislative session. Further, I ask that when Members cast a vote on the nomination, they do so from their seats.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Will the Chair withhold please, Mr. President.

You have heard my request. What is the ruling of the Chair?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, at 3:30 today we will vote on the nomination of Elena Kagan to be an Associate Justice on the Supreme Court.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, in the midst of President Johnson's ''Great Society,'' Ronald Reagan explained that our Nation had arrived at a crossroads, at a time for choosing.

The choice, Reagan explained, was ''whether we believe in our capacity for self-government or whether we abandon the American Revolution and confess that a little intellectual elite in a far-distant capital can plan our lives for us better than we can plan it for ourselves.''

Forty years later, our Nation once again finds itself at a crossroads. Government is getting larger and larger. Spending is out of control, and a little intellectual elite, in a far distant capital, is trying harder than ever to plan the lives of the American people. Even basic choices about how we care for our own health are now made by career bureaucrats whose names Americans will never hear and whose faces they will never see.

Our Nation has a choice to make. We either restore or relinquish our great heritage of limited constitutional government. Part of that choice will be made here today. Part of that choice will be made as we consider the nomination of Elena Kagan to the Supreme Court. In recent years, the progressive wing of the Supreme Court has offered opinions that would have denied Americans their right to keep and bear arms, and severely diminish the right to free speech during election time.

These same progressive Justices succeeded only a short time ago in ruling that a citizen's property could be seized by the State for private commercial development. These Justices are ignoring the text of our Constitution, the plain rights guaranteed by our Constitution, in order to advance what

they think are better ideas, their vision, their political agendas, frankly.

This progressive, activist judicial philosophy strikes at the heart of our democracy and is a direct threat to our liberty. Judges are lifetime appointed. They are not accountable to the people. President Obama himself has said that judges must shed their neutral constitutional role and impose upon the nation ''their broader vision of what America should be.'' That is how he said he would pick judges, and this is certainly the kind of judge President Obama believes he has found in Ms. Kagan, someone who shares his progressive, elitist vision and is willing to advance it from the bench.

Indeed, throughout Ms. Kagan's career, she has been more deeply involved in politics than law, and has frequently put her politics above law. She has never been a judge, never argued even a case before a jury. She has practiced law for 3 years. She has less real legal experience than any nominee in the last half century.

The experience Ms. Kagan does have, however, is mostly that of a political lawyer and a policy advocate, and whenever her political views have clashed with her legal obligations, her vision of what America should be and not her duty have too often won the day.

As a Supreme Court clerk she pursued a progressive agenda without regard to the Constitution's text or history. She even wrote she was not sympathetic to an American's constitutional right to keep and bear arms. As a top aide to President Clinton she was closely involved in efforts to restrict private gun ownership, including a plan to block firearm importation into our country that one Clinton official admitted was ''taking the law and bending it as far as we can.''

She also worked aggressively to ensure the wide availability of partial-birth abortion. Instead of providing President Clinton with sound legal advice based on the best medical evidence, she pushed the President away from his moderate position, and away from his willingness to reach a compromise on this issue. She even helped revise a medical statement to imply a medical need for the gruesome partial-birth abortion procedure that did not exist, when the expert panel had indeed said it was never an appropriate procedure.

Next, as dean of Harvard Law, Ms. Kagan would once again sacrifice legal principle for political gain for advancement of an agenda she believed in. Ms. Kagan inherited a policy of equal and unfettered access for military recruiters on campus. That was the policy. But she reversed this policy, kicking the military out of the campus recruitment office as our troops at that very time were risking their lives overseas. She did this in clear, knowing violation of Federal law, the Solomon amendment. The Solomon amendment, passed by this Congress four times, requires unrestricted, equal access on campuses for military recruiters. Ms. Kagan knew what the law said, and as she herself admitted, knew that it was in force every single day she was dean. But she put her own views, her political ideas, her ideologies above the law and above the best interests of our soldiers, stripping the military of their official access availability on campus.

Ms. Kagan justified this conduct by saying she was objecting to don't ask, don't tell. That statute, however, was passed by Congress and implemented by President Clinton, her former boss. But instead of complaining to the politicians who made the rule, to those of us in Congress who were involved in passing it and maintaining it, working within the democratic system, Ms. Kagan took it upon herself to defy the law and to demean the people who were merely following the law, our noble men and women who serve our country.

Perhaps some of those on that campus recruiting had just come off the battlefield, having served their country, placing their lives at risk. For that there can be no justification.

After Harvard, Ms. Kagan assumed the post of Solicitor General of the United States. In that job it is her sworn duty to defend all Federal laws, including those she may personally oppose. These are the laws of Congress which the Solicitor General must defend. As every good lawyer knows, her job is to represent her clients, and the client of the Solicitor General is the United States of America.

Did she fulfill that duty? Did she faithfully represent her client? No, she did not. When the liberal Ninth Circuit issued a deeply flawed ruling against don't ask, don't tell, the law Ms. Kagan had so strongly opposed at Harvard, she did not appeal the ruling, despite great chances of success on appeal to the Supreme Court. Instead, she did exactly what the ACLU, the group who was leading the fight in representing the individual in that lawsuit, who opposed the statute and wanted it stricken, she did what they desired and let the ruling stand, and missed the opportunity to get a clear appeal. This was a test of Ms. Kagan's legal character, and she failed that test. I studied the case closely. I want to be fair to her about that.

The only explanation for her not appealing to the Supreme Court was that she did not want them to uphold the statute to win a victory for the United States. In short, she did not fulfill her duty. Her duty. Is that a word that is out of fashion today? And she did not live up to her explicit, sworn promise made to this Senate, to vigorously defend that very statute, when she was confirmed to be Solicitor General.

Given this record, it is not surprising that Ms. Kagan's judicial heroes are activists who reject and repudiate sometimes even the very idea of objectivity. But it is objectivity, the search for what is right and true, that makes our system of justice so extraordinary and so unique. The whole goal of our trials is to find the truth. These concerns were addressed during the hearing. Ms. Kagan was given every opportunity to respond. But she opted, I thought, for political spin at the expense of rigorous honesty and accuracy. In so doing, she only further demonstrated she lacked the qualities necessary to sit on the Court. Other Senators have the same impression of that testimony.

Some have said that Senators are opposing this nomination for partisan reasons, that her qualifications are not in question. But what qualification is more essential for the Supreme Court than impartial fidelity to the law? This is not an ideological litmus test but a core bipartisan standard to which any nominee of any party ought to be held.

Senators can and will disagree on the question of how much deference a President is due in his nomination. But surely that deference cannot extend so far as to include a nominee who is unable to serve under the Constitution as they take an oath to do.

The American people will not easily forgive the Senate if we confirm Ms. Kagan to the Supreme Court. They will not forgive the Senate if we further expose our Constitution to revision and rewrite by judicial fiat, to advance what President Obama says is a broader vision of what America should be. That is the Congressional role, not the judicial role, to figure out what the vision and the policy of this country should be.

Now more than ever we need this Court to be an impartial defender of our constitutional liberty. As Vice President BIDEN's own chief of staff and close friend of Ms. Kagan emphatically said, ''Ms. Kagan is clearly a legal progressive.'' If confirmed, I fear she will continue putting her politics above the law, as she has so often done before. So I invited those who supported this nomination to refute the record and the analysis I have stated over the several past weeks, but I do not think one error has been raised and identified by Ms. Kagan's supporters in what I have said.

So we are left with the same concern, that Ms. Kagan would ally herself not with the constitutional liberties of all Americans but with the big government agenda of the President who nominated her. In fact, at the hearing, Ms. Kagan was unable to identify any limits on the government's power to control America's economic decisions. What Ms. Kagan perhaps fails to realize is that the people should control their government, not the other way around.

That is why no Supreme Court Justice should simply rubberstamp any political agenda of a President or Congress, nor should any Senator. Our liberties are far more precious than any partisan allegiance.

After the Constitution was drafted, Benjamin Franklin was asked what kind of government had been created. Franklin replied: A republic, if you can keep it. Again, the choice is ours. Either we embrace our great, magnificent

constitutional heritage that I love so much or we let it slip away to judges who believe they can allow their own personal core beliefs and philosophies to help them decide how a case should go. Either we move forward more secure in our freedom or we fall back to the old bankrupt idea of big government—an idea that has failed at every place, every time it has been tried.

Let's take a step today in the right direction. Let's listen to the American people and strengthen our commitment to constitutional values. It is that commitment that impels me to vote against this nomination and why I urge my colleagues in both parties to do the same.

I see the chairman of the committee, Senator LEAHY. He and I don't agree on this nomination, but he is a proven professional chairman. He has gone through a host of these nominations. He is tough, but he is fair. He let us have our say. I thank the chairman for the privilege of working with him on this important constitutional effort.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the Senator from Alabama for his kind words. We both set out with the goal of making sure the United States had a chance to hear this nomination, to hear the debate on it, and to have Senators speak. We both decided before the debate that would happen, and it has. I thank the Senator from Alabama.

We are about to conclude debate on the nomination of Elena Kagan to be Associate Justice of the U.S. Supreme Court. This is the time when the 100 of us stand in the footsteps of 300 million Americans and make the decision whether she will be confirmed to a lifetime appointment. I predict right now she will be confirmed and I look forward to her bipartisan confirmation.

She has been nominated to succeed Justice John Paul Stevens, someone who served with integrity for so many years, a man I consider a friend. Her qualifications, intelligence, temperament, and judgment will make her a worthy successor to Justice John Paul Stevens.

When she is appointed by the President after we confirm her, three women will serve together on the Supreme Court of the United States for the first time in our Nation's history, three women on the nine-member Supreme Court. As I said 5½ weeks ago, when the Judiciary Committee began Solicitor General Kagan's confirmation hearing, we are a better country for the fact that the path of excellence Elena Kagan has taken in her career is one now open for both men and women. I look forward to the day when I see many more women on that Court.

Solicitor General Kagan's legal qualifications are unassailable. She earned her place at the top of the legal profession. No one gave it to her; she earned it. As a student, she excelled at Princeton, Oxford and Harvard Law School. She was a law clerk to a giant in American justice and American law, Justice Thurgood Marshall. She worked for then-Chairman BIDEN on the Judiciary Committee. These experiences, combined with her work as an advisor to President Clinton, give her background in all three branches of our government. She also taught law at two of the Nation's most respected law schools. In the decade since the Republican Senate majority pocket-filibustered her nomination to the DC Circuit—remember, when people say she does not have judicial experience, of course, Republicans did block her from going on the court—Elena Kagan became the first woman dean of Harvard Law School and then the first woman Solicitor General of the United States, often referred to as the 10th Justice.

The 100 of us who serve in the U.S. Senate stand in the shoes of more than 300 million Americans as we discharge this constitutional duty to consider nominations to our Nation's Federal courts. We will conclude our consideration of this nomination after 12 weeks. If we can do that for a Supreme Court nomination, we ought to be able to consider the other judicial nominations that have been stalled for months after being favorably reported by the Judiciary Committee.

This is the 15th time since I have been in the Senate that I have been able to consider a Supreme Court nomination. I have applied the same standards to this nomination as I have to the ones that preceded it. I looked to see whether Solicitor General Kagan would fairly apply the law and use common sense. That is the same standard I used on the first Supreme Court Justice I voted on, a man from Chicago, Justice John Paul Stevens, nominated by a Republican President. I proudly voted for him. For Solicitor General Kagan, I looked to see whether, as a Justice, she would appreciate the proper role of the courts in our democracy. Would she be the kind of independent Justice who would keep faith with each of the words inscribed in Vermont marble over the front doors to the Supreme Court: ''Equal justice under law.'' My answer to these questions, based on her record and testimony, is a resounding yes.

Solicitor General Kagan demonstrated an impressive knowledge of the law and fidelity to it. She spoke of judicial restraint and respect for our democratic institutions, her commitment to the Constitution and the rule of law. She made clear that she will base her approach to deciding cases on the law and the Constitution, not politics or an ideological agenda. So today I will cast my vote for Elena Kagan's confirmation.

I observed at the outset of this confirmation process that there was no one President Obama could nominate who would not be opposed by some. Some Senators announced their opposition to Solicitor General Kagan's nomination even before a hearing took place. The opening statement of others at the Judiciary Committee hearings struck me more like prosecutors' closing arguments. Senators who last year disregarded Justice Sotomayor's years of judicial service to focus on a few phrases taken out of context from her speeches reversed their course this year to proclaim that an extensive judicial record is imperative. Standards shift almost every time. They then faulted Solicitor General Kagan for not having been a judge, while ignoring the fact that it was Senate Republicans who pocket-filibustered her judicial nomination more than 10 years ago.

Senators can make their own judgments, and they have. I ask of them only two things: Fairly consider Solicitor General Kagan's testimony and adhere to the standards of fairness and objectivity that you are demanding of her as a Justice. History will judge whether Senators have fairly considered the nomination of Solicitor General Kagan. I commend those Senators who have shown the independence to join the bipartisan confirmation of this nomination.

I also defend the right of every Senator to vote as he or she chooses. I understand that some statements made in opposition to this nomination were seen as insulting to the nominee and to others. I disagree with the many inferences, conclusions and judgments expressed in opposition, but I do not think Senators intended their remarks to be disparaging.

Five years ago, I followed the Democratic leader's statement in opposition to the nomination of John Roberts with my statement in favor of that nomination. That was my judgment based on the record and his testimony, including his pronouncements on judicial restraint, deference to Congress, and respect for precedent. At the time, Senators on the Democratic side of the aisle—a number of them—disagreed with me, including one Senator who disagreed with me but, nevertheless, came to the floor to defend my position. That Senator was the then-junior Senator from Illinois. Of course, he now serves as President of the United States. As I told President Obama the other day, his defense of me meant a lot then, and 5 years later, it still does.

In the course of our consideration of this nomination, I have spoken several times about the key role real world judging and judicial independence have played in furthering the Constitution's purpose of forming a more perfect union. It is essential that judicial nominees understand that, as judges, they are not members of any administration. I believe Solicitor General Kagan has that understanding. Courts are not subsidiaries of any political party or interest group, and our judges should not be partisans. That is why the Supreme Court's intervention in the 2000 Presidential election in Bush v. Gore was so jarring and why the recent decision by five conservative activist Justices in Citizens United to

throw out 100 years of legal developments in order to invite massive corporate spending on elections for the first time in 100 years was such a jolt to the system.

It is also essential that judges and Justices understand how the law affects Americans each and every day. I expect Elena Kagan learned early on in her legal career, when she clerked for Justice Marshall, that Justices ought to understand how their decisions affect real Americans. In the hard cases that come before the Supreme Court, in the real world, we want and need Justices who have the good sense to appreciate the real world ramifications of their decisions. The American people live in the real world of great challenges. The Supreme Court needs to function in that real world.

It took a Supreme Court that, in 1954, understood the real world to conclude in Brown v. Board of Education that the seemingly fair sounding doctrine of separate but equal was in reality a straitjacket of inequality and inconsistent with the constitutional guarantee of equality. It took a Supreme Court 75 years ago that understood the real world and the Great Depression to reject conservative judicial activism to accept the constitutional authority of Congress to outlaw child labor, to guarantee a minimum wage, and to establish a social safety net for all Americans. Through Social Security, Medicare and Medicaid, Congress ensured that growing old no longer means growing poor and that being older or poor no longer means being without medical care. That progress continues today with our efforts to pass laws to ensure protection from natural and manmade disasters, to encourage clean air and water, to provide health care for all Americans, to ensure safe food and drugs, to protect equal rights, to enforce safe workplaces and provide a safety net for seniors.

Vermont did not vote to join the Union until the year the Bill of Rights was ratified. Those of us from the Green Mountain State are protective of our fundamental liberties. Vermonters understand the importance the Constitution, including the Bill of Rights and the subsequent constitutional amendments have had in expanding individual liberties over the last 220 years. I believe Solicitor General Kagan shares this understanding. As she said in her opening statement at the hearing:

> What the rule of law does is nothing less than to secure for each of us what our Constitution calls ''the blessings of liberty''—those rights and freedoms, that promise of equality, that have defined this nation since its founding.

All of us are better for our historic progress to greater freedom, equality, and security.

Every February, the Senate hears President George Washington's Farewell Address. It is usually read by the Senate's most junior Member. In that pronouncement by our first President, George Washington warns against the danger of factions, partisanship, and what he called ''the spirit of party,'' noting:

> [T]he common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.
>
> It serves always to distract the Public Councils, and enfeeble the Public Administration. It agitates the Community with ill-founded jealousies and public alarms; kindles the animosity of one part against another, foments occasionally riot and insurrection.

That was George Washington, a long time ago. But today our Nation faces many challenges. It is a time when we should be pulling together and working together. Instead, we have seen too much obstruction, negativity, and devotion to the failure of the other party instead of the success of the country.

The nomination of Solicitor General Elena Kagan is a matter on which I expect the President had hoped we would come together. Her nomination really is one worthy of broad bipartisan support.

With Elena Kagan's confirmation, the Supreme Court will better reflect the diversity that has made our country so great. We will write another chapter in the history of our Nation's highest Court. And we will take another step forward in fulfilling the hopes and dreams of the trailblazers who set the path for Elena Kagan to follow.

I will proudly vote for her confirmation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I would like to express my appreciation to my staff who worked tirelessly during these past few months on this nomination. They spent many long hours combing through and distilling information in hundreds of thousands of documents provided by Solicitor General Kagan, the Clinton Library and the Pentagon. On a short timeline, my staff worked around the clock to prepare for the hearing before the Judiciary Committee, which occurred merely 49 days after President Obama announced Solicitor General Kagan's nomination to the Supreme Court. Because of their hard work and dedication, our members were well-prepared and well-informed, which allowed us to conduct a fair and thorough hearing.

Mr. President, I would like to thank my staff and Senator LEAHY's staff, the Judiciary Committee staff, for their fine work during this nomination process. It has gone on for a number of weeks, and it has been very stressful, with a lot of late nights, and people really have worked hard. I believe that has provided us with good and accurate information.

I particularly would like to express my appreciation to my staff director, Brian Benczkowski, on whom I have relied repeatedly through this process, for his good judgment and wise counsel, his integrity and experience as we have dealt with this difficult challenge. I would also note my chief counsel for nominations, Danielle Cutrona, who has also worked exceedingly hard, as well as my deputy staff director, Matt Miner.

I would like to acknowledge and thank the other hard-working and talented lawyers on my permanent staff who worked on this nomination, including William Smith, Ted Lehman, Bill Hall, Mark Patton, John Ellis, and Kimberly Kilpatrick.

I would also like to extend my appreciation to the talented lawyers who joined my staff as Special Counsels specifically to work on this nomination, including Ralph Johnson, Jason Tompkins, and Susanna Dokupil. And I would be remiss if I did not mention the efforts of our Law Clerks, two of whom dedicated their time while studying for the bar exam, including Amanda Lavis, Ed Liva, and Taylor-Lee Wickersham.

I would also like to acknowledge our dedicated support staff: Lauren Pastarnack, Sarah Thompson, Andrew Bennion, Allison Busbee, Kate Laborde, and Ivy Williams.

Finally, I cannot overstate the important work done by our press team. My Communications Director Stephen Boyd, Press Secretaries Sarah Haley and Stephen Miller, and Press Assistant Andrew Logan have worked tirelessly throughout this process.

All of these individuals shouldered the brunt of this enormous task, working late hours and through weekends and holidays. They deserve our recognition for their hard work, professionalism, and dedication to public service.

I would also like to thank the other talented lawyers on my staff who, among others I have just mentioned, handled the regular legislative business that came before the Judiciary Committee during this process: Joe Matal, Bradley Hayes, and Sam Ramer.

And let me express my gratitude to the Republican Leader and his staff, specifically John Abegg, Josh Holmes, and Webber Steinhoff; along with Republican Policy Committee Counsel Gregg Nunziata who provided invaluable assistance to my staff.

I'd also like to express my thanks to Chairman LEAHY for his work on this nomination. We didn't always agree on everything, but he was respectful of Republicans' rights during this process and he conducted a fair and thorough hearing. He would not have been able to do that without the help of his staff, including his Staff Director and Chief Counsel Bruce Cohen and his Chief Nominations Counsel Jeremy Paris.

Finally, I would like to thank the Judiciary Committee's Chief Clerk,

Roslyne Turner and her assistant, Erin O'Neill.

Every one of these talented staff members contributed to this process, and their dedication and hard work helped us conduct a fair and thorough hearing. I extend my heartfelt thanks to each of them. We could not have fulfilled our Constitutional duty of Advice and Consent without them.

Mr. President, there are in the hearing nine letters in opposition to the nomination of Elena Kagan to be Associate Justice of the Supreme Court from Gonzalo Vergara, Lt. Col., USAF (Ret); the Judicial Action Group; National Right to Life Committee; Military Families United; the Liberty Counsel; The Ethics & Religious Liberty Commission of the Southern Baptist Convention; the American Association of Christian Schools; the Center for Military Readiness; and the National Rifle Association of America.

I ask unanimous consent to have printed in the RECORD four letters from the National Right to Work Committee; the American Conservative Union; C. Everett Koop, former U.S. Surgeon General, and the Ethics & Religious Liberty Commission of the Southern Baptist Convention.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL RIGHT TO WORK COMMITTEE,
Springfield, VA, July 1, 2010.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the over 2.6 million members of the National Right to Work Committee, I strongly urge you to vote against confirmation of Elena Kagan for a lifetime seat on the United States Supreme Court. Her record as an high-level White House advisor to President William Jefferson Clinton demonstrates that her views about the First-Amendment and statutory rights of American workers are far outside the judicial mainstream.

In 1976, in Abood v. Detroit Board of Education, a case in which National Right to Work Legal Defense Foundation attorneys represented the plaintiff, public school teachers, the U.S. Supreme Court considered whether nonunion public employees can constitutionally be compelled as a condition of employment to subsidize their union monopoly bargaining agent's political activities. The Court, unanimously, held ''that a State cannot constitutionally compel public employees to contribute to union political activities which they oppose.''

The First-Amendment right of workers not to be forced to subsidize union politics, first recognized in Abood, has been reaffirmed by the Supreme Court in several subsequent cases brought to the Court for workers by National Right to Work Legal Defense Foundation attorneys, cases such as Ellis v. Railway Clerks (1984), Teachers Local 1 v. Hudson (1986), Lehnert v. Ferris Faculty Ass'n (1991), and Davenport v. Washington Education Ass'n (2007).

The Court's Abood ruling relied on the principle underlying the Supreme Court's 1976 decision about the Federal Election Campaign Act in Buckley v. Valeo, that ''contributing to an organization for the purpose of spreading a political message is protected by the First Amendment.'' The Court has reiterated that principle repeatedly, and relied upon it again as recently as this year in Citizens United v. Federal Election Commission.

However, in 1996, when she was Associate Counsel to President Clinton, Ms. Kagan rejected this long, unbroken line of Supreme Court precedent that protects the First-Amendment right of public employees—and of Americans generally—not to be compelled by government to subsidize political activities of private, voluntary associations.

In an e-mail message on October 31, 1996, to Paul J. Weinstein, Jr., Chief of Staff of the White House Domestic Policy Council, Ms. Kagan said (emphasis added):

It is unfortunately true that almost any meaningful campaign finance reform proposal raises constitutional issues. This is a result of the Supreme Court's view—which I believe to be mistaken in many cases—that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems . . . I also think the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment entails a right to throw money at the political system.

In her Senate Judiciary Committee testimony on June 29, 2010, Ms. Kagan claimed in answer to a question from Senator Orrin Hatch that these were merely the Clinton Administration's, not her personal, views.

However, later, on October 31, 1996, Ms. Kagan was one of several White House staff members whose memorandum recommending how the White House should respond to questions about President Clinton's ''Campaign Finance Reform Announcement'' was transmitted to White House Chief of Staff Leon Panetta. That memo from Ms. Kagan and others incorporated Ms. Kagan's argument that the First Amendment does not protect the right to spend money for political activities. In short, in 1996 Ms. Kagan both suggested and endorsed that crabbed view of the. First Amendment.

Thus, Ms. Kagan's testimony this week before the Senate Judiciary Committee clearly is disingenuous. It is reasonable to conclude from her record that, if confirmed, Ms. Kagan would be willing to overrule Abood's well-established protection of the constitutional right of workers not to be forced to subsidize union politics.

This conclusion is supported by other documents the Clinton Presidential Library recently produced for the Senate Judiciary Committee in preparation for its hearings on Ms. Kagan's Supreme Court nomination.

On November 14, 1996, Ms. Kagan sent a memorandum on White House stationery to then White House Counsel Jack Quinn and then Deputy White House Counsel Kathleen Wallman about a draft ''memo to the President on campaign finance.'' In her memo, Ms. Kagan said:

The memo does not address what seems to me the key issue in developing a strategy on campaign finance legislation: how to deal with Republican efforts to restrict labor union spending. I think the Republicans will insist on including in any campaign finance legislation a provision making it difficult for unions to use money from compulsory union dues in political campaigns. . . . We should start thinking now how we're going to deal with this Republican poison pill.

In 1988, of course, in Communications Workers v. Beck, yet another case in which National Right to Work Legal Defense Foundation attorneys represented the plaintiff workers, the Supreme Court had already held that the National Labor Relations Act—like the First Amendment—prohibits unions from using compulsory union dues of objecting workers in political campaigns. Thus, any provision that would make ''it more difficult for unions to use money from compulsory union dues in political campaigns'' would simply protect a constitutional and statutory right of workers recognized by the Court in the Abood line of cases and in Beck.

Ms. Kagan nonetheless subsequently recommended that President Clinton oppose any legislation protecting the right of workers not to be forced to subsidize union politics, despite the First Amendment's guarantee of that basic worker freedom of speech and association.

On February 12, 1997, Kathleen Wallman, then Deputy Assistant to the President for Economic Policy, circulated an 11:30 a.m. draft memorandum for the President on possible policy announcements of labor issues that the Vice President could make at a meeting of the AFL–CIO's Executive Committee later that month. The draft indicates that Ms. Kagan, by then Deputy Assistant to the President for Domestic Policy, was writing two sections of the memo that were not included in the draft. One of those sections that Ms. Kagan ''agreed to draft'' concerned the Administration's ''[p]osition on Beck legislation aimed at limiting the use of union dues in political activity.''

Later that same day, Ms. Kagan e-mailed Ms. Wallman her recommendation about ''legislation aimed at limiting the use of union dues in political activity'' (italics added): John Hilley [Director of Legislative Affairs], Bruce Reed [Director of the Domestic Policy Council], and I all recommend that you state strong opposition to Beck legislation, no matter what it is attached to.''

In sum, as a high-level White House official Ms. Kagan both disagreed with the well-established legal principle that underlies the long line of Supreme Court decisions recognizing the constitutional right of workers not to be compelled to subsidize union political activities as a condition of employment and opposed any legislation designed to protect that fundamental right of free speech and free association. This puts her far outside the judicial mainstream and demonstrates a disdain for the rights of independent-minded American workers.

Consequently, on behalf of the National Right to Work Committee's over 2.6 million members, I strongly urge you to vote NO on confirmation of Ms. Kagan's nomination to the Supreme Court.

Respectfully,

MARK A. MIX.

DEAR SENATOR: On behalf of the American Conservative Union, I strongly urge you to vote ''NO'' on the confirmation of Elena Kagan to the U.S. Supreme Court.

Elena Kagan's entire career is more suited to that of a political activist than a legal scholar, as she has been described by President Obama and as she described herself in her testimony. Kagan began public life as a political operative for the U.S. Senate campaign of Elizabeth Holtzman of New York in 1980. The documents produced for the Judiciary Committee show that, as a member of the Clinton Administration's Justice Department, Kagan's primary role was to develop political strategy in dealing with the Congress on legal issues. A good example of this is when the issue of partial birth abortion came before the Senate during the Clinton administration. At this time Kagan proceeded to negotiate changes to a statement by the American Council of Obstetricians and Gynecologists (ACOG) that said there were no serious medical reasons for conducting a partial birth abortion. Kagan's involvement made it more difficult for the Senate to pass a ban on partial birth abortion. This example clearly displays that Kagan is more of a political operative than a legal scholar.

Another serious impediment to Kagan's nomination is her deep involvement as the Obama Administration's Solicitor General on issues that will continue to come before the Supreme Court. This may mean that Kagan will or should have to recuse herself from key decisions of the court. As outlined in a letter from Republican members of the Committee on July 13 to Kagan, there is even a question as to whether recusal will be an issue when the constitutionality of the recently passed health care bill comes before the court.

Kagan has also shown herself willing to ignore the law for political purposes. As Dean of the Harvard Law School, Kagan banned military recruiters on campus in violation of the Solomon Act to satisfy campus activists. Her actions were voided by a unanimous 8–0 decision of the very court on which she has been nominated to serve.

Although through the mid-twentieth century, court appointments of politicians were sometimes made to satisfy political deals, such as the appointment of Earl Warren in the 1950s, in recent years judicial experience and legal background have been at the forefront of nominations. The nomination of Elena Kagan is more akin to President Lyndon Johnson's nomination of political crony Abe Fortas as Chief Justice, which had to be withdrawn.

It was President Obama, as a U.S. Senator, who changed the criteria for judges from minimum qualifications to judicial philosophy and more subjective criteria. The nomination of Elena Kagan is a blatant attempt to place on the court a political operative who will work as an advocate of Administration policies rather than look at rulings from an objective view of constitutionality. Please vote ''NO'' in the confirmation of Elena Kagan.

Sincerely,

LARRY HART,
Director of Government Relations, The American Conservative Union.

AN OPEN LETTER TO THE AMERICAN PEOPLE: For many years, before, during and after my service as surgeon general of the United States, I've been known for presenting my unvarnished opinion on medical matters, regardless of the views of political parties or outside influences. The time has come for me to do so again.

I was deeply disturbed to learn that Elena Kagan, the nominee for Supreme Court scheduled for a Senate committee vote next week, manipulated the medical policy statement on partial-birth abortion of a major medical organization, the American College of Obstetricians and Gynecologists (ACOG) in January 1997.

The problem for me, as a physician, is that she was willing to replace a medical statement with a political statement that was not supported by any existing medical data. During the partial-birth abortion debate in the 1990s, medical evidence was of paramount importance.

Ms. Kagan's amendment to the ACOG Policy Statement—that partial-birth abortion ''may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman''—had no basis in published medical studies or data. No published medical data supported her amendment in 1997, and none supports it today.

Indeed, there was, and is, no reliable medical data that partial-birth abortion is safe or safer than alternative medical procedures.

There are other medical options.

In my many decades of service as a medical doctor, I have never known of a case where partial-birth abortion was necessary in place of a more humane and ethical alternative. Not only have I never seen such a case, but I have never known of any physician who had to do a partial-birth abortion—nor have I ever met a physician who knew of anyone who had to perform one out of medical necessity. In fact, partial-birth abortion has risks of its own, and could injure a woman.

Medical science should not have been twisted in 1997 for political or legislative gains.

Ms. Kagan's political language, a direct result of the amendment she made to ACOG's Policy Statement, made its way into American jurisprudence and misled federal courts for the next decade.

She misrepresented not only the science but also misrepresented her role in front of your elected representatives in the United States Senate.

This is unethical, and it is disgraceful, especially for one who would be tasked with being a measured and fair-minded judge.

Americans United for Life Action has released a thorough and comprehensive report on this matter, a report that provides substantive evidence of Ms. Kagan's actions in this matter. I ask that Senators and the American people give this report their most serious consideration. I urge the Senate to reject the politization of medical science and vote no on the Kagan nomination.

Sincerely,

C. EVERETT KOOP, M.D., SC.D.,
Surgeon General of the United States Public Health Service, 1981–89.

THE ETHICS & RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION,
Washington, DC, July 20, 2010.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

Hon. JEFF SESSIONS,
Ranking Member, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On June 25, we sent you a letter expressing serious concerns about Elena Kagan's nomination as the next associate justice to the U.S. Supreme Court. As we stated, we have been alarmed about Kagan's lack of respect for the First Amendment's right to free speech, her admiration for extreme judicial activists, and her role in advancing pro-abortion policies. We also expressed our distress about Kagan's attempts, while dean of Harvard Law School, to bar military recruiters from campus because of her own personal views in opposition to the military's ''Don't Ask, Don't Tell'' policy. Unfortunately, these concerns remain.

During the Judiciary Committee's confirmation hearings, Kagan failed to satisfactorily clarify her actions and opinions. Many of her answers were confusing and unclear. She refused to respond to several key questions in an open and honest manner. She also avoided many issues altogether. Since Kagan has had no judicial experience and possesses limited experience as a practicing attorney, we were interested in learning about her judicial philosophy. However, we learned little about her beliefs and judicial views during the confirmation hearings. Rather than providing answers to our concerns, Kagan's responses have only raised more serious questions.

After careful consideration, we believe Elena Kagan is not a suitable nominee for the Supreme Court. She has evaded too many questions and her record is too obscure to confirm her to this lifetime appointment. Consequently, we urge you to vote against Kagan's confirmation to the Supreme Court.

Sincerely,

RICHARD D. LAND.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, let me begin by thanking the chairman and ranking member of the Judiciary Committee, Senator LEAHY and Senator SESSIONS, on conducting a dignified and respectful hearing on the Kagan nomination.

Let me just add that, in my view, the way Republicans on the Judiciary Committee have conducted themselves in the minority over the past few years underscores that the kind of hyperbole and hysteria that has too often accompanied the Supreme Court nominations of Republican Presidents is hardly an essential part of the process. The committee hearings gave Senators and the American people a valuable opportunity to focus our attention on a woman whom President Obama would like to see deciding cases on some of the most important and consequential issues we face as a country. Ms. Kagan will be ruling on some of the most important legal questions that arise during President Obama's administration and long after he leaves office. It was vitally important that we have an opportunity to question her on her views about the law. What we learned from the hearing and what we were unable to learn from it form an important part of the record on her nomination.

But this, of course, is just a part of Ms. Kagan's record. Senators have spent weeks examining Ms. Kagan's experience and background in light of the awesome responsibility that comes with a lifetime appointment on our Nation's highest Court. As I have said previously, my own judgment is that Ms. Kagan is not suited to assume a lifetime position on our Nation's highest Court. Now I would like to explain why in more detail.

As we know, Ms. Kagan does not have the judicial or private practice experience most modern-day Supreme Court Justices have had—far from it. This is relevant not because one has to have prior judicial experience in order to be a good Supreme Court Justice—that is not my view now, and it never has been—but the absence of judicial experience makes it all the more important that we look more closely at the kind of experience Ms. Kagan has, in fact, had. A review of Ms. Kagan's experience reveals a woman who has spent much or her adult life not steeped in the practice of law but in the art of politics.

When we look at her resume, we find a woman who has worked fervently to advance the goals of the Democratic Party and liberal causes, usually at the expense of those with whom she disagrees politically or ideologically. In college, she spent one summer working 14 hours a day for a liberal Democratic candidate for the U.S. Senate from New York. When her candidate lost, Ms.

Kagan wrote that it was her hope that one day a ''more leftist left will once again come to the fore.''

In fairness, few of us would want everything we said or wrote as college students put up on a billboard. But the trajectory of Ms. Kagan's career and the records from her time as a political advisor in the Clinton White House suggest someone, as one news story put it, who, long after college and even at the highest peaks of political influence, was ''driven and opinionated, with a flair for political tactics. . . .''

What else do we find in Ms. Kagan's resume?

Well, 8 years after that first Senate race, she volunteered for the Dukakis Presidential campaign, working as an opposition researcher to defend the then-Governor of Massachusetts from attacks and to look for ways to attack the Republican opposition. I note her job as an opposition researcher because it is part of a pattern of partisan political activity and because Democrats themselves have strongly questioned the impartiality of Republicans who have held this type of job.

As a Supreme Court law clerk, Ms. Kagan often inserted her own personal views into her legal advice. In one case, for example, she was dismissive of a man's second amendment claim because it was something that, in her words, she did not find to be ''sympathetic.''

Later, as an aide to President Clinton, she did not serve as an attorney but as a policy advocate, seeking legal advice rather than giving it. It was in this role that she helped lead a task force on changing the Nation's campaign finance laws and gleefully noted when one specific proposal would disadvantage Republicans. She also went out of her way to deter lawyers at the Justice Department from officially noting their serious constitutional concerns with a campaign finance proposal because it might complicate the pursuit of the Clinton administration's political goals.

It was also at the Clinton White House that she suggested turning a routine literacy event at a Maryland school into a chance to score political points against—you guessed it—Republicans. And it was there that she went to extraordinary lengths to prevent the enactment of a ban on partial-birth abortion, a procedure the vast majority of Americans strongly oppose.

From the Clinton administration, she went on to academia. She had strongly held views and acted upon them there as well. As dean of Harvard Law School, she refused to give our military, at all times, the full and good access to which they are entitled under Federal law. Indeed, she was so driven by her own personal views on this issue that she took a position in a case before the Supreme Court that was so legally dubious that not a single Justice agreed with it.

From Harvard, President Obama—her friend and former colleague at the University of Chicago Law School—selected her to be his Solicitor General. I, and the vast majority of my Republican colleagues, voted against her nomination to that position, given her lack of litigation experience. Indeed, Ms. Kagan made her first oral argument in any court, for any purpose, just last year in the Citizens United case. Having been in the courtroom myself that day, I heard her argue to an astonished Supreme Court that the power of the Federal Government is so vast it can ban political speech with which it disagrees, such as political pamphlets, despite the clear commands of the first amendment to the contrary.

So when we look at Elena Kagan's background, what we find again and again is someone who has worked tirelessly to advance a political agenda or ideology, often at the expense of the law.

Let's look for a moment at her relationship to the current administration.

We know the President and Ms. Kagan are former colleagues and friends. We know that the President views her as an important and loyal member of his team and that he was particularly pleased with her handling of the Citizens United case. And we know the President is confident that Ms. Kagan shares his view that judges should be judged especially on their ability to empathize with some over others—in other words, that she embraces the so-called empathy standard whereby judges act on, to quote the President, ''their broader vision of what America should be,'' which may or may not be what the law says is required. All of which brings us to the question of whether Ms. Kagan is suited to sit on the Supreme Court.

We do not have a judicial or private practice record to go to, but from the record we do have—that of a passionate policy advocate, a zealous political operative, and a loyal member of the Obama administration—the President picked precisely—precisely—the kind of judge he said he would. But is this the end of the inquiry? The President won the election. Ms. Kagan is bright. She has a good humor. Does the Constitution suggest that we therefore must assent to her nomination? Is that what the Founders envisioned?

Well, the Federalist Papers say two things that are particularly relevant here.

First, let's look at Federalist 76, which gives examples of specific disqualifiers for confirmation. The common theme for these disqualifiers is someone who is nominated not because of their objective qualifications but because of a personal connection to the Executive—be it friendship, family relationship, or a belief that they will exhibit a bias. It says the Senate's power to disapprove a nominee ''would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.'' That is Federalist 76.

Now let's look at Federalist 78, which talks about the role of the courts in our democracy and the proper philosophy for a judge. Here, Hamilton writes that courts may not ''substitute their own pleasure to the constitutional intentions of the legislature.'' He adds that their job must be to ''declare the sense of the law'' and that if, instead, they should exercise their ''WILL''—which he puts in all capital letters—''the consequence would be . . . the substitution of their pleasure to that of the legislative body.'' In other words, Hamilton was cautioning against judges so motivated by their own passions and sympathies that they would use their judicial power to implement, as President Obama puts it, ''their broader vision of'' what ought to be.

So while Hamilton, in Federalist 76, listed some of the reasons for disqualifying a nominee, this was clearly not an exhaustive list. Surely he did not lay out the critical qualification for a judge in Federalist 78 and then leave the Senate powerless to enforce it. Both papers must be read together, not in isolation, which brings us back to Ms. Kagan.

If you believe the role of a judge is to be an impartial arbiter, Ms. Kagan's background as a policy advocate and political lawyer—and oftentimes a very partisan one—cannot be ignored. Indeed, Members of both parties should appreciate the importance of confirming judges who are more interested in what the law says than in how the law can be used to advantage any one side.

As the chairman of the Judiciary Committee once put it:

> No one should vote for somebody that's going to be a political apparatchik for either the Democratic Party or the Republican Party.

If you believe the role of a judge is to be an impartial arbiter, Ms. Kagan's relationship to the President can't be ignored either. I think our friend, the senior Senator from Ohio, put his finger on what Federalist 76 was talking about in this regard. As he put it earlier this week:

> I would argue that General Kagan has been nominated based on her friendships and her personal attachments with President Obama and others at the White House, not based on objective qualities that would indicate she is qualified to be a Supreme Court Justice.

As for the empathy standard, well, empathy may be a very good quality in general, but in a court of law it is only good if you are lucky enough to be the guy the judge empathizes with. It is only good enough if you happen to share the judge's ''broader vision of what America ought to be,'' which is the exact opposite of what the author of Federalist 78 had in mind.

Let's say you are a pro-life group challenging a restriction on late-term abortion and you are appearing before a Justice Kagan. In light of the lengths

she went to in order to arrive at her preferred result on the subject of partial-birth abortion, do you think you are going to get a fair shake?

Let's say you think the government is infringing upon your second amendment rights. Given that she dismissively said she is not sympathetic to this sort of challenge, do you think she is going to apply the law or her own broader vision of how America should be?

Let's say you are a conservative nonprofit group that wants to publish a pamphlet or show a movie before an election. In other words, let's say you are a group such as Citizens United. Given her record of partisan advocacy, how do you think you are going to fare before her in that case?

Ms. Kagan has never made a secret of her professional aspirations. She has cultivated all the right friendships along the way, including the President of the United States. This is all well and good but, in my view, it strains credulity to think that Ms. Kagan's strong political views will be more constrained by the Constitution once she reaches her goal than they have been up until now.

Some of Ms. Kagan's supporters would like us to focus on her personality. They say she has a knack for making friends and getting along well with different kinds of people. Once again, these are all fine qualities. No one has any doubt that Ms. Kagan is bright and personable and easy to get along with. But the Supreme Court is not a social club. If getting along in polite society were enough reason to put someone on the Supreme Court, then we wouldn't need a confirmation process at all.

The goal was not to determine whether we think someone is smart and easy going; it is whether someone can be expected to be a neutral and independent arbiter of the law rather than a rubberstamp for this administration or for any other.

Whether it is small claims court or the Supreme Court, Americans expect politics to end at the courtroom door. Nothing in Elena Kagan's record suggests that her politics will stop there.

Ms. Kagan's background as a political operative, her lengthy resume of zealous advocacy for political and ideological causes, often at the expense of the law and those whose views differ from her own, her attachment to the President and his political and ideological goals, including his belief in the extraconstitutional notion that judges should favor some over others, make her precisely the kind of nominee, in my view, the Founders were concerned about and that Senators should have reason to oppose.

For these reasons, I will vote against the nominee, and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, the Republican leader and I recommend that Senators proceed to the Senate floor to cast their votes. We ask that Senators be seated when they cast their votes.

Decades before America's founding—when its direction was only roughly charted and its doctrines still in draft form—a lawyer from Massachusetts wrote that ours must be a nation of laws and not of men. That man, John Adams, knew that the rules and rights of a free land must withstand personal whims and political winds. It is a belief so basic Adams would later enshrine it in his State's constitution.

Today we will send to our highest Court another brilliant lawyer from Massachusetts, Elena Kagan, someone whose respect for the rule of law is matched only by her appreciation for those laws that concern the daily lives of the people they govern. The roots of General Kagan's respect for the rule of law are in her respect for our separation of powers. It is a reverence she developed during her service in all three branches of government, defending the first and second amendments, strengthening our national security, and protecting children's safety.

Wherever Elena Kagan has gone throughout her considerable career, she has succeeded. At Princeton and Oxford, at the law schools at Harvard and the University of Chicago and back to Harvard once again, in the private sector and in the highest levels of government, she has brought together people of every ideological stripe.

In recent weeks, we have again seen how effectively she impresses and unites those she meets. Look at the incredibly diverse array of people and organizations speaking in unison in favor of her nomination, including every Solicitor General, no matter the party, over the last quarter century. Now she is poised to join a Court whose power she respects as well as its limits. She understands that the laws are made only on this side of the street and only interpreted on the other side of the street.

Our Supreme Court promises equal justice for all who come before its bench. We must also fulfill the promise of greater equality among those who sit behind the bench.

Although the Founders did not want ours to be a government of men, for a long time men were the only ones running it. The most qualified women were turned away—turned away—one after another. Justice O'Connor graduated third in her law school class at Stanford, one of the premier law schools in this country, while others her age were just finishing college. The only job offer she got after graduating third in her class was a job as a legal secretary.

Justice Ginsburg graduated first in her law school class at Columbia, another premier law school, but not a single law firm would hire her either. She was denied a clerkship not by one but two Supreme Court Justices because, as they readily admitted, she was a woman.

It took nearly 200 years before the Court welcomed Sandra Day O'Connor as its first woman and more than a decade longer before Ruth Bader Ginsburg would join her as its second. A year ago today, Ginsburg was the only woman Justice, but when it opens this fall, three women—a full third of the bench—will preside together for the first time. That is progress. It is not yet completely equitable in a nation where women represent more than one-half the population, but it certainly is progress.

That Sotomayor and Kagan can join the Court in such relatively rapid succession is a tribute to the path their predecessors cleared.

Justice Ginsburg said last year that ''women belong in all places where decisions are being made.'' The Supreme Court is certainly one of those places. Elena Kagan is certainly one of those women.

As the Senate votes for this nominee on her merits, we are also voting for the most inclusive Court in its long history. It will be even more inclusive when we confirm more Justices who don't come from Ivy League schools.

In the oath General Kagan will soon take—the same oath sworn by 111 Justices before her—she will pledge to ''do equal right to the poor and to the rich.'' That is a commitment her predecessor, Justice John Paul Stevens, always fulfilled. We are grateful for Stevens' long record of service as a decorated war veteran, a successful lawyer, and an impartial judge and Justice who summoned common sense in his opinions. He was always passionate but always a gentleman.

Stevens once wrote: ''Corporations are not part of 'We, the People' by whom and for whom our Constitution was established.'' General Kagan believes that too. It is the principle she defended in her first case as the first female Solicitor General; that is, our country's chief lawyer, when she fought to stop foreign and domestic corporations from drowning out American voters' voices. She knew it would not be an easy case, but she stood for fairness, transparency, and citizens' rights because that is what a nation of laws demands.

General Kagan learned from another trailblazing Justice and her personal hero, Thurgood Marshall, that behind the law lived real people. She knows the Court's rulings can affect working families as intimately as they do wealthy interests.

The American people deserve a Justice who understands that one litigant's case is no more justified simply because he has more money than his opponent. Elena Kagan will be that Justice.

We need a voice on the Supreme Court who remembers and reveres the rights of individuals, not because people are always right and corporations are always wrong but because the argument of even the poorest citizen should be heard just as loudly, with the same patience and deliberation and impartiality as that of the richest firm.

Elena Kagan has demonstrated, time and time again, that she understands that.

In fact, listening is one of her strong suits. Justice Stevens often said that openly debated differences benefit democracy and he promoted what he called ''understanding before disagreeing.'' The lawyer and teacher the President has chosen to succeed Justice Stevens believes the same.

When General Kagan spoke last year to graduates of Harvard Law School, where she was beloved by the students and faculty alike, she reminded them: ''You only learn something when your ears are open, not when your mouth is open.'' That shows wisdom. It takes a smart person to recognize that we make progress and make the right decisions when we approach each person and each problem with an open mind. It takes a smarter one to say as much.

So I hope each Senator will approach this vote the way General Kagan will approach each question that comes before the Court: with deference to the facts, the evidence, and our shared national interests.

General Kagan is a public servant who has remained far above the political fray and will be the only Justice who comes from outside the judicial monastery. She is a student and teacher of the law who looks up from her books out into the real world. She knows that while we are a nation of laws and not of men, the former has a genuine and personal impact on the lives of the latter.

Because of her intellect and integrity; her reason, restraint, and respect for the rule of law; her unimpeachable character and unwavering fidelity to our Constitution, I am proud to cast my vote for Elena Kagan's confirmation to be a Justice of the U.S. Supreme Court.

We are going to wait until the hour of 3:30 arrives before we start to vote. Senator LEAHY, at that time, will have a request to make.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination of Elena Kagan to be an Associate Justice on the Supreme Court of the United States.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Elena Kagan, of Massachusetts, to be an Associate Justice of the United States Supreme Court?

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 229 Ex.]

YEAS—63

Akaka	Bingaman	Cardin
Baucus	Boxer	Carper
Bayh	Brown (OH)	Casey
Begich	Burris	Collins
Bennet	Cantwell	Conrad
Dodd	Klobuchar	Reed
Dorgan	Kohl	Reid
Durbin	Landrieu	Rockefeller
Feingold	Lautenberg	Sanders
Feinstein	Leahy	Schumer
Franken	Levin	Shaheen
Gillibrand	Lieberman	Snowe
Goodwin	Lincoln	Specter
Graham	Lugar	Stabenow
Gregg	McCaskill	Tester
Hagan	Menendez	Udall (CO)
Harkin	Merkley	Udall (NM)
Inouye	Mikulski	Warner
Johnson	Murray	Webb
Kaufman	Nelson (FL)	Whitehouse
Kerry	Pryor	Wyden

NAYS—37

Alexander	Crapo	McConnell
Barrasso	DeMint	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Risch
Brown (MA)	Grassley	Roberts
Brownback	Hatch	Sessions
Bunning	Hutchison	Shelby
Burr	Inhofe	Thune
Chambliss	Isakson	Vitter
Coburn	Johanns	Voinovich
Cochran	Kyl	Wicker
Corker	LeMieux	
Cornyn	McCain	

The nomination was confirmed.

The PRESIDING OFFICER. A motion to reconsider this vote is considered made and laid on the table. The President shall be notified of the Senate's action.

Mr. LEAHY. Mr. President, the Senate has concluded our consideration of the nomination of Elena Kagan and confirmed her as an Associate Justice on the U.S. Supreme Court. For the second time in 2 years, we have considered a nomination for a lifetime appointment to the Supreme Court, one of our most consequential responsibilities. I am proud that process we followed in considering this nomination in the Judiciary Committee and in the Senate has garnered praise from many Senators for its fairness and thoroughness.

We could not have given this nomination the attention it deserved without the help of dedicated staff. For months, the staff of the Judiciary Committee has worked long hours dutifully to obtain and review extensive amounts of documents and information and help Senators in our review. I wish to thank the following members of the majority staff in particular, Jeremy Paris, Erica Chabot, Kristine Lucius, Shanna Singh Hughey, Maggie Whitney, Hasan Ali, John Amaya, Sarah Hackett, Sarah Hasazi, Michael Gerhardt, Elise Burditt, Noah Bookbinder, Anya McMurray, Liz Aloi, Tara Magner, Kelsey Kobelt, Juan Valdivieso, Matt Virkstis, Curtis LeGeyt, Roslyne Turner, Erin O'Neill, Julia Gagne, Brian Hockin, Joseph Thomas, Elizabeth Saxe, Katharine McFarland, Miles Clark, Christine Paquin, David Zayas, Lydia Griggsby, Adrienne Wojciechowski, Dan Taylor, Patrick Sheahan, Matt Smith, Scott Wilson, Kiera Flynn, Rachel Pelham, Bree Bang-Jensen, Chuck Papirmeister, and Bruce Cohen. I also thank my staff for their hard work on this nomination, in particular, Edward Pagano, David Carle, Laura Trainor, and Kevin McDonald. I would also like to thank Stacy Rich from Senator MURRAY's staff who helped manage the floor.

I commend and thank the hard-working staffs of the other Democratic members of the Judiciary Committee for their tremendous contributions to this effort.

I also commend and thank Senator SESSIONS, the committee's ranking Republican, and his staff, in particular, Brian Benczkowski, Danielle Cutrona, Ted Lehman, and Lauren Pastarnack, for their hard work and professionalism.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The PRESIDING OFFICER. The Senator from Michigan.

UNANIMOUS CONSENT REQUEST—S. 3454

Mr. LEVIN. Mr. President, it is obvious we are not going to be able to get to the Defense authorization bill this week. However, it is important we get to it as soon as possible after we return. In order to facilitate that, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 414, S. 3454, national defense authorization.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I do so with some reluctance, I remind my colleagues that last year we took up the consideration of the Defense authorization bill without warning. The distinguished chairman of the committee introduced a hate crimes bill which had no business on the Defense authorization bill, filled up the tree, and then, of course, we spent a great amount of time on hate crimes.

I have only been a member of this committee since 1987. I have never seen what the chairman of the committee did last year by bringing forth a totally irrelevant and very controversial issue and putting it on the Defense authorization bill. We spent weeks on that when we should have been spending time on defending this Nation. It was a betrayal of the men and women who are serving this country.

I am not going to allow us to move forward, and I will be discussing with my leaders and the 41 Members of this side of the aisle as to whether we are going to move forward with a bill that contains the don't ask, don't tell policy repeal before—before—a meaningful survey of the impact on battle effectiveness and morale of the men and women who are serving this Nation in uniform.

It is, again, the chairman of the committee and the majority leader and the other side moving forward with a social agenda on legislation that was intended to ensure this Nation's security.

Along with it, abortion now is going to be performed in military hospitals for the first time in a long time. There is going to be a transparency. The distinguished chairman and his staff, without informing me or anybody else, put in $1 billion worth of porkbarrel projects instead of the $1 billion the administration asked for us to aid Iraq as we are finally leaving.

It is a terrible piece of legislation, ramrodded through. My greatest concern, of course, is about repeal of don't ask, don't tell without any survey being done to find out the battle effectiveness and morale, which we were assured would take place before the repeal of don't ask, don't tell. It is purely a political promise on the part of the President of the United States and the Members on the other side of the aisle, and it is disgraceful to have it on this legislation without a survey being done about our battle effectiveness and the morale of the men and women in the military from whom I am hearing all the time.

Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, each of the items which the Senator from Arizona mentioned were voted on in committee. These are decisions that were made by the committee, and if we can get this bill to the floor, the decision will not be left up to the Armed Services Committee; it will be left up to the Senate. If anyone wishes to strike a provision that is in this bill—and the provisions which the Senator from Arizona talked about are all relevant provisions. It was a Senate Armed Services Committee bill which put into place don't ask, don't tell. The provision we have in there now which changes that policy makes it conditional upon that survey being completed and a certification from the military leaders that there is no negative impact on morale. So we have taken into consideration that survey.

The main point is that the place to debate these policies is on the floor of the Senate. The Senate will determine, if we can get this bill to the floor, whether we make that conditional change in the don't ask, don't tell policy or whether we do a number of other things, some of which I objected to in committee.

Some of the amendments of the Senator from Arizona that were adopted in committee I objected to and voted against. I am not going to deny the Senate the opportunity to take up a bill which is essential for the men and women in the military because I disagree with some provisions in that bill. I will then move to strike those provisions if I disagree that much, if we can get the bill to the floor. That is what the Senate debate is supposed to be about.

I am sorry there is an objection to this bill coming up. Obviously, we are going to try to get this bill up in September so we can debate the issues which the Senator from Arizona points to. They are legitimate issues for debate. We should debate them, but the only way we can debate them is if we get the bill to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I will respond again. Last year, the Senator from Michigan did not allow exactly what he is espousing now. He brought up hate crimes and filled the tree so that even if the Senator from Arizona wanted to have an amendment on it, I could not do it. The hate crimes bill had nothing to do with national defense. It had everything to do with the social agenda of the chairman of the committee.

What we have done is, we have eroded the confidence of Members on this side of the aisle as to what the agenda is going to be.

Perhaps the Senator from Michigan can tell me what hate crimes had to do with the defense of this Nation. It had everything to do with his social agenda. I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I will be happy to tell the Senator from Arizona what hate crimes has to do with the defense of this country. Men and women who defend this country defend this country for a lot of reasons. One of them is we try to act against hate in this country. That is one of the values we stand for; that we try to defeat hate. That was debated last year. It was voted on last year. The vote maybe did not come out the way the Senator from Arizona wanted.

If we want to debate last year, that is OK. Let's bring the bill to the floor so we can debate it. But the objection now makes it much more difficult to bring a bill to the floor so we can debate the very issues the Senator from Arizona wants to debate.

We should debate the don't ask, don't tell decision we made in the committee. It was debated there; it should be debated on the Senate floor. By the way, it is a conditional change in the don't ask, don't tell policy. The policy was put in place by the Pentagon and by the Armed Services Committee and by the Senate. It is perfectly appropriate that it be considered as part of this bill because it was our committee which put that policy in effect to begin with.

The debate is appropriate. But how do we have that debate unless we can get it to the floor of the Senate? How can we debate the amendments of the Senator from Arizona? There were two or three that he offered in committee that I objected to. How do we get to those debates unless we can get the bill to the floor?

I cannot get a guarantee from everybody that I will prevail in my effort to strike the amendments of the Senator from Arizona. I cannot get that guarantee in advance, nor should the Senator from Arizona seek a guarantee in advance as to what will be in the final bill or will not be in the final bill.

Mr. McCAIN. Mr. President, I can guarantee that we would not fill up the tree the way the Senator from Michigan did last year and would probably do again this year in violation of what I believe is what the Senate should be all about—amending on different legislative proposals that are before the Senate instead of filling up the tree and not allowing amending of the bill, despite what the chairman says had something to do with national defense.

Hate crimes? Really? Then that means that everything in the social agenda of the Senator from Michigan has to do with the men and women who are serving in the military. I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it was the Senate which made a decision last year on hate crimes. It was not the Senator from Michigan, although I very much favored what the Senate of the United States did. But it was the Senate of the United States which acted in a way which the Senator from Arizona does not agree to—I don't know how many amendments we adopted last year, but it was a large number of amendments which were adopted. A large number of amendments were defeated. I don't know if that tree was filled up, as the Senator puts it, last year or not, or when it was filled up. But we had a huge number of amendments that were considered on this bill.

It is the intention, I hope and believe, of the leader, and it is surely my intention this year, that we have an amendment process which is traditional for the Defense authorization bill; that it be a very open process for amendments on this bill. That is my intention. It is the intention of the majority leader as well. I want to assure my friend from Arizona that will be the case again this year.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Arizona.

Mr. McCAIN. Madam President, I won't repeat myself over and over. The fact is, last year, the Senator from Michigan brought up hate crimes, filled up the tree, and we spent almost all of the first 2 weeks debating hate crimes, which had nothing to do with the purpose and mission of the Senate Armed Services Committee. It is the first time I have ever seen such a thing happen. I am not going to let it happen again if I have anything to say about it.

As I have said to the Senator from Michigan, I will talk to our leadership and our caucus and all the Members over on this side of the aisle, and when we get back a decision will be made as to whether we will object to the motion to proceed. In the meantime, I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Is the Senator from Arizona suggesting we did not have a vote on hate crimes last year?

Mr. MCCAIN. The Senator from Arizona is saying that the Senator from Michigan filled up the tree; did he not? Was the tree filled up? You are the chairman of the committee.

Mr. LEVIN. It is not my recollection, but that is not my question. My question is whether we had a vote on hate crimes.

Mr. MCCAIN. My response is did you prevent the tree from being filled?

Mr. LEVIN. We did not prevent a vote on hate crimes last year. That is my answer.

The PRESIDING OFFICER. The Senator from Arkansas.

HEALTHY, HUNGER-FREE KIDS ACT OF 2010

Mrs. LINCOLN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 363, S. 3307, the Healthy, Hunger-Free Kids Act of 2010.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3307) to reauthorize child nutrition programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mrs. LINCOLN. Madam President, there is a Lincoln-Chambliss substitute amendment at the desk, and I ask that the amendment be considered and agreed to, the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relating to the bill be printed in the RECORD, without intervening action or debate, and that the pay-go statement from Senator CONRAD be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4589) was agreed to.

(The amendment is printed in today's RECORD under ''Text of amendments.'')

The bill (S. 3307), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. CONRAD. Mr. President, this is the Statement of Budgetary Effects of PAYGO Legislation for S. 3307, as amended.

Total Budgetary Effects of S. 3307 for the 5-year Statutory PAYGO Scorecard: net increase in the deficit of $814 million.

Total Budgetary Effects of S. 3307 for the 10-year Statutory PAYGO Scorecard: net increase in the deficit of $2.189 billion.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act.

The table is as follows:

ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 3307, REAUTHORIZING CHILD NUTRITION PROGRAMS (AS TRANSMITTED ON AUGUST 5, 2010—WEI10567)

[Millions of dollars, by fiscal year]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
Net Increase or Decrease (−) in the On-Budget Deficit Relative to Current Law (as of August 5, 2010													
Net Budgetary Impact	0	−51	−50	279	−5,108	−4,127	−2,484	−1,004	−165	265	259	−9,056	−12,184
Less:													
Previously Designated as Emergency Requirements [1]	0	0	0	0	−5,446	−4,424	−2,775	−1,290	−438	0	0	−9,870	−14,373
Statutory Pay-As-You-Go Impact	0	−51	−50	279	338	297	291	286	273	265	259	814	2,189
Net Increase or Decrease (−) in the On-Budget Deficit Relative to the Effects of H.R. 1586 as Amended by the Senate on August 5, 2010													
Net Budgetary Impact [2]	0	−51	−50	279	−2,138	297	291	286	273	265	259	−1,662	−287
Less:													
Previously Designated as Emergency Requirements [1]	0	0	0	0	−2,476	0	0	0	0	0	0	−2,476	−2,476
Statutory Pay-As-You-Go Impact	0	−51	−50	279	338	297	291	286	273	265	259	814	2,189

Note: Components may not sum to totals because of rounding.

[1] Savings in Title IV that would result from a change to the Supplemental Nutrition Assistance Program that was previously designated as emergency.

[2] If H.R. 1586 were to clear the Congress prior to this bill, the net deficit impact would change because some of the savings in Title IV of the child nutrition legislation that would result from a change to the Supplemental Nutrition Assistance Program are also included in H.R. 1586. Total savings would decline from $14.4 billion to about $2.5 billion over the 2010–2020 period. The net decrease in the deficit would be $1.7 billion over the 2010–2015 period and $287 million over the 2010–2020 period, if H.R. 1586 were to clear the Congress prior to this bill.

Source: Congressional Budget Office.

Mrs. LINCOLN. Madam President, for the past 2 weeks, I have come to the floor of the Senate to speak about the critical importance of passing child nutrition legislation before we adjourn for the August recess, and I want to say a very special thanks to all of my colleagues for their hard work on this initiative, their willingness to rise above partisan politics, regional differences, or anything else, to seize this opportunity. I am so pleased today to say we have seized this opportunity to make a historic investment in our children.

I started out my discussion here on the floor last week by saying all we would need to get this bill done was a mere 8 hours—a simple 8 hours to pass a bill that would improve the lives of millions of children across this country. With the assistance of my colleagues, we were able to accomplish this goal in much less time than that, and I want to thank my colleagues again for sending such a strong bipartisan message of support for child nutrition.

Before I go any further, I wish first to thank my good friend and the ranking member of our Agriculture Committee, Senator CHAMBLISS, for his tremendous assistance in crafting this legislation and bringing us to this vote today. He is a wonderful partner in the Senate Committee on Agriculture, Nutrition, and Forestry, and he has been a true partner in this effort. I greatly appreciate all his work on this bill. We could not have gotten to this point, nor could we have passed this, without him. So I am grateful to him. I also add my thanks to his staff—Martha Scott Poindexter and Kate Coler. And, of course, all my thanks go out to my staff on the Agriculture Committee—Robert Holifield, Brian Baenig, Dan Christenson, Hillary Caron, Courtney Rowe, and Julie Anna Potts. They are the absolute best.

I also need to thank the administration—the President and First Lady, as well as Secretary Vilsack—for their incredible leadership on childhood nutrition. Their hands-on involvement, particularly in the last few days, has ensured that we will be able to accomplish this goal. I know this is an issue they all care very deeply and passionately about, and that is reflected in the many shared priorities between the Congress and the administration that are included in this bill.

I must say the presence of the First Lady, her compassion, her diligence, her tenacity in wanting to see something happen on behalf of the children of this country that was productive, was progressive, and that moved us forward past the benchmarks we had been at since 1973 have been amazing, and I am certainly grateful to her for all she has done.

With the passage of this bill, I am pleased we are bringing some fresh bipartisan air into the Senate. It goes to show that when you are willing to roll up your sleeves, work across the aisle in a collective and bipartisan manner, you truly do see results. That is what the American people elected us to do. That is what they expect and that is what this bill represents.

Most importantly, this bill is about our children, and about doing what is right for them and for their families. It is about connecting more children with the child nutrition programs which their families depend upon to make ends meet. It is about making sure they get the nutritious meals they deserve so they can succeed in the classroom and learn better. It is about making sure our schools and classrooms, our childcare settings are all places that promote good health and wellness, because we know that children who are healthier learn better and they also

grow up to be healthier adults, contributing more and more to our communities and our industries and businesses and families.

They say an ounce of prevention is worth a pound of cure, and that is certainly true with this bill, which makes huge leaps forward in the fight against childhood obesity and chronic disease. We know that better nutrition and more physical activity are at the heart of tackling the obesity epidemic in this country, and this bill promotes both. It provides the largest increase in the child nutrition programs since their inception—nearly 10 times the amount we provided in the last authorization. It includes the first real increase in the reimbursement rate for the National School Lunch Program in almost 40 years. Madam President, 40 years. It is amazing to me—I believe I may have been 10 years old at the time—to see that finally, after 40 years, we are making the kind of investment in our reimbursement for school nutrition programs that we should. In exchange for that extra cash, children will receive healthier school meals. That is the deal, and it is a good deal. It is a good deal for us as a Congress and those who are stewards of the taxpayers' dollars, and it is good for our children too.

It also includes an historic agreement between schools, parents, public health and nutrition advocates, and the leaders in the food and beverage industry to establish national school nutrition standards throughout the school campus, not just in the lunchroom. This provision complements the commonsense steps we have already taken in my home State of Arkansas to ensure that our school environments are as healthy as possible for our children. With passage of this bill, we will be bringing some of that Arkansas wisdom to the rest of our country, and I am very proud of the hard work that has gone into our schools in Arkansas as well as our fight against childhood obesity. We are so incredibly proud of the steps we have taken and the successes we have already seen.

The bill also takes tremendous steps forward in the fight against childhood hunger in Arkansas and all across our country. It reduces the redtape that serves as a barrier to accessing child nutrition programs and will connect over 100,000 additional children per year with free school meals. In this day and age—and particularly in this economy—that is so critical for working families. It improves the way we feed hungry children during the out-of-school time. Because of this bill, an additional 29 million meals per year will be served through afterschool programs so children don't have to go to bed hungry, they don't have to leave school hungry, they don't have to go home hungry.

I know there are many who wish to have seen us do more. I too would have liked to have gone further and made even bigger investments. But in this budget environment, with record deficits, we have been able to produce a bill that is fully paid for and will not add one dime to the deficit. It is the fiscally responsible and right thing to do by our children. At a time when families are scrimping and saving to make their own budgets work, we simply must pass this bill so their children can live longer, healthier, and more productive lives. And we will. We have.

Today, in this Chamber, we have taken a major step forward. We have made a strong commitment to our children and to improving the health of the next generation of Americans. With the passage of this bill we are ushering in a new era that will feed the minds and the bodies and the souls of millions of children across this country. I look forward to continuing to work with my colleagues to see this legislation signed into law as well as making sure we are implementing this as quickly as we can, as we know that schoolchildren will be starting back to school here in the next couple of weeks. We must work hard to see this legislation signed into law so we can make an investment in our children—our greatest blessings, our greatest resource—that will last them a lifetime.

Mr. CHAMBLISS. Mr. President, I am very pleased that the Senate has passed the Healthy, Hunger-Free Kids Act of 2010. I am supportive of the final product before us to reauthorize these important child nutrition programs.

The Senate Committee on Agriculture, Nutrition, and Forestry had three goals in mind as we drafted the Healthy, Hunger-Free Kids Act of 2010: expand access to existing programs to better reach children in need, improve the nutritional quality of meals, and simplify program rules to improve operations. I am extremely pleased that all three of these goals are met with this legislation.

The Healthy, Hunger-Free Kids Act of 2010 makes a significant investment of over $3 billion to improve the nutritional quality of school meals. The performance-based increase to the reimbursement rate should entice more schools to meet higher standards faster than an across-the-board increase.

This legislation also gives USDA the authority to regulate all foods sold on school campuses, far beyond the existing authority to regulate only meals served through the National School Lunch Program. I have been impressed with industry efforts to work with schools to create consistent voluntary guidelines to reduce caloric intake of food and beverages sold on school campuses. I urge the Secretary of Agriculture to look closely at the success of existing voluntary agreements and use them as a model for future regulations.

The Healthy, Hunger-Free Kids Act of 2010 also provides greater access to nutrition programs for low-income children across the country. By expanding afterschool meals, promoting direct certification, and expanding community eligibility for universal meal service, this legislation will ensure that more children who need nutrition assistance will be able to participate in the programs.

I would like to thank all the members of the Senate Agriculture Committee for their efforts and support of this legislation, as well as thank chairman LINCOLN for her leadership throughout the process.

Mr. WYDEN. Mr. President, today the Senate has passed legislation that will make a historic investment in our children by approving the first increase in real terms of the reimbursement rate for school lunches in 40 years.

Now 10,000 children a year will have new access to free school meals. Throughout the country, there are people working hard to make sure these kids have a least one healthy meal each day. In my State, one of the people who makes that happen is Betty Brain of the Blazers Boys and Girls Club in Portland. She is known as Chef Betty and every day she cooks meals for more than 200 underserved kids, dishing up healthy foods with fresh ingredients to keep them healthy and strong.

Chef Betty is not just a cook. She is an inspiration to the kids who come to the Boys and Girls Club every day. These kids are family to her, and she makes it her personal responsibility to make sure they get not only a good meal but also a kind word and a helping hand.

I can guarantee that there is a Chef Betty in every Boys and Girls Club in America—someone who understands how important it is to help a child in whatever way she can.

For all the Chef Bettys in America, we need to reauthorize these programs so they can keep those kids from being forced into eating not just any food but good food made by good people.

Mr. FEINGOLD. Mr. President, I am pleased that the Senate just passed the Healthy, Hunger-Free Kids Act. This legislation makes historic investments in the health and nutrition of our Nation's children. In addition to increasing funding for a number of programs, without adding a penny to the deficit, it requires a long overdue update of the nutrition standards for the food in our schools. I commend the chairwoman of the Agriculture Committee, Senator LINCOLN, and its ranking member, Senator CHAMBLISS, and their staffs for their hard work on this important legislation. I also thank our leadership for working to ensure this bill passed.

I am particularly glad the bill includes provisions based on legislation, the Student Breakfast and Education Improvement Act, Senator KOHL and I introduced last year to improve school breakfast programs. The Healthy, Hunger-Free Kids Act will help schools invest in their breakfast programs. Many of my colleagues know that school breakfast programs face hurdles that reduce participation. This bill will help schools start new breakfast programs, as well as expand or improve existing programs.

As I mentioned, this legislation also includes a provision to update school nutrition standards based on legislation introduced for the past several Congresses by Senator HARKIN that I

have cosponsored. I am pleased that these standards will be updated and expanded to foods sold outside of the cafeteria.

I have long advocated programs and policies that ensure schools have access to fresh, local food. I worked with other Senators to ensure the 2008 farm bill removed barriers to local procurement and preference for our country's schools. Along those lines, I am glad that the Healthy, Hunger-Free Kids Act provides funding for farm-to-school programs which help connect farmers to schools and provide children with a new perspective on nutrition and food. Many Americans are now generations removed from the farm, and these programs can provide valuable knowledge of where food comes from and how it is grown. They can also provide farmers with a new marketing opportunity and allow them to collaborate directly with local schools.

The Healthy, Hunger-Free Kids Act also reauthorizes a number of important programs outside of schools, including the Special Supplemental Nutrition Program for Women, Infants, and Children, WIC, the Child and Adult Care Food Program, afterschool feeding programs and Summer Meals. These programs are all critical to ensuring that our children do not go hungry outside of the school environment as well.

I am also glad that the bill includes provisions to streamline our nutrition programs, such as direct certification, categorical eligibility, and community eligibility. It also includes funding for pilot programs to improve methods of providing healthy food to our children, which will allow local schools to try programs that work for them and will likely generate creative new ideas to national problems.

I commend Senators LINCOLN and CHAMBLISS for ensuring the full cost of this legislation is offset. Though I might have preferred different offsets, I am pleased that we are able to improve our child nutrition programs without passing the cost onto the very children these programs will help.

Mr. LEAHY. Mr. President, today the Senate has taken a lengthy stride toward improving the health of America's children and addressing two of the greatest threats to their wellbeing and security: hunger and obesity. By passing the bipartisan Healthy, Hunger-Free Kids Act to reauthorize Federal child nutrition programs, we will be making a historic investment in our children's future and in the Nation's future. With others in this body, I have pressed for action on this bill before the Senate completed its business this week. I am pleased that the Senate and our leaders made this bill the priority that our children deserve it to be.

I have heard from countless Vermont parents, teachers, school administrators, food service workers, community leaders, farmers and others about the importance of making sure every child in America has access to nutritious meals at school. They all want what's best for our children, and they all know how crucial it is that we have passed this legislation today.

In March of this year, more than 4 months ago, the Senate Agriculture, Nutrition, and Forestry Committee unanimously approved this bipartisan bill, upon which our Chairman and Ranking Member have worked so hard. Today's action has come just in time, as the September 30 deadline to reauthorize these programs is quickly approaching. Without action today, I have been concerned that we would have been forced into another long-term extension of these vital programs, sidelining the tremendous improvements that the Agriculture Committee has been working on for months.

I am grateful for Chairman LINCOLN and Ranking Member CHAMBLISS for all that they have done to ensure that we could pass this bipartisan bill. Our First Lady also deserves credit for the impetus that has helped propel our efforts forward. She has vigorously and ably taken up the cause of solving the problem of childhood obesity within a generation, so that kids born today can reach adulthood at healthy weights. The groundbreaking legislation that the Senate has passed today will bring fundamental changes to our schools and will improve the food options available to our children.

When the first national school lunch program was created in 1946, children in this country were plagued with malnutrition from not having enough of the proper nutrients for health, growth and development. At the time it was considered a matter of national security to safeguard the health and well being of our nation's children. That was a far different era in the health of our Nation, but the importance of these programs and the children they help has not diminished. Unfortunately, the health statistics for children in this country today are troubling; in fact one in five children in this country is considered obese.

Thankfully this bill will help to put those children on the road to healthier, more productive and longer lives. The Healthy, Hunger-Free Kids Act establishes for the first time, ever, national school nutrition standards to ensure our children have healthier options available throughout the entire school day. With this legislation, parents across the country will know that the snacks and foods offered to their children at school, even the vending machine and a la carte lunch line options, are based on national standards established by USDA to ensure healthier diets.

I believe that our school cafeterias should be treated as an extension of the classroom and as an opportunity for students to learn about nutrition, well-balanced meals, and where their food comes from. I thank the Chairman for including funding for the Farm to School program, which is a proven, common-sense, community-driven approach to improve the health and wellbeing of children while supporting our local farmers and economy. My goal in authoring the Farm to School program was the powerful logic of this ''two-fer'' an opportunity to get money into the hands of American farmers for their locally grown products, while supporting local economies and teaching kids about nutritious foods and where they come from. Vermont is leading the country in this effort, and I hope other States will be able to learn from our experiences as they incorporate more local and healthy foods into their cafeterias.

It is a sad reality that hunger is a regular part of life for far too many children in America today, and for many children, the meals they get at school are sometimes the only things they will eat all day. In Vermont one in ten people live in food insecurity, and many of these are our most vulnerable, our children. In addition to increasing reimbursement rates and streamlining the nutrition programs to make them easier for families to utilize, this legislation also improves summer and afterschool meal programs.

I again thank the chairman and ranking member of the Senate Agriculture Committee for doing a remarkable job with this legislation. Their hard work and dedication, and that of their staff, have resulted in bill that makes a historic investment in the future of this country.

Mr. BENNET. Madam President, I am thrilled that today the Senate has passed what must be a top Senate priority every day: the health and well being of our children.

The Healthy, Hunger-Free Kids Act reauthorizes child nutrition programs before they expire on September 30. This bipartisan, completely paid-for legislation will make the most historic investment in child nutrition programs since their inception. And I am proud to support this bill.

At a time when childhood obesity rates are skyrocketing and child poverty is increasing, this bill couldn't be more important. For kids to be successful in the classroom they must be well nourished—kids who eat right, learn better.

More than 390,000 Colorado kids and millions more nationwide—rely on school meals, and this bill will make sure that those meals—and other foods kids have access to while at school—are nutritious and healthy. And that is just one example of the important investments this bill makes.

Coloradans know the value of healthy living—perhaps that is one reason why my State is the fittest State in the Union—but we too are struggling with rapidly increasing obesity rates, particularly among children.

Colorado is tackling the concurrent problems of child hunger and childhood obesity head-on with a State-led effort of ending childhood hunger by 2015 and a roadmap to do it. Simultaneously

Colorado has school districts and communities that are leading the Nation in piloting innovative models that put healthy eating and active living at the top of their priority list.

I am thrilled that the bill we passed today builds on and supports the work that my State is already doing, while challenging Colorado and other States to go even further, to eliminate childhood hunger, to tackle childhood obesity, to emphasize wellness, and to build a healthy foundation for all kids.

Chairman LINCOLN, Ranking Member CHAMBLISS, thank you for your leadership and diligent work on this historic bill. Passage of the Healthy, Hunger-Free Kids Act is an example of the Senate doing exactly what it should—delivering for our kids.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Madam President, I ask unanimous consent to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FREE TRADE AGREEMENTS

Mr. LEMIEUX. Madam President, I rise to speak this afternoon on the floor of the Senate about an issue that is very critically important to the people of this country, and that is our relationship with Latin America.

This weekend, the new President of Colombia will be sworn in—Juan Manuel Santos—and he follows a great leader in Colombia, President Uribe, who, in my mind, is the Abraham Lincoln of that country. He kept that country unified at a very difficult time, while it was wracked with what was then a civil war. Eight years ago, President Uribe brought the country back together. He was able to fight the FARC, keep the country from falling into a narcoterrorist state, and has brought stability to Colombia. They are perhaps our best friend in Latin America.

Colombia is a vibrant, beautiful country, full of good people, with a democracy that now works. This last election is a tribute to President Uribe. On behalf of my State of Florida and the Senate, I rise to congratulate President Uribe and the great work he did on behalf of Colombia, as well as to welcome in President Santos.

Our relationship with Colombia is very important. They are a key trading partner to the United States and a key trading partner to my home State of Florida. When you are walking around and perhaps seeing some fresh flowers—there are some here in this Congress—but wherever you are in this country, there is a very good chance those flowers came from Colombia. Seventy percent of the flowers we have in this country that are purchased by local florists come from Colombia, and they come through Miami on their way to your local florists.

We have a great trading relationship. That is why, in 2006, we entered into a free trade agreement with Colombia. Unfortunately, we have not ratified that agreement. Along with the free trade agreements for Panama and South Korea, they have languished without approval. The President spoke about this in his State of the Union Address—the importance of passing these free trade agreements—yet we still don't have those agreements before us here in the Congress. For one reason or another, they have yet to be ratified.

There is a lot of talk in this Chamber about the creation of jobs, and that that should be our focus. Well, passing these free trade agreements would get Americans back to work. Right now those countries basically have free trade with us but we don't have free trade with them. Ninety percent of all Colombian products sold in the United States enter our country duty free. Yet American goods face tariffs of up to 35 percent when entering Colombia.

According to the Latin America Trade Coalition, in 2008, more than 6,000 small- and medium-sized American businesses exported to Colombia. If we were to pass the Colombia Free Trade Agreement, more than 80 percent of U.S. consumer and manufacturing products and most U.S. farm goods would immediately enter Colombia duty free.

Implementing this treaty could increase our gross domestic product by $2.5 billion. I say to my friends in the majority, if they want to create jobs in this country—and that certainly should be what we are focused most on in this most troubling economy—let's pass these free-trade agreements. Let's do it when we get back from the break; let's do it in September. We should have already done it.

When I met with President Uribe in January of this year and talked to him about a variety of issues, he looked at me painfully and said: Why is our friend, the United States of America, not ratifying this agreement?

Our greatest friend in the region, a bright spot of democracy, a President who has fought the narcoterrorists, stabilized this country as a bulwark against Venezuela and all the threats that posed to our region, and we can't ratify this agreement? It is a shame. It is something we need to do. We need to do it as well as ratify the agreement with Panama, as well as the one with South Korea.

REMEMBERING REAR ADMIRAL LEROY COLLINS, JR.

Mr. LEMIEUX. Madam President, I rise today to give special recognition to the life and work of a great Floridian who was tragically killed in Florida unexpectedly just a few weeks ago. RADM LeRoy Collins, Jr., is the son of our former Governor, Governor LeRoy Collins. He was an admiral in the Navy. He was the head of the Veterans Affairs Division in the State of Florida where I had the opportunity to personally work with him when I served the Governor. A native of Tallahassee, FL, he received his commission from the Naval Academy in June 1956 and began a long career in the Navy.

His first tour was aboard the amphibious transport USS *Calvert*, followed by the Submarine Officer's Basic Course in Groton, CT, and he later served abroad the U.S. submarine *Chivo*.

Through hard work, dedication and sacrifice, LeRoy earned the rank of rear admiral.

Admiral Collins served as an analyst for naval Intelligence in Washington, DC, and as a ballistic missile weapons officer aboard the nuclear-powered ballistic missile submarine USS James Madison. After a brief tour working missile test operations at the Naval Ordnance Training Unit, in Cape Canaveral, he transferred to the Navy Reserve in 1966.

While a naval reservist, Admiral Collins served as commanding officer of the coastal minesweeper USS Thrush and later as commander of various Navy Reserve submarine units. During his time, he was the Navy's liaison to the Florida National Guard and also commanding officer of the Navy liaison unit at U.S. Readiness Command, headquartered at MacDill Air Force Base, FL.

The admiral served as Commander, Naval Reserve Readiness Command, Region 8 and later as Deputy Chief of Naval Operations (Reserve) for Logistics, Pentagon, until his retirement from the Navy Reserve as a two-star rear admiral in October, 1990.

Admiral Collins also had a career in business. He spent time with the Florida Power & Light Company and IBM. He was the founding president of Financial Transaction Systems, Inc., and president of Telecredit Service Center, Inc. In addition, he served as president of Dynamic Realty of Tampa, Inc., was chairman of Gateway Holdings, Inc., and served as president of the Armed Forces Financial Network.

He was a great Floridian. The Collins family is perhaps Florida's first family. Governor Collins is perhaps our greatest Governor. Admiral Collins upheld the tradition of his family that traces it roots all the way back to the founding of Florida. The property upon which our Governor's Mansion sits was given by the Collins family. Their home, The Grove, sits right next door.

Admiral Collins was in many ways everything you would expect of a great Floridian. He was genteel, he was kind, he was smart. Public service mattered to him.

On behalf of the people of Florida, on behalf of the Senate, I extend our condolences to his wife Jane and their family on the passing of a truly great Floridian. He and they are in our thoughts and prayers.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

PIGFORD SETTLEMENT

Mrs. HAGAN. Madam President, I rise to associate myself with the remarks of the chair of the Agriculture Committee, Senator LINCOLN, as well as Senators GRASSLEY and LANDRIEU, concerning the importance of providing funding to pay the still pending claims of the Black farmers who were discriminated against by the U.S. Department of Agriculture. This case has North Carolina roots. Timothy Pigford, a Black farmer, was the focal point for this class action lawsuit. He grew up in Columbus County and had a farm in Bladen County, NC. He was first denied a Federal loan to buy a farm in 1976.

Mr. Pigford and others filed a lawsuit in the U.S. District Court for the District of Columbia against the U.S. Department of Agriculture, Pigford v. Glickman, alleging that the USDA maintained a pattern and practice of discrimination against Black farmers.

In 1999, the government settled the Pigford v. Glickman case, finding that thousands of African-American farmers were in fact discriminated against when applying for benefits that would help their farms.

Under the terms of the settlement, eligible farmers initially were required to submit completed claims packages by October 12, 1999. This deadline was subsequently extended by the court to September 15, 2000. Approximately 61,000 petitions were filed after the original October 1999 deadline but before the September 2000 late filing deadline. Of these 61,000 petitions, only around 2,500 were permitted to proceed to a determination on the merits. Over 25,000 additional petitions were filed after the September 2000 late filing deadline and before the May 2008 enactment of the 2008 farm bill.

It is quite clear that inadequate notice was provided to those who had viable claims of discrimination against the USDA. Because of this inadequate notice, many farmers were denied participation in the Pigford claims resolution process as late filers.

The 2008 farm bill provided $100 million to pay the outstanding claims of the so-called late filers. However, the amount of money that was set aside in the farm bill for the settlement is totally inadequate to satisfy the damages that more than 4,000 African-American farmers in North Carolina, and a total of 75,000 nationwide, could be eligible to receive.

Last February, Agricultural Secretary Tom Vilsack reached a settlement agreement with the farmers who filed claims after the deadline set by the court who were originally denied a determination of their Pigford claims. This settlement agreement provides, once and for all, sufficient awards for farmers who were the victims of discrimination at the hands of their own government, the U.S. Department of Agriculture.

The Federal Government has failed to live up to its obligations to our Black farmers, including more than 4,000 in my State of North Carolina.

Today the Senate has the opportunity to live up to its obligations and right this wrong. I believe it is imperative that we address this inequity for Black farmers across the country, including those in North Carolina, and I hope we are able to reach an agreement to resolve this issue today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURRIS. Madam President, even though he has left the floor, I would like to thank the distinguished Senator from Wyoming for permitting me to proceed. I want to comment on what the distinguished Senator from North Carolina spoke on because that is my topic as well. We hope to be able to bring up this issue on the Senate floor and get some justice for the Black farmers.

I come to the floor today to speak about justice and the Department of Agriculture. Let me go back a few years.

Though civil rights legislation in the 1960s was supposed to have outlawed racial discrimination, at least on the Federal level, a 1982 report issued by the Civil Rights Commission stated that the USDA was ''a catalyst in the decline of the black farmer.''

That year, African-American farmers received only 1 percent of all farm ownership loans, only 2.5 percent of all farm-operating loans, and only 1 percent of all soil and water conservation loans. That year, too, the Reagan administration closed the USDA's Civil Rights Office—the very arm that investigated discrimination complaints.

Adding insult to injury, when African-American and other minority farmers filed complaints, the USDA did little to address them. In 1983, President Reagan pushed through budget cuts that eliminated the USDA Office of Civil Rights—and officials admitted they ''simply threw discrimination complaints in the trash without ever responding to or investigating them'' until 1996, when President Clinton ordered the office re-opened.

Even when there were legal findings of discrimination at USDA, they often went unpaid—and those that did get paid, the money often came too late, since the farm had already been foreclosed.

In 1984 and 1985, the USDA lent $1.3 billion to farmers nationwide to buy land. Of the almost 16,000 farmers who received those funds, only 209 were Black. By 1992, in North Carolina, the number of Black farms had fallen to 2,498, a 64 percent drop since 1978.

In Illinois, there are many similar stories. As a child growing up on the family farm in west central Illinois, Lloyd Johnson remembers cropland extending for miles around, all of it owned by African-Americans like himself. ''For a stretch of four miles, it was black-owned land,'' the 66-year-old farmer recalls. ''Now there's mighty few.''

Today, Johnson's farm in Alton, IL, is one of just 59 run by African Americans across the State, down from 123 in 1997, according to revised figures from a 2002 census. As farming has become a big business, it has become one of the least diverse businesses around.

It was not always. In 1920, Illinois had 892 Black farmers, and African Americans owned 14 percent of the Nation's farmland. Now they hold less than 1 percent. The same pressure to consolidate that has reduced the ranks of farmers for the past century is making any turnaround unlikely, demographers say. The number of Black farmers in Illinois, currently less than one in 1,000, appears destined to eventually hit zero. Probably there will be none very shortly.

In 1990, The Minority Farmers Rights Act, created to address the injustices noted at USDA, and passed in this body by former Senator Wyche Fowler of Georgia, who sat on the Agriculture Committee, authorized $10 million a year in technical assistance to minority farmers.

The new program was only able to garner $2 to $3 million a year under President Reagan, and was in danger of being de-funded altogether. As working capital and technical assistance was systematically denied to Black farmers across America, most rural African-American farmers did not have access to essential legal assistance and fell prey to land speculators and unscrupulous lawyers.

In 1994, the Land Loss Prevention Project filed a Freedom of Information Act lawsuit on behalf of Black farmers, turning key information over to Congress to investigate discriminatory practices by the USDA. Again, USDA released a report analyzing data from 1990 to 1995, and found that ''minorities received less than their fair share of USDA money for crop payments, disaster payments, and loans.''

In 1997, a USDA Civil Rights Team found the agency's system for handling civil rights complaints was still in shambles: the agency disorganized, the process for handling complaints about program benefits ''a failure,'' and the process for handling employment discrimination claims was ''untimely and unresponsive.''

A follow-up report by the GAO in 1999 found that 44 percent of program discrimination cases, and 64 percent of employment discrimination cases, had been backlogged for over a year.

It was against this backdrop in 1997, that a group of Black farmers led by Tim Pigford of North Carolina filed a class action lawsuit against the USDA. In all, 22,000 farmers were granted access to the lawsuit, and in 1999, the government admitted wrongdoing and agreed to a $2.3 billion settlement—the largest civil rights settlement in history.

However, African-American farmers had misgivings with the process of the Pigford settlement. Many farmers who joined the lawsuit were also denied payment. By one estimate, 9 out of 10 farmers who sought restitution under Pigford were denied. The Bush Department of Justice spent 56,000 office hours and 12 million contesting farmers' claims; and many farmers feel their cases were dismissed on technicalities.

I would like to remember what Congresswoman Eva Clayton, an African-American Democrat from North Carolina, said at a March 1999 Black farmers rally at the Federal Courthouse in Washington, DC: ''There is reason to despair . . . There are several reasons why the number of black farmers is declining so rapidly. But the one that has been documented time and time again, is the discriminatory environment present in the Department of Agriculture . . . the very agency established to accommodate the special needs of farmers . . . Once land is lost, it is very difficult to recover . . . We stand here today in despair over this history. Yet, we also stand here today in hope that justice will prevail, and that the record will be set right for those farmers who have been wronged . . . ''

Shortly after coming into office, President Obama's Secretary of Agriculture, Tom Vilsack, signaled a change in direction at USDA. The Secretary has declared ''A New Civil Rights Era at USDA,'' and stepped-up handling of civil rights claims in the agency.

This year, Secretary Vilsack responded to concerns over handling of the original Pigford case, agreeing to a historic second payment in April, known as Pigford II, that would expand the settlement to farmers who were excluded from the first case.

We are here today to help put an end to this long-standing injustice. Pigford II is before us and will help make right this history of discrimination by one of our own government agencies.

I want to thank Leader REID for his unceasing efforts in bringing the Pigford II and Cobell settlements before us, and I thank others who came before me and those of us here today, on both sides of the aisle, who have advanced the force of justice on this issue.

I urge my colleagues to consider carefully this important question today.

The PRESIDING OFFICER. The Senator from Wyoming.

SECOND OPINION

Mr. BARRASSO. Madam President, I come to the floor today, as I have week after week since the health care bill was signed into law, with a doctor's second opinion of the health care law. I do this as someone who has practiced medicine, taking care of the families in Wyoming as an orthopedic surgeon for 25 years; as someone who has been the medical director of the Wyoming Health Fairs, to give people low-cost blood screenings so they can have early detection of medical problems to help them find problems early. And early treatment following early detection is something that always works to keep down the cost of their medical care.

I wish to talk about the fact that we have seen again this week a new development, and the development this week is that the American people have spoken. They have done it in the Show Me State of Missouri. The Show Me State has shown Washington that they have rejected the President's takeover of the health care system in this country.

Like so many Americans, voters in Missouri are sick and tired of Washington forcing things upon them, telling them what they need to do, and now telling them what they need to buy—specifically in terms of the Federal mandate that people have health insurance, that they must go out and buy that or face penalties, taxes, fines related to the fact that they make a choice to not buy health insurance.

I think the voters are also tired of being ignored by Washington. That is why 71 percent of the voters in Missouri on Tuesday—71 percent, over 7 out of 10—who went to the polls rejected the demand by Washington that they be forced to buy a product, to buy health insurance. It is part of the law. It is a mandate. They have to have health insurance, have to buy it.

So how did the White House respond to this rejection of what has now been forced down the throats of the American voters? Well, Robert Gibbs, the White House Press Secretary, was questioned on this during the White House press conference, and he was asked what it means that voters in Missouri would vote against this Federal mandate, and Gibbs said ''nothing.'' It means nothing. Well, to the voters of Missouri whom I have talked to, this is an insult. It does mean something. They expressed their opinion, and the White House said: Your opinion means nothing to us.

So instead of trying to address the concerns and fix the new law, right now the White House seems to be more focused on a slick public relations program. They have a whole campaign going.

It is interesting because the people of Missouri are not the only ones who are opposed to this law. Later this year, voters in a couple of other States will be voting as well on the impact and the mandate.

A new Rasmussen poll out just this past week says that 57 percent of Americans—I am talking about likely voters; that is how they polled this, likely voters—said this recently passed health care law, in their opinion, is bad for our country. So 57 percent of Americans feel the law that was forced down the throats of the American people, with the American people screaming: Do not pass this law—even today, 57 percent of Americans, as they learn more and more about what is in the law, believe it is bad for the country. That is actually the highest level of pessimism about this law since the law was passed in March.

Support for the law continues to erode. So what happens? Well, the White House comes out with a public relations campaign, and once again they are setting their sights on America's seniors. They did it with a very expensive glossy mailer that went out to the seniors on Medicare. It looked to me like a propaganda piece—very misleading. Once again, they are focused on the seniors. Why? Well, because the seniors are those who are most opposed to the new health care law, the one that takes $500 billion away from Medicare, not to save Medicare, the health care program for our seniors, but to start a whole new government program for someone else.

So this week, what happened? At the end of last week, the new director of Medicare and Medicaid, Dr. Berwick—and we have talked about him on the Senate floor. He is the one who had a recess appointment, the one who is in love with the British health care system, the new director who had the recess appointment who has never come to the Senate to share his answers with the American people. The American people have been denied the right to hear from him. He did not have time to share his views with the American people, but he did have time to introduce a slick new ad campaign to try to sell the new law to Medicare patients.

The health care law is out there now being promoted in a television ad for which the American taxpayer is going to have to pay the bill. The American taxpayers are going to pay the bill, and the ad stars Andy Griffith. During this ad—and we know Andy Griffith from Andy of Mayberry, the television show, and in later years, Matlock. He is used as the spokesman now to our seniors, telling seniors a number of things, making a number of promises. Let's go through them.

One is, he says seniors will have their ''guaranteed benefits.'' Well, only in Mayberry does a $500 billion cut equal better care for American seniors. Even the administration's own actuaries and own specialists in Medicare took a look at this, and they don't even agree with the commercials. They say the cuts are unlikely to be sustainable over time. They say that one in six hospitals and doctors offices related to Medicare providers are going to become unprofitable within 10 years, and many may be forced to close. They say the new law is going to jeopardize patient access to medical care.

Well, then Mr. Griffith says: ''Well, more good things are coming.'' Well, what kinds of things for our seniors on Medicare? When you take a look at how the cuts are out there—there are cuts for home health, which is a lifeline for seniors who try to stay out of

a nursing home. There are cuts to nursing homes for Medicare. There are cuts in physical therapy. There are cuts to hospice, where many people spend the last days of their lives. There are cuts across the board. I do not know how that can be related to ''more good things are coming.''

The President's Medicare experts tell us that benefits aren't going to remain the same because things would happen with Medicare Advantage. One out of four people on Medicare is signed up for Medicare Advantage, and the reason they do it is because there are advantages of being on Medicare Advantage in terms of preventive care, in terms of coordinated care. There are good reasons people sign up for that. Yet there are going to be cuts there.

In the commercial, they also say the law will lower prescription costs, but the Congressional Budget Office estimates that is not true, that the cost of prescriptions will continue to go up.

There are people who look at ads, political ads, different kinds of ads. There is an organization called factcheck.org, and what they did is they said this commercial uses—their words are ''weasel words,'' they say, to avoid telling the truth. Well, that is the fundamental problem. As much as most Americans love to hear from Andy Griffith, we would prefer to hear the truth from President Obama. Instead of spending hundreds and hundreds of thousands of dollars of taxpayer money—taxpayer money—on a misleading ad, the President should put this money toward the $500 billion that has been cut from our seniors on Medicare.

The White House continues to believe the American people do not understand what is in the health care law, and they say that is the reason it is unpopular. They say that if more people understood the law, well, then it would be more popular. But week after week, something else comes out, another broken promise that makes people realize this is not good for them. It is not good for them as patients; it is not good for the providers, the nurses and doctors who take care of the patients; and it is not good for the payers, the people who are paying for their health care, the taxpayers of America. Across the board, people realize, as they learn more and more about what is in this law, that it is not good for them.

When I go to senior centers and visit with seniors, I say: How many of you believe it is going cost you more for our health care? Every hand goes up.

Then I say: How many of you believe the quality of your care is going to go down? Every hand goes up.

You see the same thing if you go to a Kiwanis Club or a Lions Club or a Rotary Club, civic organizations, whomever you visit. Do you think the cost of your care is going to go up? Every hand goes up. Do you think the quality of your care is going to go down? The hands go up again. That is not what the American people want—paying more and getting less.

Well, I think the American people are really getting a good understanding of what is in this bill, and the people of Missouri have clearly reflected that Tuesday in the voting booth.

Earlier this week, I joined Senator COBURN, the other physician in the Senate—there are only two physicians who serve in this body—and other Members of the Senate in sending a letter to Secretary Sebelius, the Secretary of Health and Human Services. What we requested is that the Department stop running this ad, reimburse the U.S. Treasury for any taxpayer money spent on the ad, and explain which one of the accounts in Health and Human Services paid for this advertisement.

Take a look at this. We as a nation are $13 trillion in debt, and the White House's ongoing propaganda campaign should not be funded by American taxpayers. And that is why, week after week, every week since this bill became law, I have come to the floor to give my second opinion about the health care law and to say that it should be repealed and replaced—replaced with something that is patient centered, not government centered, not insurance company centered, but patient centered. Allow people to buy insurance across State lines. That will help bring down the cost and will help more people to be insured. Give people who buy their own health insurance the opportunity to have the same tax breaks the big companies get. Give people who buy their own health insurance, and others, opportunities through nutrition and diet and exercise and taking responsibility for their own health care. Let them reap the benefits of that. Then, of course, we need to deal with lawsuit abuse and the expense of all of the unnecessary tests, the defensive medicine doctors all across the country will tell you they end up practicing.

Those are the things we need to do—and opportunities for small businesses to join together to bring down the cost of their care. With the individual mandate that is out there and the business mandate, we are seeing more businesses saying: You know, I am not going to want to provide health insurance under this new law. I will just pay the penalty and go on. That is going to make it harder for people.

Here we are with a huge national debt, high unemployment, and a health care law that, in my opinion, would best serve the country if it was repealed and replaced. That is why I come to the floor again today, the last day the Senate is in session, as Senators are heading out around the country to visit with those in their communities. I am hoping the American people continue to speak out and tell their elected representatives it is time to repeal and replace this health care law.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY BORDER SECURITY SUPPLEMENTAL APPROPRIATIONS ACT, 2010

Mr. SCHUMER. Madam President, I am going to ask unanimous consent for a proposal on the border. First, I will speak for a minute and then ask consent. I know my colleague from Arizona will then speak and offer some amendments to it.

Today, I join my cosponsors—Senators REID, INOUYE, MURRAY, FEINSTEIN, BINGAMAN, MCCASKILL, CASEY, UDALL of Colorado, BEGICH, and BURRIS—to try to make our borders as secure as possible. We are asking unanimous consent to pass a smart and tough $600 million emergency border security appropriations package that will provide immediate relief to the border.

Here is what our border security package will do: It will provide over $250 million to hire 1,500 new agents to permanently patrol our southern border and ports of entry.

It will also create a strike force that will be deployed in different areas of the southwest border, depending on where the need is greatest at any particular moment.

It will provide funds to deploy unmanned drones to fly along our southern border and provide our patrol officers on the ground with real time information on unlawful border crossings. I believe there are seven working now. They have been very successful, and they should be expanded quickly and immediately.

It will provide funds to improve communications capabilities between Federal border enforcement and State and local officers along the border.

It will provide funds to construct forward operating bases for the Border Patrol to use that are actually located on the border instead of being hundreds of miles away.

It will provide funds for Immigration and Customs Enforcement to conduct investigations of drug runners, money launderers, and human traffickers along our border.

It will provide over $200 million to increase the number of ATF, DEA, and FBI agents on our border because the focus on drug dealing and crime on our border is very important and has to be coordinated with immigration enforcement and bolster the number of prosecutors and court resources along our border so wrongdoers can be immediately brought to justice.

The best part of this border package is it is fully paid for and will not increase the deficit by a single penny. The emergency border funds will be paid for by assessing fees on foreign

companies known as chop shops that outsource good, high-paying American technology jobs to lower wage, temporary immigrant workers from other countries. These are companies such as Infosys. But it will not affect the high-tech companies such as Intel or Microsoft that play by the rules and recruit workers in America.

This border package will, therefore, accomplish two important goals. It will make our border far more secure extremely quickly, and it will level the playing field for American companies and American workers to compete against these foreign companies known in the industry as using ''outsourcing visas.''

Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5875, which is at the desk; that the Schumer substitute amendment, which is the text of S. 3721, a bill making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, be agreed to, the bill, as amended, be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Madam President, reserving the right to object, I ask unanimous consent to engage in a short colloquy with my colleague from New York.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, my understanding, I say to my colleague from New York, is this provides for 1,000 new Border Patrol agents; is that correct?

Mr. SCHUMER. Yes; 1,000 Border Patrol and 500 ICE and DEA.

Mr. MCCAIN. One-hundred ICE, $39 million for Customs and Border Protection, 250 new Customs and Border Patrol agents you mentioned, communications equipment, money to deploy forward operating bases. I wish to go over it again with my colleague.

Mr. SCHUMER. So far, exactly right.

Mr. MCCAIN. A Federal law enforcement training center, additional funding for the Department of Justice.

Anyway, the reason I mention this is because I think these are significant. It comes to a total of about $600 million; is that correct?

Mr. SCHUMER. Yes.

Mr. MCCAIN. I thank my colleague. I think this is significant legislation. I ask the Senator if he would amend his request to include the adoption of three amendments. Those amendments are Nos. 4590, 4591, and 4592. They are: $200 million for Operation Streamline, which is a program that charges those individuals who have crossed the border illegally with a petty crime or misdemeanor with jail time. This has proved to be a great deterrent for repeat crossers; $68 million additional for the Customs inspectors and the other third would be $20 million for the Law Enforcement Support Center which helps the Federal Government, States, and localities identify those individuals who are here illegally and also determines their status regarding eligibility.

If I may mention to my colleague, I am not complaining about these provisions. I would like to point out that Operation Streamline on the border has been a very effective tool as disincentives to repeat crossers. I hope that either in this legislation the Senator from New York would consider it and, of course, we need more Customs inspectors.

The Law Enforcement Support Center is to identify individuals because right now they are overtaxed, as we know, with the number of illegals, how to identify them and to determine their status.

These three amendments I would obviously pay for out of the stimulus package.

My question to my colleague from New York, I understand he is paying for them—maybe he can elaborate—for these provisions by increasing fees or taxes on companies that issue or need H–1B visas and those companies that have less than 50 percent of their employees as American citizens; is that correct?

Mr. SCHUMER. That is basically correct, yes.

Mr. MCCAIN. Would the Senator describe that.

Mr. SCHUMER. The bottom line is this. I like the H–1B program, and I think it does a lot of good for a lot of American companies. In fact, in the immigration proposal I made, along with Senator REID and Senator MENENDEZ, as well as the outline with Senator GRAHAM, we expand H–1B in a variety of ways.

There is a part of H–1B that is abused, and it is by companies that are not American companies or even companies that are making something. Rather, they are companies that take foreign folks, bring them here, and then they stay here for a few years, learn their expertise, and go back. We think we should increase the fees when they do that.

Mr. MCCAIN. I thank my colleague. Again, I ask if the Senator from New York would amend his request to include the adoption of those three Kyl-McCain amendments.

Mr. SCHUMER. Madam President, first, I appreciate the spirit in which the Senator from Arizona has talked about the proposal. Let me try to be in the same spirit. I always said I believe in comprehensive immigration reform. I know my colleague from Arizona has focused on this issue for at least as long as I have. I was involved in the original legislation back in the late eighties with a great deal of care, a great deal of concern, and a great deal of focus.

I hope, even though I cannot accept these amendments, that maybe we could come together on something that we could bring back in September because I do believe we have to secure the border. Even in the comprehensive proposal that we made, we said we have to secure the border and do other things as well. It is my belief that securing the border alone will not solve our immigration problems; that until we have comprehensive reform, particularly in making sure employers do not hire illegal immigrants—which they now do, even though they do not know they are illegal immigrants because documents are so easily forged, that we have to do comprehensive. But we should do the border. To say we have to do comprehensive does not gainsay that we have to work on the border and work on it quickly and soon.

My problems with the amendments are as follows: First and foremost, taking funds from the stimulus is something I could not support. The reason is very simple. In my view—and it may be different than my colleague's—the stimulus creates jobs. I do not want to tell my constituents in Buffalo that they may be laid off or not have the opportunity for a job to work on a road, to be employed as a sheriff or firefighter or teacher because there are less stimulus dollars. I do not believe in robbing Peter to pay Paul.

I prefer our source, which is from these companies which are not, as I say—they are companies whose whole purpose is to bring people in on H–1B and the vast majority of them from other countries who go back to the other countries. That is a better funding source.

On the third amendment, I do believe we have that one, the $21 million for the center. I believe that is in our bill, the Law Enforcement Support Center. I believe that is in our proposal.

As for the second amendment, which is probably the one where we have a substantive disagreement, Operation Streamline is, first, expensive. If you are going to immediately incarcerate everyone who is apprehended at the border, you pay for their medicine, you pay for their health care, you pay for their food. It is over $100 a day. DHS has been using a different program. When they find someone crossing the border illegally, they bring them to the Mexican interior. Secretary Napolitano has shown some good documentation that works, and it is a lot cheaper.

Until proven otherwise, I think we ought to continue that program and maybe expand that program based on the agreement we have that there should be more people on the border so there are more apprehensions.

What we learned in a different area—asylum—is that building detention centers for all those who are caught creates problems.

In New York, we have a large number of asylees—and I support asylum in many justified cases—and it has proven to be very expensive. It has proven to be cumbersome, and oftentimes you don't have the supply of space to keep up with the demand.

So I would respectfully oppose the three amendments and urge that the original proposal be supported.

I yield to my colleague.

Mr. MCCAIN. I think my colleague may have been referring, when we are talking about the law enforcement support center provision that says U.S. Immigration Customs Enforcement salaries and expenses, maybe that is the area that he is referring to that falls under——

Mr. SCHUMER. I believe so, yes.

Mr. MCCAIN. The stimulus money. I would remind my colleague that just this morning he voted to use $1.5 billion in stimulus funds for the DOE Loan Guarantee Program. But that is a subject of a different discussion.

Let me just say again about Operation Streamline that I would invite my colleague from New York to come and see one of these facilities and talk to our people down at the border. One of the problems, as you know, is we have had this catch and release, or even catch and take to another part of the United States and put them across the border. So we seem to have these repeat crossers. The experience that we have had, and the people down there will tell you about, is keeping these people incarcerated for a period of time—and it isn't just everybody who comes across, it is somebody who has committed a petty crime, a misdemeanor, et cetera—we have found those individuals do not return or are much less likely to do so.

So I say to the Senator from New York, there is no fence money in here, and we would have liked to have seen that. We need to complete and reinforce the fence. We want 3,000 officers down on the border, but the bill has 1,200, which is certainly a major step forward. And there is 1,000 Border Patrol. We think we need as many as 3,000, as I mentioned.

But I think this $600 million is important. I think it is going to a lot of the right purposes. We will fight some more on these three additional amendments I am talking about. While I appreciate the addition of UAVs, we need more surveillance capability on the border and, obviously, in my view, we need to finish the fences. But this is a step forward, so I would ask unanimous consent on behalf of myself and Senator KYL to be added as cosponsors. This will move forward our 10-point plan we have put forward to get our border secured.

Mr. SCHUMER. I thank the Senator, and I am glad we were able to—

The PRESIDING OFFICER (Mr. Goodwin). Is there objection to the request made by the Senator from New York?

Mr. SESSIONS. Reserving the right to object, I think we are a little out of sync.

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. SCHUMER. I yield to the Senator for a few thoughts.

Mr. SESSIONS. If the Senator from New York wishes, he can proceed to the UC, which I will support, and then I would like to have a few moments to make some comments. That would be fine.

Mr. SCHUMER. I have been told they need to do some conferring in our cloakroom, so the Senator may speak and I will hold off for a minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate Senator SCHUMER's legislation, and I also would support it. It is clearly a step in the right direction, and it is one of the things we need to do.

I guess as we leave this Congress to go home and get ready to campaign, many of my colleagues may be able to say they did something that was helpful in eliminating illegal immigration—something other than suing the State of Arizona, where the Department of Justice is trying to block Arizona from participating effectively in reducing the amount of illegal immigration.

On June 11, the National Immigration and Customs Enforcement Council, acting on behalf of approximately 7,000 ICE officers and employees—Immigration and Custom Enforcement—cast a unanimous vote of ''no confidence'' in Mr. John Morton, the Director, saying that he is more interested in politics than in in enforcing our immigration laws. So I am concerned about that.

Also, Senator MCCAIN was correct to say that we voted for 700 miles of double-layer fencing, and even appropriated money for its construction. Only 400 miles have been completed and of that, only about 40 miles are double layer. I am not aware that any other construction is ongoing. Why aren't we completing that? It multiplies dramatically the capability of an agent to be effective on a long border if there are barriers there. So I am not happy about our not completing that. It is very much a failure. This Congress committed to the American people more than one time to build that fence and we still have not done it.

This is typical of why the American people are not happy with us; why our approval rating is getting close to single digits. You can't get much lower than it is. After much debate, we agreed to build a 700-mile fence, yet we end up getting 400 and saying that is great.

Then we have this administration, immediately after taking office causing a big stir by investigating its own ICE agents. ICE agents raided a business in Washington State which was employing a whole bunch of illegal workers and do you know what Ms. Napolitano, the Secretary of Homeland Security says? She says: We are going to get to the bottom of it.

Did she mean we are going to get to the bottom of the people who were illegally working and the company who was illegally hiring them? No. She wanted to get to the bottom of what it was this agent was doing trying to enforce the law.

She sent a signal throughout the entire Federal law enforcement community. What was that signal? Don't raid businesses. That is exactly what that did.

Operation Streamline does work. It absolutely works. CNN had a guy on; he was caught within hours, Senator MCCAIN. They took him down to the border and walked him to the middle of the bridge and let him go back, and he just came back the next day. So this Operation Streamline is really a dramatic improvement where it is in effect.

The 287(g) program ought to be expanded, which calls on and provides a mechanism for great partnership with local people. Instead, Secretary Napolitano narrowed the program and when the State of Arizona tries to help DHS, the Obama Administration say: No, that is not a good idea. We are going to sue you.

So, in my view, this bill is a good step. I salute my colleague from New York. I think we have some potential to work in the right direction. But there is a lot more to be done, and what is lacking is a firm commitment from this administration and this Congress to end the massive illegality at our border. It is within our grasp to do so. A lot of people think it is not possible—it is possible. We have done it on certain sectors of the border. We could complete that, and then we could begin to focus on what to do about the people who have been here for many years and how to handle that. But until we focus on ending the illegality, we can't get anywhere.

So I will be thankful for what we have. Senator MCCAIN would like to add 3,000 more agents, but 1,200 is a step in the right direction. But a number of other things, if done effectively, with the will to reduce the illegality, will work. It is not impossible.

The thing about Operation Streamline, and the reason it saves money instead of costing money, is that when it is utilized, the number of people entering illegally goes down because they know they are not just going to be taken back to the border the next day and released to then reenter. They actually get a misdemeanor conviction and maybe some sort of probation, and then they are released and are much, much, much less likely to come back because it would be a more serious offense the second time.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, we are waiting to see if there are other Members on our side who would like to come and speak, so I would like to either yield time to the Senator from Rhode Island, who has been waiting on another subject, and then come back to this, or suggest the absence of a

quorum, whichever would be OK with my colleague.

Mr. President, I temporarily yield the floor to my colleague from Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, I intend to speak for a few minutes on climate change and the need for a new energy strategy for this country.

I will just note that if any of my colleagues intend to seek the floor to conclude the business Senator SCHUMER and Senator MCCAIN were engaged in, they can just signal me and I will yield the floor to allow them to finish that business.

Mr. President, we are now at the end of this work period, and we will shortly be going back to our home States for our home work during the August recess from Washington. We are doing so without having done anything about our dependence on fossil fuels, the carbon pollution that we subsidize going into our atmosphere, the undisputed science of what is happening in our atmosphere as a result of that, and the consequences that are beginning to pile up on our planet as a result of our negligence in addressing this pressing issue.

It is easy when you are in Washington to think that this is the center of the universe and that the little fights and quarrels that happen here and the politics of this town are what is most important. In this Chamber, which is very often a hotbed of those politics, I think that problem is particularly severe. There are political situations where, if we don't get it resolved, then it just keeps going along and there is no real harm done. But nature doesn't give a darn about our politics. Nature doesn't give a hoot about our campaign contributions. Nature doesn't care about what motivates delay. Nature doesn't care whether you are lying or telling the truth. Nature just goes on about her business, driven by chemistry, biology, physics—the basic elemental forces of nature.

We are getting ourselves into a situation where by ignoring those forces we are beginning to imperil ourselves and future generations.

It is astonishingly irresponsible to be in the predicament we are in right now, with what is fair to describe as a looming global emergency that we can't get anything done on.

The big oil companies, the big coal companies, the big energy companies are able to drop into this particular Chamber their delay, their desire to have nothing happen on this subject, and that trumps the interests of all the people of the United States, all the people of the planet, their children and grandchildren, off into our future.

I want to read into the RECORD a few things that have come out in the press in the last few weeks. Here is USA Today, in the middle of last month:

> The world is hotter than ever. March, April, May and June set records, making 2010 the warmest year worldwide since record-keeping began in 1880. . . .

That is not some fringe group reporting this. That is the National Oceanic and Atmospheric Administration of the Government of the United States of America.

In my home State, back in Rhode Island, ''July was more than 4 degrees above normal,'' quoting from the Providence Journal on August 2, ''and the second hottest month on record for Providence; 4.2 degrees higher than normal.''

Here is a newsclip about what effect these temperatures are having on our oceans:

> The rising temperatures have been particularly hard on oceans, which have absorbed more than 90 percent of the heat trapped by greenhouse gases over the past 50 years.

This was another NOAA report.

> Oceans are taking in increasingly more carbon. The report's analysis of global ocean uptake of carbon dioxide estimates that the seas stored 33 percent more anthropogenic [man made] carbon in 2008 than they did 14 years earlier. Oceans' absorbsion of CO_2 has caused rising acidity that is damaging the ability of shellfish, crustaceans, corals and plankton to build shells and skeletons.

You might ask, who cares about shellfish, crustaceans, corals, and plankton? Shellfish keep a lot of American fishermen busy and occupied and productive, and feed an awful lot of families. Ditto crustaceans—the Rhode Island lobster in particular. Corals are the nurseries of our tropic seas. When they die, it has a pronounced effect throughout the oceanic food chain. And phytoplankton—all plankton—are the base of the oceanic food chain. When you have a collapse in the phytoplankton, you have a potential collapse of the entire oceanic food chain.

There have been massive die-offs in the historic record of the ocean and we are trending toward having another one, with an ocean that is more acidic now than it has been in 8,000 centuries. We are getting to the point where the small animals that form the base of the ocean food chain are becoming soluble in the water that is their environment.

Lobsters in particular—again from the Providence Journal of July 29:

> Meanwhile, the water off our coast has been unusually warm. Lobsters like cold water and in the colder waters east of Cape Cod, the heartland of the fishery, the crustaceans seem unaffected. No moratorium has been recommended there. The lobstermen explain a decline in the local stocks by saying there has been a general migration toward cooler waters.

So the warming of our waters is having a pronounced effect on Rhode Island businesses, on Rhode Island lobstermen. I was out the other day with Rhode Island lobstermen, hauling in pots, seeing what was down there, and the fishery has not been wiped out, but it is suffering, it is under pressure, and it relates to our warming planet and to climate change.

It is a global situation. According to the Wall Street Journal, there are 400 oxygen-depleted dead zones identified by scientists in our oceans—oxygen-depleted dead zones in our oceans, 400 of them, covering an area of nearly 100,000 square miles of dead ocean because there is not enough oxygen in it to support life, as though it is on some alien planet.

Now a very recent study, July 29, reported:

> Researchers at Canada's Dalhousie University say the global population of phytoplankton—

Again, the basis of the oceanic food chain—

> has fallen about 40 percent since 1950. That translates to an annual drop of about 1 percent of the average plankton population between 1899 and 2008. The scientists believe that rising sea surface temperatures are to blame.

There is another side to this story and, frankly, most of it is phony baloney science. It is bought-and-paid-for mercenary science. It is not the real deal. It masquerades as the real deal, it is designed to fool the public, and it is designed to prevent us from taking action. Regrettably, for a while it is working.

Here is what Paul Krugman wrote the other day, looking at the variety of evidence that supports the need for us to do something about that for the sake of our planet, our children, and our grandchildren.

> Nor is this evidence tainted by scientific misbehavior. You probably heard about the accusations leveled against climate researchers—allegations of fabricated data, the supposedly damning e-mail messages of ''Climategate,'' and so on. What you may not have heard, because it has received much less publicity, is that every one of these supposed scandals was eventually unmasked as a fraud concocted by opponents of climate action, then bought into by many in the news media.

This should be a win-win. This is an issue that is important to us as humans trying to live on this planet as dramatic changes begin to take place in our atmosphere and ecosystems. This should be a win for us economically as green jobs grow, as we compete with China and India, as we stop losing the race to China and India for this next economy, as we stop sending money overseas to people who do not care for us much, who fund our enemies, and who drain hundreds of millions of dollars a year out of our economy.

It should be a win on national security, protecting us from those circumstances. It should be a win across the board. But the special interests will not let go, will not step into the future. They know they control enough votes in this place to make this not happen.

I promise my colleagues this is a day that the future will look back at and look at this Senate, and this will be our day of infamy. This will be the day when all of the evidence was before us, we had every chance in the world to do

what was right, we in fact knew what was right, and we allowed lies and phony science, concocted evidence and the big money from big oil, from big coal, from the big polluters, to steer us away from our duty.

I hope when we come back in September we will take this back up, that we will take it up seriously. It is my strong belief that if we go at this with real diligence as a Senate—if we have the White House with us and behind us and fighting for us, if we have the environmental groups out there in the field doing their work, pushing this issue, and if we have the hundreds of thousands of Americans who work in green energy industries and who are green energy investors and who are going to grow into this green energy economy out there explaining the true economic value, and if we have our national security apparatus making the point as to how important this is, as all the national intelligence estimates have already said—we can push this over the top. Not the first time, because the lies and the money will trump the first time. But if we do it a second and a third and fourth time and force this issue, I think we can bring it home. I hope we will at least try. Some battles are worth the fight even if you are not sure you can win.

I yield the floor.

The PRESIDING OFFICER. Without objection the Senator is recognized.

CHILD NUTRITION

Mr. HARKIN. Mr. President, I thank the Senator from Pennsylvania for yielding me a few minutes to go in front of him even though he was here before me.

I want to say a couple of words in support of the child nutrition bill. I know the Senator from Pennsylvania also wants to speak about that, the child nutrition bill that was passed by unanimous consent here in the Senate this afternoon.

I thank Chairman LINCOLN, chairman of the Senate Agriculture Committee, for her tireless efforts to bring this bill to fruition. She has been a great advocate, a great champion of child nutrition and making the changes necessary to get better food for our kids in schools.

I also thank Senator CHAMBLISS, with whom I served on the Agriculture Committee for a number of years, either as ranking member or as chairman, working on agriculture bills.

I also particularly want to thank Senator MURKOWSKI of Alaska. She and I have worked together as partners in this effort for several of the past years on trying to get this bill put together and get the provisions we have in the bill done. She has been a great champion of better food in our school lunch program, school breakfast program, afterschool meals.

I also thank our leader, Senator REID, and Minority Leader Senator MCCONNELL, for working together on both sides to get this bill to the point where we could actually get to a unanimous consent today.

There are many important components of this bill, many of which I had pushed for many years when I was chairman of the Agriculture Committee. I am particularly supportive of the provisions to increase reimbursement for school meals, expanded use of direct certification in the National School Lunch Program, the expansion of afterschool meals, a new and great focus on promoting breastfeeding, and the very real advances that that makes to health promotion in the early stages of childhood.

I want, however, to mention one provision I worked on for about 15 years, a provision that would require the adoption of school nutrition standards for all foods in all schools. Since the 1970s, the rates of childhood obesity have tripled among children and adolescents in the United States. Type 2 diabetes has increased dramatically. Current estimates suggest that among children born today, the lifetime risk of developing diabetes is 30 percent for boys, 40 percent for girls, and for African Americans and Latinos it is even higher.

Again these are complicated problems that will require multifaceted solutions. To improve the health of our children, all sectors of society must be involved—parents, the media, community organizations, corporate America, and of course our schools.

Again, I am well aware that schools are not the only places where our kids have access to sugary beverages and fried foods, candy, and high sodium foods. But schools can and should do more to provide healthy foods to our kids. What kids learn to eat at an early age they tend to develop habits and tastes for and eat those foods later on in life.

If you start feeding kids sugary soda and French fries for lunch, they tend to keep eating that as they grow older, with all of the health problems that brings on.

To that end, it is critically important that we establish strong nutrition standards for all the foods sold in school through vending machines, snack bars, a la carte lines in the schools. There are several reasons we need to set such standards. Existing USDA nutrition standards for the foods sold outside of school meals are outdated. They allow for the sale of foods that are low in nutrition and high in fat, sugar, and salt. In addition, in recent years science has greatly increased our knowledge of how kids' diets affect their health. Yet we have done very little to adjust our nutrition standards to this new knowledge.

We have had a big loophole here and this is the way it is. The Secretary of Agriculture can set nutritional guidelines for all of the foods sold in the school lunch, in the school lunchroom—school breakfasts, school lunches, and can adopt those standards to follow the dietary guidelines. However, the Secretary has no authority to regulate the foods sold outside the lunchroom. So you have a big loophole here. Kids can eat lunch, they can have good food prepared according to dietary guidelines, but down the hall there are vending machines with candy bars and potato chips and sugary sodas and all kinds of things such as that, which undermines what we are trying to do to get better food for our kids in schools.

It undermines parental supervision. Parents think that if they send their kids to school, they are going to get good meals. Yet they can go down the hallway from the school lunchroom and buy all of those bad foods. So that is what this bill does. It provides that the Secretary of Agriculture now, for the first time, has the authority to regulate all of the foods in schools, even in the vending machines, snack bars, and a-la carte lines.

Again, I am proud this provision has had broad support on both sides of the aisle, among public groups and food and beverage companies. I particularly would like to thank the following groups for their help through all these years to bring this bill to this point: the Center for Science in the Public Interest, the American Heart Association, the American Dietetic Association, the American Diabetes Association, the American Public Health Association, the American Association of School Administrators, and the National PTA. They have all been wonderful in working together to get this bill put together and through the floor of the Senate. On the food and beverage side, I particularly wish to thank the American Beverage Association, Mars, Incorporated, the dairy industry, Pepsi, Coca-Cola, and many others who brought us to this point.

We cannot ignore the rising toll of diabetes, heart disease, and childhood obesity. By including the commonsense provisions to protect the nutrition environment in our schools, this bill makes a major step forward in efforts to protect our children and promote their health.

I sincerely thank my friend and colleague from Pennsylvania for allowing me to take this time even though he was next in line.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object—I will not object—I wish to thank the Senator from New York and those on the other side for taking a significant step forward. I believe we have a lot more to do, but this will contribute to our effort to get our border secured. And we will be continuing to fight for all of the provisions Senator KYL and I have put forward, but I thank my colleague for his cooperation in sending some $60 million to help our border get secured, and at this time, it is not. But I think this is movement in the right direction. I thank my colleague.

Mr. SCHUMER. Mr. President, I wish to thank my colleague. As you know, our goal—most of us on this side—is comprehensive reform. We believe securing the border is part of that, and this bipartisan effort can help move us in that direction. I hope we can move forward in a bipartisan way on many other parts of immigration reform beyond the border in the future.

I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4593) was agreed to as follows:

Strike all after the enacting clause and insert the following: That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $253,900,000, to remain available until September 30, 2011, of which $39,000,000 shall be for costs to maintain U.S. Customs and Border Protection Officer staffing on the Southwest Border of the United States, $29,000,000 shall be for hiring additional U.S. Customs and Border Protection Officers for deployment at ports of entry on the Southwest Border of the United States, $175,900,000 shall be for hiring additional Border Patrol agents for deployment to the Southwest Border of the United States, and $10,000,000 shall be to support integrity and background investigation programs.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for ''Border Security Fencing, Infrastructure, and Technology,'' $14,000,000, to remain available until September 30, 2011, for costs of designing, building, and deploying tactical communications for support of enforcement activities on the Southwest Border of the United States.

AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND PROCUREMENT

For an additional amount for ''Air and Marine Interdiction, Operations, Maintenance, and Procurement'', $32,000,000, to remain available until September 30, 2012, for costs of acquisition and deployment of unmanned aircraft systems.

CONSTRUCTION AND FACILITIES MANAGEMENT

For an additional amount for ''Construction and Facilities Management'', $6,000,000, to remain available until September 30, 2011, for costs to construct up to 2 forward operating bases for use by the Border Patrol to carry out enforcement activities on the Southwest Border of the United States.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $80,000,000 to remain available until September 30, 2011, of which $30,000,000 shall be for law enforcement activities targeted at reducing the threat of violence along the Southwest Border of the United States, and $50,000,000 shall be for hiring of additional agents, investigators, intelligence analysts, and support personnel.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $8,100,000, to remain available until September 30, 2011, for costs to provide basic training for new U.S. Customs and Border Protection Officers, Border Patrol agents, and U.S. Immigration and Customs Enforcement personnel.

GENERAL PROVISIONS

(RESCISSION)

SEC. 101. From unobligated balances made available to U.S. Customs and Border Protection ''Border Security Fencing, Infrastructure, and Technology'', $100,000,000 are rescinded: *Provided*, That section 401 shall not apply to the amount in this section.

TITLE II

DEPARTMENT OF JUSTICE

SEC. 201. For an additional amount for the Department of Justice for necessary expenses for increased law enforcement activities related to Southwest Border enforcement, $196,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be distributed to the following accounts and in the following specified amounts:

(1) ''Administrative Review and Appeals'', $2,118,000.

(2) ''Detention Trustee'', $7,000,000.

(3) ''Legal Activities, Salaries and Expenses, General Legal Activities'', $3,862,000.

(4) ''Legal Activities, Salaries and Expenses, United States Attorneys'', $9,198,000.

(5) ''United States Marshals Service, Salaries and Expenses'', $29,651,000.

(6) ''United States Marshals Service, Construction'', $8,000,000.

(7) ''Interagency Law Enforcement, Interagency Crime and Drug Enforcement'', $21,000,000.

(8) ''Federal Bureau of Investigation, Salaries and Expenses'', $24,000,000.

(9) ''Drug Enforcement Administration, Salaries and Expenses'', $33,671,000.

(10) ''Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses'', $37,500,000.

(11) ''Federal Prison System, Salaries and Expenses'', $20,000,000.

TITLE III

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $10,000,000, to remain available until September 30, 2011: *Provided*, That notwithstanding section 302 of division C of Public Law 111–117, funding shall be available for transfer between Judiciary accounts to meet increased workload requirements resulting from immigration and other law enforcement initiatives.

TITLE IV

GENERAL PROVISIONS

SEC. 401. Each amount appropriated or otherwise made available under this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 402. (a) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) shall be increased by $2,250 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are nonimmigrants admitted pursuant to section 101(a)(15)(H)(i)(b) of such Act or section 101(a)(15)(L) of such Act.

(b) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) shall be increased by $2,000 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are such nonimmigrants or nonimmigrants described in section 101(a)(15)(L) of such Act.

(c) During the period beginning on the date of the enactment of this Act and ending on September 30, 2014, all amounts collected pursuant to the fee increases authorized under this section shall be deposited in the General Fund of the Treasury.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 5875) was read the third time and passed.

Mr. CASEY. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTHY, HUNGER-FREE KIDS ACT OF 2010

Mr. CASEY. Mr. President, I rise this evening to speak about the bill we passed today, what is known as the child nutrition bill, but the actual title is the Healthy, Hunger-Free Kids Act of 2010. We passed it by unanimous consent, which means we have done something that happens all too rarely around here. We passed a major piece of legislation in a bipartisan way, we got consent from the whole Chamber, and we did not have to have a vote on it. That is a good development, to pass a big piece of legislation which will have a tremendously positive impact on our children, and passing it in that manner is encouraging.

I am grateful, as so many of us are, to our chairman, Senator LINCOLN, for her continued leadership to craft a child nutrition bill that protects and assists the most vulnerable of our society—pregnant women and children who are food insecure, especially in a time of economic difficulties for so many families and high unemployment in so many communities across the country.

In the Scriptures, they tell us that a faithful friend is a sturdy shelter, and he or she who has found a faithful friend has indeed found a treasure. I am paraphrasing a little bit, but I think that line from the Scriptures about a faithful friend being a sturdy shelter has application to this discussion we have had about the Child Nutrition Act and helping our children because so many elected officials around the country say they are a friend of children. That is a good sentiment. We like to hear that. But often we do not have the opportunity to demonstrate our friendship, our concern for children, and sometimes we don't take the opportunity even when it is presented to us. So in our efforts to show and demonstrate—sometimes in small

ways, sometimes in more substantial ways here in the Senate or in other instances as well—we have a chance to demonstrate, to prove or to provide some proof that we are trying to be a friend to children.

The bill itself reauthorizes our Nation's major Federal child nutrition programs which are administered by the U.S. Department of Agriculture. As many people who watch these proceedings know, reauthorization means we want to do it again, we want to continue a policy and keep the policy moving in the right direction and fund it.

Under this program, the following are included: the National School Lunch Program and the School Breakfast Program; the Special Supplemental Nutrition Program for Women, Infants, and Children, known by the end of that program's name, WIC—women, infants, and children; the Child and Adult Care Food Program, which is not something we hear a lot about but is critically important; and the Summer Food Service Program.

The act itself—the Healthy, Hunger-Free Kids Act of 2010—provides $4.5 billion in additional funding over the next 10 years, nearly 10 times the amount of money provided for the previous child nutrition bill and the largest new investment in child nutrition programs since the inception of these particular programs.

This historic new investment provided by the act could not come at a more important time, particularly given the incidence of hunger and the corresponding need for Federal nutrition assistance, which has increased in recent years. We know the economic realities. The numbers do not begin to tell the story, but the numbers are part of the story.

Throughout the country, more than 15 million people are out of work. In Pennsylvania, for example, a 9.2-percent unemployment rate equates to 591,000 Pennsylvanians out of work. I know some States are at 10 percent unemployment and 11 percent and 12 percent and some even over 13 percent. But in our State, having more than 591,000 people out of work is close to if not a record number of people.

I have always believed that when it comes to programs and policies that impact our children, whether it is a nutrition program or an education program, whether it is helping to protect our kids, I have always believed that what motivates us and what motivates people across this country to take steps to help children is a basic and fundamental belief that every child in America is born with a light inside them.

Some children, because of their circumstances, because of the family they are born into or because of other reasons, do not need a lot of help, and their light shines so brightly, it is blinding, it is boundless, it is assimilating—you can fill in lots of other words. Some children are born with a light inside them, but it does not burn as brightly because of limitations or because of adverse circumstances they are born into or because the family they are born into does not have some of the advantages many of us have had. They do not have a steady job. They do not have income. They do not have the ability to provide for their family.

I have always believed that it is the obligation of every public official, whether you are in the Senate or whether you are a State official or local official, but especially if you are elected, to do everything you can, to take every opportunity you can to help our children at a minimum with at least four things: nutrition and the prevention of hunger, early education, health care, and certainly basic safety and protection. This legislation takes a substantial step forward in at least one of those areas—the area I mentioned as it relates to preventing hunger and making sure kids are being given nutritious meals.

We know providing care at the beginning of a child's life is so important. That starts with that child's mother. Through the WIC Program, pregnant women and new mothers have access to nutritious foods and learn more about healthy eating—something we could all learn a thing or two about. The program encourages breastfeeding and supplies formula, food packages, and farmers market vouchers. The WIC Program is a strong investment in our future and serves more than half—more than half—of all infants in the United States. As babies grow into toddlers, they benefit from the nutritious meals and snacks provided by childcare homes and centers and Head Start Programs participating in that program.

I mentioned before that we don't hear a lot about the Child and Adult Care Food Program. That program allows children to develop, it prepares children to enter school ready to learn, and it helps working families to work.

In the vast majority of States, the Child and Adult Care Food Program—the afterschool program that it is—only provides reimbursement for a snack. The bill we passed today gives communities in all 50 States the ability to be reimbursed for a meal.

When toddlers grow into young children and arrive for their first day of school, many are able to enter the cafeteria and eat a healthy meal for breakfast and for lunch. These meals fuel them with the energy they need to grow into healthy adults. We know the numbers on these for children are so substantial. More than 10 million children receive a free or reduced-priced breakfast, and nearly 20 million children in the United States receive a lunch. In Pennsylvania, that translates into 1 million kids having the benefit of school lunch and just about a quarter of a million children getting the benefit of the School Breakfast Program.

Congress has taken a step now—at least the Senate has today—to ensure more eligible children receive meals, increasing the number of eligible children and increasing the nutritional value of meals. Hungry and malnourished children cannot fully participate in school. If a child can't, during school, have the benefit of a school lunch or a school breakfast or sometimes both, they can't learn. It is as simple as that. None of us could learn. None of us can function if we don't have enough to eat. I have always thought that if we invest in children, making sure they can learn at a very young age, they can learn more now and earn more later. We have to remain committed to these programs.

I have had a very strong interest in and have advocated for a long time for the so-called universal feeding concept because I believe the experience in a major urban school district—in this case, the city of Philadelphia—in that school district, that universal feeding concept as a model in one school district has reduced the stigma of poverty and increased participation in the School Lunch Program. Philadelphia schools are reimbursed for only the number of students who qualify for free or reduced-price meals but agree to offer free meals to all children. It covers everyone; it doesn't single children out for different treatment. Universal feeding enhances efficiency by dramatically reducing the administrative burdens of the program, and it maintains the integrity and congressional intent of the National School Lunch Program.

There is a lot more I could talk about with regard to the bill, but I wish to move very quickly and then conclude by highlighting some photographs.

This first photograph was made available to us by a Dr. Mariane Chilton. Dr. Chilton is at Drexel University. I have met a lot of people who have been champions for our children, who have stood up for children in all circumstances, but if there is one person who I can think of in any university of the United States who has done so much for our children and has stood up for them, who has been even more than just a faithful friend—Dr. Chilton has been the person who, time and again, has reminded us about the moral gravity of making sure children are first on our list.

She developed a program called Witnesses to Hunger. This particular project began after consent was given by mothers across the city of Philadelphia who agreed to participate. More than 40 of them were given a camera. They took pictures of their lives, the lives of their children, their own life, what happens in their homes. They made these pictures available. They gave us a window into their own lives by their own consent. By providing that insight, they allowed us to see the real misery of hunger for children. They allowed us to see the horrific nightmare so many children and so many families were living through, even before this recession.

The first picture I have is a photograph of a young boy sitting at a table.

Here is what his mother Melissa said about him:

My son, he's already on the small side and he needs every bit of food that he can get to make him healthy, keep him healthy. He has failure to thrive. He has a bone deficiency that doesn't allow him to grow. He's only 30 pounds. He has acid reflux. He had RSV, failure to thrive, chronic asthma.

This is one example of a child who doesn't have enough to eat, which leads to the obvious health problems that entails.

This next picture is a photograph of three children sitting at a table. They have beautiful smiles. They are wonderful children. The title of this picture is ''Oodles of noodles.'' These children are eating lots and lots of noodles. Their mother says:

And the kids know my food stamps got cut off. Because when they came home from school today, they didn't have their snacks. So they know that I didn't go to the market. I really didn't tell them why or anything like that, because I don't think they understand. But it affected them.

When people make decisions about cutting programs or voting against programs, we know they have real consequences.

The last picture is a young boy holding bananas and giving the photographer a great smile. In this photo, Gale, his mother, captures her son's happiness as he holds up a bunch of bananas.

Some people tell us people choose to eat unhealthy foods. They use that as a rationale, a pathetic and insulting rationale. But sometimes they make that argument. We know families want more access to fresh fruits and vegetables. But, frankly, in a lot of inner cities, they are not available, not at all. We have to recognize that, rather than denigrate or judge people who live in those communities. There are plenty of folks in Washington who are good at judging. They are not real good at responding to the needs of people.

There is so much in this bill. I will not go through more of it because we don't have time. I believe this bill does meet that basic obligation to do everything we can, at least in this program, at least with this opportunity, to make sure that light inside every child burns as brightly as the full measure of that child's potential, as brightly as we can possibly allow it to burn with our help. I believe this bill does one thing as well, going back to that reference to Scripture about a faithful friend being a sturdy shelter. This bill will not solve all the problems of the families who will be positively impacted. It will not eliminate hunger. It will not rescue a child from so many challenges in the life of a child who lives in a poor family. But this bill is one example of one way we can demonstrate what that scriptural reference tells us. It gives us a chance to demonstrate in a significant way that we are trying to do all we can to be that faithful friend to our children and to provide some measure of shelter when the storms of this recession hit that family and hit that child. We can take a step in proving that we are trying to be that faithful friend to children.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

SMALL BUSINESS LENDING FUND ACT

Ms. LANDRIEU. Mr. President, I rise to speak on an issue that is still pending before this body. Unfortunately, it looks as though we will not be able to wrap this up in the next few hours. It looks encouraging that we may be able to take it up immediately when we return in September.

Before I speak about that, I compliment Senators LINCOLN, CASEY, HARKIN, and others who have come to the floor in the last few hours but have been working for months, if not years, on the child nutrition bill. It is quite extraordinary that this Chamber at this late hour, because of the work of Senators LINCOLN, HARKIN, CASEY, and others, has decided by unanimous consent to pass a significant and major piece of legislation the Senator from Pennsylvania beautifully described. I compliment all of them for their work.

I wish we had been able to do the same thing for the small business bill we have been fighting for, the Small Business Job Creation Act of 2010. We can't seem to get to a point where we can get unanimous consent. So we will have to fight this out a step at a time. We had some significant votes this last week by including a Republican amendment, including in the small business bill a $30 billion lending program. We have potentially other aspects to strengthen it. But the bill is in extremely good shape.

I wish to put this up for a visual. I know people will find it hard to believe we could have literally over 100 organizations, extraordinarily strong and powerful bipartisan, conservative, moderate and liberal organizations, supporting small business. It may seem surprising that with all this support, we couldn't pass the bill before we leave. I wish to call out again just a few: The American Hotel and Lodging Association, the American International Automobile Dealers Association, the Associated Builders and Contractors of California, the California Bankers Association, Engineering Contractors, Hispanic Bankers of Texas, National Association of Self-Employed, National Restaurant Association, Recreation Vehicle Industry Association, the U.S. Hispanic Chamber of Commerce. I just listed one-half dozen or a dozen. Members can see we have hundreds of extraordinary organizations that have stepped up to say what I have been saying, what the Senator from Washington, Ms. CANTWELL, has been saying, what the senior Senator from Washington, Senator MURRAY, and Senators BOXER and MERKLEY are saying: We are not going to end this recession until we find a way to get capital and cash in the hands of small business. That will lead the way out of this recession. It is not going to be led by Wall Street. It is going to be led by Main Street.

I would like to put up our Main Street sign. Main Street is going to lead the way. There was a beautiful article written by Harold Meyerson. It was dated August 4 in the Washington Post. The article is entitled ''Jobs in the Cards?'' It reads, in part:

All things considered, American big business is doing just fine, thank you. Profits, productivity and exports are up. New hires, rehires and wage increases, as I have written, are nowhere to be seen. They're no longer part of the U.S. corporate business plan, in which higher profits are premised on having fewer employees. Sell abroad, cut costs at home—the global marketplace that American business has created is paying off big-time.

Not so for American small business, which inhabits those less rarified realms of the economy in which depressed domestic demand and bottled-up credit remain a mortal threat. The great private-sector trickle-down machine has largely stopped working for small business.

He is right. If we don't get small business started up again and focus on them and help them, this recession will never come to an end. Maybe that is what some people on the other side of the aisle want. Maybe they put politics before progress. But this is dangerous, it is wrong, and it is painful. We have to figure out a way.

I ask unanimous consent to have the article from which I just quoted printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 4, 2010.]

JOBS IN THE CARDS?

(By Harold Meyerson)

All things considered, American big business is doing just fine, thank you. Profits, productivity and exports are up. New hires, rehires and wage increases, as I have written, are nowhere to be seen. They're no longer part of the U.S. corporate business plan, in which higher profits are premised on having fewer employees. Sell abroad, cut costs at home—the global marketplace that American business has created is paying off big-time.

Not so for American small business, which inhabits those less rarefied realms of the economy in which depressed domestic demand and bottled-up credit remain a mortal threat. The great private-sector trickle-down machine has largely stopped working for small businesses. A May report from the Congressional Oversight Panel on the TARP (chaired by consumer advocate Elizabeth Warren) found that bank lending to small businesses has plummeted, particularly among the big banks that taxpayers helped bail out. The Wall Street banks' lending portfolio declined 4 percent between 2008 and 2009, the report concludes, but their lending to small business declined 9 percent. Smaller banks—''strained by their exposure to commercial real estate and other liabilities''—have similarly reduced their lending.

As the corporate sector hums along without hiring, hope for a recovery increasingly depends on boosting consumer demand through public investment and jump-starting small-business expansion through tax

credits and a reopened lending window. For the past half-year, the administration and congressional Democrats have been unable to overcome Republican senators' resistance to increasing public investment. Senate Republicans have also blocked their efforts to cut taxes and increase loans to small business—even though such policies have long been GOP priorities and small business has long been considered a key Republican constituency.

Late last week, the Senate's 41 Republicans united to block a bill that would have temporarily eliminated the capital gains tax on small businesses that issue stock, increased the tax deduction for start-ups, increased their depreciation allowance, and established a $30 billion fund, offset by budget cuts elsewhere, dedicated to small-business lending by small banks. The bill was backed by generally pro-Republican business lobbies; to add a further note of absurdity to the GOP opposition, some of the bill was written by Republican senators. The Republicans' ostensible reason for opposing these motherhood-and-apple-pie provisions was that Democrats were limiting the number of amendments they could bring up. Their actual reason was to deny Democrats a legislative victory on the kind of stimulus package that still commands substantial public support and, just possibly, to forestall any economic uptick before November.

Republicans are certainly right that Democrats, for political and economic reasons, are focusing more on helping small business recover. A June survey from the firm of Democratic pollster Stan Greenberg argued that ''Democrats can win the economic debate by making small business the center of their agenda.''

But there's another way Democrats can assist small business besides continuing to press for their small-business stimulus. The president can choose a champion of small business to direct the newly created Consumer Financial Protection Agency. He can nominate Elizabeth Warren.

To date, we have heard chiefly that the big banks look askance, and then some, at the prospect of Warren heading the agency. She is among the nation's leading critics of the credit card rip-offs that big banks have long inflicted on cardholders as a matter of policy. Precisely for this reason, she stands out as a small-business hero, because in the absence of bank lending, small businesses increasingly are turning to credit cards as a source of funding or operating revenue. Fully 83 percent of small businesses, the Federal Reserve reported in May, use credit cards. Three-quarters of small businesses that apply for business credit cards secure them, according to a 2010 survey from the National Federation of Independent Business, while just 39 percent of bank-loan applicants obtain loans. A 2009 study from the National Small Business Association concluded that 59 percent of small businesses used cards to meet their capital needs.

Bank loans to small businesses have been increasingly supplanted by bank credit cards. And no one is more expert that Warren on how banks exploit their cardholders. She is, by common consent, one of the leading academic authorities on the topic as well as a passionate advocate for getting cardholders a fairer shake.

Enemy of Wall Street? When necessary, absolutely. Friend of Main Street? None better. If he nominates Warren and can get her confirmed, President Obama will have found one more way to aid American small business.

Ms. LANDRIEU. The bill we have put forward, supported by hundreds of organizations, has a way forward.

I wish to also include for the RECORD another editorial by Mr. Richard Neiman of the Wall Street Journal. I submit it again because it is so good. The Journal mistakenly editorialized against this bill, but there are people sending letters to the Wall Street Journal to take a second look. Richard Neiman is one of them.

He writes:

Unlike TARP, the SBLF would incentivize banks to loan by lowering the dividend rate at which banks must repay the government if the banks meet lending performance metrics. Further, the SBLF removes the TARP stigma that discouraged small banks from participating in government programs that support lending. It is these banks that are the primary source of credit for small businesses which lack the same access to capital markets as large companies.

The SBLF is not a sequel to TARP, but it can be a segue toward a stronger future for our nation's small businesses and their employees.

I ask unanimous consent to have this article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Aug. 5, 2010]

SMALL BUSINESS LENDING FUND WILL HELP RECOVERY, JOBS

(By Richard Neiman)

Your editorial, ''Son of TARP'' (July 30) is unfortunately titled, and underestimates the potential of the proposed Small Business Lending Fund (SBLF).

Small business growth is the only way out of this recession. Yet our entrepreneurs are not being provided the credit they need, as the TARP Congressional Oversight Panel often hears from small business owners. Our recent report on the issue demonstrates that, during the crisis, lending to small businesses fell by 9 percent at our Nation's largest banks, and the bankruptcy of nonbank business lenders such as the CIT Group has further limited credit options.

The financial crisis and recession have created the lack of demand for credit that your editorial points out, but it is as important to point out the lack of supply. Small banks are reluctant to take on more risk when small businesses' customer base is weak. Breaking this stalemate requires old-fashioned underwriting to identify the good deals which are still waiting to be made.

The SBLF is intended to provide public-sector support to bring credit- and lending-worthy parties back to the table. Unlike TARP, the SBLF would incentivize banks to lend by lowering the dividend rate at which banks must repay the government if the banks meet lending performance metrics. Further, the SBLF removes the TARP stigma that discouraged small banks from participating in government programs that support lending. It is these banks that are the primary source of credit for small businesses which lack the same access to capital markets as large companies.

The SBLF is not a sequel to TARP, but it can be a segue toward a stronger future for our nation's small businesses and their employees.

Ms. LANDRIEU. I also ask unanimous consent to have printed in the RECORD another very nice article that appeared in the Wall Street Journal by Ruth Simon, one of their reporters, who outlines a particular story about Pinnacle Bank, which is basically in support of our bill. This is a story about a bank in Florida. It will be in the RECORD for Members to read.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Aug. 5, 2010]

SBA PROGRAM PROVES A HIT, BUT NOW IT IS IN LIMBO

(By Ruth Simon)

Pinnacle Bank made just two loans through the Small Business Administration in 2007 and 2008. So far this year, the Orange City, Fla., bank's total is nine, to borrowers from an auto dealer to a computer-equipment wholesaler to a bakery.

''The SBA program is the only way we can continue to lend right now,'' says David Bridgeman, president of Pinnacle, which has two branches and assets of $213 million, including about 600 loans. For many of the $3.4 million in loans Pinnacle made through the SBA in 2010, the bank has to set aside capital against only the 10% slice that isn't guaranteed by the U.S. government.

Across the nation, many banks have turned to the SBA's so-called 7(a) program to help unfreeze credit. Nearly 3,000 lenders have made 7(a) loans in the current fiscal year, up 21% from 2008.

The 7(a) program, the SBA's largest loan program, is hardly a cure for the credit shortage affecting many borrowers. The agency is involved in less than 10% of all small-business loans, and some banks won't participate because of red tape. Lenders must follow the SBA's rules when making 7(a) loans, which can be used for working capital, fixed assets and other business expenses. The term of the loan can be as long as 25 years.

Last year, Congress temporarily sweetened the 7(a) program by increasing the SBA guarantee to 90% of any given loan from as little as 75% previously. Lawmakers waived fees costing borrowers as much as 3.5% of the loan amount, as well as costs charged in a separate SBA program providing structured financing for fixed assets.

But the sweetened program is now in limbo, drawing complaints from borrowers and lenders, as lawmakers haggle over broader small-business legislation.

Since the SBA program was sweetened, more than 1,300 lenders that hadn't made an SBA loan since at least 2007 have barreled in, while existing participants like Pinnacle have been pushing more borrowers through the agency's pipeline to take advantage of better terms.

About $16.2 billion in 7(a) loans have been made under the more-attractive terms. By May, the program's loan volume had returned to before-the-credit-crunch levels.

''The extra 15% of guarantee helped us stretch a little more,'' says Vito Pantilione, president of Parke Bank, a unit of Parke Bancorp Inc. The five-branch Sewell, N.J., bank recently used the program to make loans to two printing companies looking to adapt to electronic publishing.

Since hiring a local banker with expertise in SBA loans in August 2009, Bank of Holland, a Holland, Mich., unit of Lake Michigan Financial Corp., has made more than two dozen loans through the federal agency.

''We do not have capital issues, but it's very difficult to find businesses that . . . have not lost money and suffered some weakening of their balance sheet,'' says Garth Deur, Bank of Holland's president.

Sweetened government backing makes it easier for banks to stomach the risks of lending to local businesses that hit bumps when the economy slowed or to finance entrepreneurs with a solid business plan but little track record, Mr. Deur says.

The SBA has repurchased 0.2% of the loans made with the higher guarantees. That rate,

which reflects defaults, is in line with the program's historical levels.

Congress extended the higher guarantees three times, but the latest round of funding was exhausted in May, causing a decline in SBA loan volume. A provision included in the small-business job-creation bill now before the Senate would resuscitate the 90% guarantee through Dec. 31 and allow the SBA to increase the maximum loan amount to $5 million from $2 million. The bill already has passed the House, but the Senate is bogged down by disputes over the broader bill.

''On the financing side we're stuck'' until Congress acts, says Mark DeHaan, who is hoping to get a 7(a) loan for $1.6 million from the Bank of Holland to pay construction and start-up costs for an educational child-care center in Grand Rapids, Mich.

Pinnacle largely avoided the worst sins committed by banks throughout in Florida, such as lending on raw land being purchased for housing developments. Still, Pinnacle had a net loss of $1.8 million in 2009 as falling real-estate values and rising unemployment forced the bank to boost loan-loss reserves. Pinnacle has shed about a third of its troubled loans but is looking for additional capital.

Mr. Bridgeman, who started his banking career 28 years ago as a teller in Kentucky and took over as Pinnacle's president in 2003, says the bank decided to rev up its SBA lending after a tough regulatory exam forced it to halt most traditional lending in order to conserve capital.

Pinnacle made 11 SBA loans for $3 million in 2009. The bank has generated fee income by selling some of its SBA loans on the secondary market.

Car dealer J. Brendan Hurley was rejected by four other banks before Pinnacle won approval in March for a $560,000 loan through the SBA to help him add Dodge cars to his Chrysler franchise in DeLand, Fla. Since getting the loan, Mr. Hurley has hired six new employees, and service volume has doubled, he says.

''The fact that I had a commitment from Pinnacle sealed the deal to get the Dodge franchise,'' he adds. Mr. Hurley is seeking a second SBA loan from Pinnacle that would allow him to build a new facility designed to meet Chrysler Group LLC's requirements.

Ms. LANDRIEU. Finally, I have another article written by Barbra Barrett of the Miami Herald. It reads:

The U.S. Senate might leave town this week without finishing up what Democrats had hoped would be a significant political achievement . . .

On its face, the legislation would pour billions into a slate of programs to help small business obtain federal microloans, government contracts and export assistance.

I ask unanimous consent to have this article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Miami Herald, Aug. 5, 2010]

SMALL BUSINESS BILL APPEARS TO BE STUCK IN SENATE

(By Barbra Barrett)

WASHINGTON.—The U.S. Senate might leave town this week without finishing up what Democrats had hoped would be a significant political achievement before the August recess: passing a multibillion-dollar swath of programs to help struggling small businesses.

On its face, the legislation would pour billions into a slate of programs to help small business obtain federal microloans, government contracts and export assistance. But the bill also is part of the political wrangling that's going on in Washington ahead of fall's midterm elections.

Republican senators unanimously blocked the legislation a week ago, preventing an up-or-down vote that could have given the Democratic majority a political victory going into the August recess. In response, President Barack Obama gave a speech Monday urging the Senate to pass the bill.

Senate Majority Leader Harry Reid has vowed to try again this week, but it's uncertain whether the vote will happen.

Observers say the legislation could have sweeping effects in North Carolina.

More than 85 percent of companies in the state have fewer than 100 employees, said Scott Daugherty, N.C. small-business commissioner and executive director of the Small Business and Technology Center.

''We are substantially a state of small companies,'' he said.

The Economic Policy Institute recently calculated that there are nearly five job seekers for every open job. The unemployment rate in North Carolina remains above 10 percent.

Failure to pass the bill would bring Democrats such as U.S. Sen. Kay Hagan, who supports the act, back to their states this weekend with one fewer success to show from their party.

And it would give Republican U.S. Sen. Richard Burr, who is running for reelection, another point of criticism against the Democratic majority and the Obama administration.

Burr declined to be interviewed for this story, but in a prepared statement, his spokesman, David Ward, turned blame for the struggle of small businesses on the Democrats.

''What (small businesses) really need is for Congress and the administration to stop overburdening them with federal mandates, excessive bureaucratic red tape, tax increases and high energy costs,'' Ward said.

Carter Wrenn, a Republican political consultant in Raleigh, said Burr should easily be able to defend his ''no'' vote to his Tar Heel constituents.

''He can explain that all the job programs haven't worked, and he can explain that this is just one more,'' Wrenn said.

He said the legislation is a spending bill dressed up as a bailout.

''The truth is there's a trillion dollars now in the banking industry now that's loanable that ain't being loaned,'' Wrenn said. ''The real problem is everybody's so uncertain about the future that no one wants to loan money.''

Burr's no vote last week on the procedural question on the bill drew immediate criticism from the Democratic Senatorial Campaign Committee, which supports his challenger, Elaine Marshall, in the upcoming Senate race.

''Again and again, Burr shows he's more loyal to Republican leaders in Washington than to North Carolina small businesses,'' Deirdre Murphy, DSCC spokeswoman, said in a statement.

And David Axelrod, Obama's senior adviser, said Tuesday that GOP senators can expect to hear questions from constituents about why the bill didn't move forward.

''Make no mistake: It will be an issue if politics intrudes on what we should be doing,'' Axelrod said. ''I think if I was in the position of Senator Burr, I'd rather go home and say I did something constructive for the small businesses of my state.''

Much of the bill includes bipartisan proposals. Among them are provisions that would increase amounts of Small Business Administration loans, leverage $1 billion in export capital, offer tax breaks for investments and startup costs, and give temporary funding for rural exports.

At the bill's center is a $30 billion program for community banks to extend loans to small businesses. Burr's opposition puts him at odds with the N.C. Bankers Association, which supports the legislation.

''We think it is imperative,'' said Thad Woodard, the group's president. ''Our folks have emphasized this as a lubricant for small-business lending.''

Ms. LANDRIEU. She is right. We have worked across the aisle as much as we could. But for some inexplicable reason, we can't seem to get unanimous consent to move such an important and extraordinary bill forward.

The small business bill, the Main Street bill, has $12 billion in tax cuts for small business. Democrats are for tax cuts for small businesses that will help them to create the jobs we need. It is very targeted, very strategic, very thoughtful, very careful, and focused on reducing the deficit as well. All I hear from the other side is: Extend tax cuts permanently to everybody, to heck with the deficit. Who cares if we get to a balanced budget. We want to go back to the way things were.

Democrats don't want to go back to the way things were. We want to go forward in a new way—with sound fiscal policy, balanced budgets, focused on Main Street, focused on small business. That is what Democrats and a handful of our Republican colleagues want—unfortunately, not enough to get the job done. I do thank the great coalition of Senators who have helped.

I also wish to submit an article by Jeff Cox, of CNBC, ''Four Things That Could Help Companies Start Hiring Again.'' He talks about positive momentum, loans to small business, and foreign demand.

One of the things he mentions is:

American consumers—even those with jobs and savings—are focused on paying down debt and not greasing the economic skids.

As such, job markets may have to rely on low export prices and consumers in robust developing economies to help generate demand.

He is correct. We are going to have to rely on markets outside the United States to sell our goods there and pull ourselves out of this recession. Do Members think small businesses get the least amount of help with exports? No, they don't. In our bill, we have extra support for the Department of Commerce and the Small Business Administration to help small businesses in Louisiana, in West Virginia, and around the world to reach out from our main streets to main streets in foreign countries to try to sell goods. It is going to be a Main Street-to-Main Street partnership around the world. With the Internet, this is possible. Before the Internet, it would be laughable to even suggest such a thing.

But with the Internet, with the global air transportation, with expanded trucking and train transportation, we literally can move goods from Main Street right here. I would not be surprised if Georgetown Cupcake, which I

spoke about yesterday, ships their cupcakes to India or China because they are really good cupcakes and maybe they do not make them as well there. That may be a little exaggeration, but I think it makes the point that if we can help our small businesses, there is no telling where these cupcakes—and in my State, it would be King Cakes—can go to support businesses on Main Street.

So I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From CNBC, August 5, 2010]

FOUR THINGS THAT COULD HELP COMPANIES START HIRING AGAIN

(By Jeff Cox)

Job creation in 2010 has been slow but unsure, coming in a weak trickle that has left investors unsatisfied and asking what it will take to actually get employment moving in a meaningful way.

Thursday's weekly jobless claims report only reinforced what Wall Street already knew—that despite halting signs of improvement, 479,000 new filings for unemployment insurance was hardly indicative of a robust recovery.

As such, the stock market sold off and strategists and analysts were left to ponder how long it will take for things to turn accelerate off the weak growth that has taken place this year.

''The question is when is that going to pick up enough to meaningfully lower the unemployment rate and spark the virtuous cycle of upward momentum, to get employment, wages and aggregate demand higher,'' says Tom Higgins, chief economist at Payden & Rygel in Los Angeles. ''That takes time. If you look back at the last two cycles, employment recoveries have been slow.''

Economists and employment experts say four things will have to happen to get jobs moving:

1. POSITIVE MOMENTUM

Slowdowns are as much psychological phenomena as they are economic, with confidence the key as much as any other factor.

With the news mostly bad about the economy, companies are afraid to hire until a more positive tone comes about.

''Hiring has tended to be slow the last two cycles,'' Higgins says. ''The trajectory coming out of this recession is even shallower. That likely means the trajectory of hiring is much shallower.''

One of the main problems is an economic Catch–22: Companies won't hire until they see more strength from consumers, and consumer spending can't get stronger if people don't have jobs. That means corporate America will have to rely on ''small positives'' to keep building until confidence is established, says Kurt Karl, chief US economist at Swiss Re in New York.

''Businesses like to look at year-over-year growth in sales, and that just isn't that strong yet. But it should be better and better as we get deeper into the recovery,'' Karl says. ''With these unemployment recoveries, you either get one extreme or the other. You're either booming, or it's crash and burn. But we're muddling in between.''

2. LOANS TO SMALL BUSINESS

While the biggest companies sit on the lion's share of the $1.8 trillion in cash on corporate balance sheets, small businesses are groping for funds.

That's not been made any easier by banks that have been loathe to lend as they meet capital requirements laid out in the new financial reform legislation. Without that access to capital, small businesses will be unlikely to add new employees.

''We need small businesses, which generate 60 percent of the jobs, to get more access to lending, to capital, so people can take risks,'' says John Challenger, CEO at job outplacement firm Challenger, Gary & Christmas. ''Entrepreneurs rely on savings, but those savings have been depleted.''

The ability to invest in companies and develop products will help spur the demand needed to create jobs, Challenger says.

Small businesses in the recessionary environment ''don't have access to the savings they might normally have. On the front end, with small businesses not there to pick up the slack, that's a very important hindrance to getting this economic engine going,'' he says.

3. FOREIGN DEMAND

American consumers—even those with jobs and savings—are focused on paying down debt and not greasing the economic skids.

As such, the jobs market may have to rely on low export prices and consumers in robust developing economies to help generate demand.

''One thing we do know is exports are strong. Overseas economies are doing quite well,'' says Brian Gendreau, market strategist with Financial Network Investment, based in El Segundo, Calif. ''For large-cap stocks, more and more revenues are going to come from abroad. That's where we're going to get the growth.''

Of 250 companies in the Standard & Poor's 500, 46.6 percent of all sales came outside the US in 2009, actually a slight decrease from the previous year, according to S&P.

But Gendreau sees capital expenditures increasing in a way that seems to anticipate more spending coming soon.

''Companies seem to be spending a lot of money in anticipation of demand that doesn't look obvious it will show up,'' he says.

4. CAPITAL SPENDING

Indeed, one of the main precursors seen for employment growth is capital spending by companies on plants and equipment.

In fact, Deutsche Bank analysts say cap-ex spending this year is robust—growing 20 percent over the previous quarter—and the trend traditionally leads the jobs market by a full quarter. The movement in cap-ex, says Deutsche economist Joseph A. LaVorgna, suggest a strong jobs-creation move in the third quarter.

''Taken literally (the comparison between cap-ex and jobs) implies we will see several million jobs created over the next few quarters,'' LaVorgna said in a note to clients. ''While we are not so bold to forecast such sizeable job gains, we wonder whether there is some upside risk to our slightly above consensus forecast for July private payrolls.''

Deutsche is projecting Friday's nonfarm payrolls to show job gains of 110,000 in July, compared to the consensus of 90,000.

That would be some indication that Wall Street is putting cash to work.

''We all know companies are sitting on mounds and mounds of cash, possibly record amounts of cash,'' Gendreau says. ''The question is, when are they going to start putting it to work?''

MORATORIUM IN THE GULF COAST

Ms. LANDRIEU. Mr. President, I know there are Senators who wish to speak, but I have one more subject to speak about before I yield the floor.

In addition to fighting for Main Street, I am going to come back here in September—and continue through the August recess with many hearings in my State and meetings in my State—to fight for justice for the gulf coast.

I have not spent a lot of time in the last week or two here on the floor on this issue because I have been handling this small business bill, but I have been spending an awful lot of time on the phone, in meetings, and in Louisiana and will continue around the country to talk about this tragedy that has occurred.

As shown on this chart I have in the Chamber, this is what the gulf coast looked like before the moratorium was put in place—this blanket moratorium, unnecessary moratorium—by the administration. We had 33 deepwater rigs in the Gulf of Mexico. As you can see, many of them were off the coast of New Orleans and Louisiana.

As shown on this other chart, this is what it looks like today. Nobody is working. There is one rig being drilled. It is the Deepwater Horizon current site of the relief well. Everybody else has been put out of business in the Gulf of Mexico. This represents, at a minimum, 40,000 direct jobs—40,000 direct jobs.

I want to show you a picture of the shallow water. This other one is of the deep water. That is what it looks like shut down. This one is of the shallow water. There is no moratorium in the shallow water. But before the moratorium, there were 55 wells in the shallow Gulf of Mexico. These wells—each one of them—represent hundreds of people supporting them and on the shore supporting them. We are down to 13. And I have to fight so hard to get one permit issued by MMS.

I am proud, very proud, that my colleague in the House of Representatives, CHARLIE MELANCON, did what I did not believe was even possible: he got the entire Democratic caucus on record asking the President basically to lift this moratorium. Yes, there was some language in there. I would have liked it to have been immediately. But the fact that we have now every Democrat and every Republican in the House of Representatives on record lifting this moratorium and helping us get back to work in the gulf is really extraordinary.

I am looking forward to coming back to lead the effort in the Senate to follow the lead of the Congressman from the district that is most affected, Mr. MELANCON, to get the gulf back to work. There are 25 idle rigs, there are 5 nondrilling operators, one Deepwater Horizon, and 2 wells being drilled. We have to get the gulf coast back to work.

So in addition to passing the small business bill that we have to pass for the whole country, we have work to do along the gulf coast. We have a liability issue to settle. We are working on a compromise. I have a justice for the gulf document I am going to submit, a bill I am going to ask to be filed right now so that we can work in earnest.

I hope that before we get back here, the President will administratively lift this moratorium. That is what he should do. We have put new safety requirements in. BP is going to pay the fines, billions of dollars of fines. They put $20 billion in escrow. Claims are being paid. That part is working fairly well. What is not working are the people in the gulf of Mexico. We do not want handouts. We do not want welfare. We do not want food stamps. We want to go back to work, and that is what we are going to work on.

So this Senate has some work to do. The House has done its job in this regard. I hope, Mr. President, you and your team and the Secretary of Interior will think very hard about the economic damage that is being done right now. I understand safety is at issue. I understand we want our oceans clean. Nobody wants them cleaner than those of us who swim in the gulf, live in the gulf, fish in the gulf, and have for decades and centuries. But enough is enough. We have to get back to work. There are things that can be done, and I submit the bill at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to address the Senate for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTHY, HUNGER-FREE KIDS ACT OF 2010

Mr. BROWN of Ohio. Mr. President, I rise to express strong support and to echo the comments of the previous speaker before Senator LANDRIEU, Senator CASEY, for the Healthy, Hunger-Free Kids Act of 2010.

Chairwoman LINCOLN has led the reauthorization efforts—chairing hearings of the Agriculture Committee, on which I sit, and speaking eloquently in this Chamber about what is at stake in the Healthy, Hunger-Free Kids Act.

The health and well-being of our Nation's children, it goes without saying, has a direct effect on the health and well-being of our Nation. Our economic security depends on a strong and capable workforce. Our national security depends on a highly skilled and physically fit military. In fact, when President Truman signed the National School Lunch Act—laying the foundation for President Johnson to sign the Child Nutrition Act of 1966—he did so at the request of our military leaders, who saw firsthand the malnutrition plaguing so many of our soldiers—especially rural soldiers, White and Black alike—in World War II.

When Congress passed the National School Lunch Act in 1946, it said:

> It is hereby declared to be the policy of the Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children.

Today, our military leaders once again support the Child Nutrition Act and have joined with hunger and nutrition advocates to urge Congress to pass this critical legislation.

So, too, are educators and business leaders and health care providers, who are worried about the costs of poor nutrition to our economy and our health care systems and the educational development of our children.

As Senator CASEY said so well, hungry children simply cannot learn. And my guess is, there are few, if any, in this Chamber who went to school so hungry as kids that they could not learn. But it certainly is proven, and we know that from observing kids, from talking to children, from watching their performance.

Study after study indicates that access to healthy, nutritious foods is critical, obviously, to our children's health and their ability to learn. Yet the stories behind these studies put a real face on the issue of childhood hunger.

Twenty percent of Ohio children under 18 years of age—570,000 children—think of that, 1 out of 5 children in a State, in a generally wealthy State, in a very wealthy country; 20 percent, 1 out of 5 children in my State under 18 years of age, more than 500,000 children—live in food-insecure homes. Those numbers are comparable in the Presiding Officer's State, in cities such as Huntington and Charleston and Morgantown and Beckley and all over his State.

Too many students nationwide—more than 1 million children—slip through the cracks and do not receive free or reduced-priced lunches for which they are eligible. In Ohio, about 700,000 children are eligible for reduced-priced or free breakfast or lunch. Every day, that number is significantly fewer as to those children who actually receive lunch and breakfast.

Understand, too, on weekends in the summer months, those numbers shrink dramatically. There are feeding programs in the summers, but only about 1 out of 10 children who are eligible actually gets those free breakfasts, free lunches, free snacks in those summer months. So the effects of poor nutrition reach beyond the boundaries of hunger. It also fuels childhood obesity, ironically. So it plagues communities across the Nation.

That is why this reauthorization is so important. Every 5 years, we have a chance to make the programs and resources available to our children better and more effective. This year we did that, and the Senate passed it today.

The bill will improve the quality of food in the National School Lunch Program and make sure children who need the help most are actually getting it. Each day, some 30 million schoolchildren across the country participate in the National School Lunch Program, from cities as large as Cleveland and Cincinnati and Columbus to rural towns such as Gallipolis and Galion and Grafton.

Each school day, the number of schoolchildren receiving free or reduced-price meals increases as more families struggle with high unemployment and increased poverty. We know that during the extension of unemployment benefits, the number of families who lost their jobs, then lost their unemployment insurance, then lost their health care, then lost their cars in some cases and in far too many cases then lost their homes to foreclosure—that those families even more relied on the school breakfast and lunch program.

The reauthorization includes provisions from the Hunger Free Schools Act that Senator CASEY from Pennsylvania and Senator BENNET from Colorado and I introduced earlier this year.

This legislation would auto-enroll eligible children and eliminate duplicative paperwork that costs schools and families valuable time and, in too many kids' cases, access to healthy school meals. It would allow eligible schools in high-poverty areas to serve universal free school lunches and breakfasts. In Ohio, an estimated 432 schools enrolling more than 150,000 students could opt into this program. So making this part of the reauthorization absolutely matters to embrace more children in these programs.

This bill is about reaching the very children—the neediest and most vulnerable—we should have been reaching in the first place.

The reauthorization would also expand the Afterschool Meal Program and the Summer Food Service Program, which play critical roles in childhood development outside of the classroom. We know that for particularly young children, if they are not eating right, their development as sentient, strong, healthy, intelligent human beings is significantly arrested.

Less than 10 percent of Ohio's eligible schoolchildren receive summer nutrition assistance. As I said, in rural Appalachia, across the river from the Presiding Officer's State, the numbers are bleaker as meal locations are fewer and farther between. The numbers are not good enough in Cleveland. They are not good enough in Youngstown. They are even worse in Malta and McConnelsville, in Pomeroy, in Piketon, and especially in the even more rural areas such as Colton in Jackson County, Coolville in Athens County, and those small remote areas where meal locations are even harder to reach. By strengthening these summer programs, we ensure more children have a nutritious breakfast, lunch, or snack during the summer months. It is a key ingredient in keeping children healthy, educated, and active.

Steve Garland of the E.L. Hardy Center—a summer feeding site outside of Columbus—tells a story of a single father with three sons who relies on the center for meals and mentoring. The father says that without the center, his young sons are at risk of falling behind in school and getting in trouble in the community.

It is not just keeping children fed. It also matters for their school work. It

matters for keeping them out of trouble. It matters for their intellectual development.

Fifty children per day in past summers would show up for a healthy meal and recreational activities at the Hardy Center. This summer, because of enthusiastic and dedicated VISTA volunteers, attendance at the Hardy Center has ballooned to 300 children per day.

Now, get this: Typically, only about 1 out of 10 eligible children across the country—Ohio is actually slightly above the national average—only about 1 out of 10 children across the country who are eligible for free breakfast and free lunch is getting it during the school year. Only 1 out of 10 gets these breakfasts, lunches, or snacks in the summer—1 out of 10.

That is why what we did when Senator DORGAN and Senator KAUFMAN and all of us worked together in expanding national service—VISTA; Peace Corps; City Year, which two of my daughters have been part of as volunteers; AmeriCorps; all of those programs—more of those kids, more of those volunteers are now helping these summer feeding programs.

So instead of feeding 50 people at the Hardy Center, thanks to the VISTA volunteers, 300 children—all those 300 were eligible last summer; they just were not there because they did not know about it, they could not get there, whatever—now, because of these VISTA volunteers, 300 children are getting fed almost every day this summer. That is the good news. The bad news is that Steve Garland of the Hardy Center says there are still some 5,000 children in the surrounding communities who do not have a site in their area.

I said 5,000, and that is just Columbus. That is not the whole State. That is not the whole country. That is 5,000 children in Columbus who aren't getting fed who are eligible, who won't do as well in this life probably because they are not getting adequate nutrition as children.

When the President signs this bill into law, we will help countless other community leaders such as Steve provide more meals and activities to keep our children healthy.

The reauthorization dramatically reshapes and updates nutrition standards to help us reduce childhood obesity rates ands put healthier food in school cafeterias.

Steve Grundy, director of Nutrition Services for Dayton Public Schools, faces the choice between doing what is right—feeding our children healthy foods—and what is cost-effective—serving cheaper, less healthy foods.

Craig Hokenberry of Cincinnati Public Schools sees children with stunted growth because they have too little to eat. Without access to healthier fresh foods, families and schools look to the local food bank for afterschool or weekend meals. Because they are just getting these programs during the week, they are getting breakfast and lunch. Weekends, not so good; summers, not so good.

As Nora Nees of Ohio's Association of Second Harvest Foodbanks can attest to, these programs are in demand now more than ever.

Ginny Black in Columbus teaches children about healthy eating habits. Ms. Black has been a school nurse in Columbus for more than 20 years. She has seen firsthand how good nutrition contributes to higher academic achievement and better classroom behavior. According to her, reauthorizing the Child Nutrition Act means no more vending machines with junk food, no more having to rely on outside vendors for pizzas and burgers.

I was recently in Mansfield, my home town, about 50,000 people, visiting with community health workers at CHAP—women who travel across the country to provide prenatal care for underserved communities. CHAP is a facet of the social service safety net that is working to improve outcomes and reduce costs, but it is stretched thin.

By authorizing the Child Nutrition Act, we can help these workers and educators and parents do much more for our Nation's children. The more children who are healthy, the more we can lower rates of childhood obesity and diabetes. The more children who are not going hungry during school, the greater their chance to learn and succeed.

It is important we took this step today. This legislation means not just a lot for hungry children today; it means a lot for the future of this country, because children who in the past have not been so well served will have the opportunity to eat better, will have the opportunity to grow better, will have the opportunity to intellectually develop better, and will have the opportunity to be healthier. We owe that to our children. We took an important step.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESTORING MARKET CREDIBILITY

Mr. KAUFMAN. Mr. President, I rise to discuss the need of the Securities and Exchange Commission to take meaningful action to protect the credibility of our markets.

As my colleagues know, I believe deeply in the importance of our capital markets to America's future economic success and the ability of Americans to invest for their retirement years. I have said many times on this floor that democracy and our capital markets are the fundamental pillars that make America great. I have always maintained that if we do not have credible markets, our country will be in serious trouble. Credible capital markets are one of America's crown jewels and we should protect them as such.

I am deeply concerned about the state of our equity markets. Many rapid and dramatic developments have inextricably changed the way stocks are traded in today's marketplace. The markets have become fragmented and dominated by high-frequency trading.

These changes came to a head on May 6 when stock prices spiraled out of control, ultimately dropping and recovering over 500 points during a dizzying 20-minute time period.

It is clear we must rely more than ever on our regulators to protect the integrity and credibility of our capital markets. Without a doubt, the SEC—the Securities and Exchange Commission—along with the Commodity Futures Trading Commission—CFTC—has worked heroically to study the flash crash and put circuit breakers in place to prevent another event of the magnitude we witnessed on May 6 from occurring, or even more. But that is not anywhere—nowhere even close—to enough.

As Chairman Mary Schapiro has repeatedly stated, our markets exist to perform two principal functions: capital formation so that companies can raise capital and invest, create jobs and grow; and attracting and serving long-term investors to help facilitate that process. The May 6 flash crash revealed structural flaws in our market structure that must be addressed—must be addressed—in order to ensure our markets are performing their best and highest purposes.

There are many questions that remain unanswered and many solutions that I hope the SEC already has been exploring. More and more market participants and regulators are sharing their own concerns about the overall performance of our equity markets.

Michael Cembalest, the chief investment officer of J.P. Morgan's private banking division, wrote a commentary on July 13. This is J.P. Morgan. Mr. Cembalest outlined several areas of current market structure, including the market's increasing reliance on volume driven by high-frequency traders, which merit careful review.

In addition to supporting circuit breakers, Mr. Cembalest suggested that high-frequency traders should: ''be required to register as broker-dealers . . . [and] act more like the floor specialists they're replacing.''

Cembalest also noted that while high-frequency volume has ostensibly made trading cheaper by narrowing the spreads investors often pay to get their orders filled, there are other costs associated with trading that might be less obvious. One such cost, according to Cembalest, occurs when high-frequency traders ''spray the tape'' with thousands of quotes to ''ferret out'' the intentions of large investors, and then trade ahead of their order flow.

A draft report submitted by a British member of the European Parliament to the Committee on Economic and Monetary Affairs expresses similar concerns.

The report, which could influence the European Union's ongoing review of market structure, states ''limiting systemic risk must be prioritized.'' Accordingly, it proposes that all trading platforms should ''stress-test their technology and surveillance systems.'' It also called for ''an examination of the costs and benefits of high frequency trading on markets and its impact upon other market users. . . .'' Finally, the report calls for ''the regulation of firms that pursue high frequency trading strategies to ensure that they have robust systems and controls with ongoing regulatory reviews of the algorithms they use.''

While I stated many of these concerns last August 21 in a letter to Chair Schapiro, it has taken almost a year later—and in large part due to the May 6 flash crash—that these ideas have finally gone mainstream and people are talking about it in all the different areas of the news media. Although the task before us is daunting, as even tweaking the market's structure is rife with potential unintended consequences, the SEC must act to protect investors and restore market credibility in the coming months. Navigating these issues will be difficult, particularly with so many business models based, or even dependent, on the existing regulatory framework.

Another challenge comes in the form of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act which places a raft of new responsibilities, including 95 rulemakings and 22 studies, on the Securities and Exchange Commission. Nevertheless, the SEC must triage its responsibilities and work expeditiously to adopt much needed reforms in the market structure area. There can be no back burner when it comes to resolving a broken market structure. There can be no delay when long-term investors are losing confidence. The time for action is now.

The direction the Commission takes in its bid to fulfill its mission will say much about the type of country in which we live. As difficult as it might be, regulators must stand apart from the industries they regulate, listening and understanding industry's point of view, but doing so at arm's length and with a clear conviction that on balance, our capital markets exist for the greater good of all Americans.

This is a test of whether the Commission is just a ''regulator by consensus,'' which only moves forward when it finds solutions favored by large constituencies on Wall Street, or if it indeed exists to serve a broader mission and therefore will act decisively to ensure the markets perform their two primary functions of facilitating capital formation and serving the interests of long-term investors.

A consensus regulator may tinker here and there on the margins, adopt patches when the markets spring a leak, and reach for low-hanging fruit when Wall Street itself reaches a consensus about permissible changes. In these times, however, the Commission must be bold and move forward. The American people deserve no less.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

UNANIMOUS-CONSENT REQUEST H.R. 4994

Mr. DORGAN. Mr. President, earlier today we had some suggestion on the floor of the Senate about the Cobell case—that is the settlement of the Cobell case—the Federal court case Cobell, et al. v. Salazar. A negotiation ensued late last year with an agreement in December of last year that would settle at last—at long, long last—a 15-year litigation in Federal court dealing with American Indians and the mismanagement of their trust accounts—literally stealing and looting trust accounts over the years and, in addition to that, a substantial amount of incompetence along the way.

I described today people who have had oil wells on their land and who have lived in poverty because somebody else got the money from their oil wells. They didn't get it, despite the fact that the government held their land in trust and promised to provide them their income from that land, whether it was from minerals, oil, grazing, agriculture, or another activity. For 140 years, American Indians have too often been cheated.

Well, a court case that has existed now for 15 years determined that the Federal Government had a responsibility and liability. Rather than have that court case continue for more years in the Federal courts, there was a negotiation late last year with Interior Secretary Ken Salazar and Cobell plaintiffs. They reached an agreement and the Federal judge gave Congress 30 days to provide the funding and approve the settlement. The Congress did not do that in 30 days. In fact, the deadline for the settlement has been extended now six times during which the Congress has not acted.

We have tried very hard to find ways to satisfy everybody here, but apparently that is not capable of being done today. I am profoundly disappointed in that. I think my colleague from Wyoming wishes he were one of the negotiators. He was not, of course. It was the Interior Secretary who and the plaintiffs who negotiated. The Congress simply is an evaluator of whether it wishes to dispense the funding for the settlement that was done. I was not a negotiator. Nobody in Congress was a negotiator.

The question isn't, by the way, whether Indians were cheated or whether they are owed money as a result of mismanagement and fraud over these decades. The Federal court has already determined that was the case. They found in favor of the plaintiffs, and then the case was appealed further by the Federal Government.

The question is whether we have a responsibility here. We do. The Federal court has already found that to be the case. The question is whether we will meet our responsibility. This negotiation that ensued with Cobell v. Salazar, as far as I am concerned, represented a sound and reasonable approach, and I believe we should fund and approve it and move forward.

The unanimous-consent request that I am going to offer includes Cobell v. Salazar and the authorized settlement in that case, as well as the approval and funding for the final settlement of claims from the Black farmers discrimination litigation that has been discussed at some length on the floor as well.

Mr. President, having said that, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 4994, and that the Senate proceed to its consideration; that the substitute amendment at the desk, which authorizes the settlement of Cobell, et al., v. Ken Salazar, et al., and to provide an appropriation for final settlement claims from In re Black Farmers Discrimination Litigation, be considered and agreed to, the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BARRASSO. Mr. President, reserving the right to object, I do support the Cobell lawsuit. I have great admiration for my colleague from North Dakota and the considerable work he has done as chairman of the committee. He has worked very effectively and passionately and he also worked with Secretary Salazar to get to a point where we can move forward. We are not quite there yet in terms of the policy or the payment issue. We are not quite there, but I will offer the following alternative to the proposal the chairman has presented to the Senate. It is along the lines of things I have been discussing with Secretary Salazar and the administration.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3754, which was introduced earlier today; that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the original request?

Mr. BARRASSO. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, let me say again how extraordinarily disappointed I am. I have in my hand the proposal Senator BARRASSO offered to the Secretary of the Interior.

By the way, I don't accuse anybody of bad faith. The Senator from Wyoming is a friend of mine. I am enormously disappointed with him at this point. He has a right to be disappointed with me, if he wishes. Let me just say this. This negotiation ensued last November and December, resulting in a settlement. None of us here were part of that settlement—excuse me, we weren't a part of the negotiation that reached the settlement. That is not the role of the Senate, to be involved in a 100-person negotiation.

The lawsuit was a suit brought by plaintiffs against the Secretary of the Interior. The negotiations were negotiations with the Secretary of the Interior, who was the defendant in that suit. That is appropriate and the way it should be.

If we don't like what that negotiations developed and don't support the settlement and believe we can do better, then we should object. But then we don't get this done. That has happened six times this year. Over and over and over again, we have failed to act on this matter.

My colleague has five things he wants that are different than the settlement. Maybe they are better, I don't know. I don't have the foggiest idea. I said to him a while ago that I wish he would take yes for an answer because the response to his requests of the Interior Secretary was a letter from the Secretary saying he agreed with him and would do them. But my colleague wants them in legislative language. That changes the settlement and the negotiation.

It is 7:30 on a Thursday night in August, months and months and months after the settlement was sent to the Congress by a Federal judge, saying do this in 30 days. I just say it is very hard to get things done. Next, it will be somebody else who has four provisions or five provisions or who can write the settlement better or think it through more clearly. I don't know. I do know this. The people who have been cheated—and there are a lot of them and many of whom have died waiting for this settlement—are not going to get any benefits from this settlement until this Congress decides whether it is going to pass legislation dealing with the settlement.

It may be that any Member of the Congress can do a better job and write better provisions, except that we weren't the negotiators because we were not the defendants in the lawsuit. We have every right to say no, if that is the point. We have said no since last December. If that is the point, I suppose more plaintiffs will die. They will wait years and probably go back to Federal court. Maybe we can go another 10 years in Federal court, having lawyers earning money and Indians living on lands with oil wells 100 yards from their house and they get checks of 5 cents or 8 cents or maybe $3 as revenue from the wells. That is what has been happening for the last 130 years.

I understand why there is frustration. If I sound frustrated, think of the people I describe who have been cheated and have lived in poverty most of their lives because they have not had the opportunity to get income from the lands they owned. I don't understand it. I guess people see competing UCs, and wonder what is the result of what are called in the Senate competing UCs? Does anybody go home feeling good? Not me. We are either going to do this or not. If we don't like this settlement, let's not do it. I happen to like it; let's do it. My colleague, perhaps, wants to respond.

I will yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, again, I have a great deal of respect for my colleague from North Dakota. He is compassionate and makes a compelling argument. We do need to settle the Cobell lawsuit. I ask the leaders to, over the next couple weeks, come together and allow for a very limited debate, possibly a few amendments on the floor, and then an up-or-down vote.

That is the sort of thing we need to do—in the light of day—with the Members of the Senate, not something that continues to be brought forth with the goal of getting a unanimous-consent agreement. We are not there.

I think the ideas I have brought forward are good. They come forward because those are the ideas I have had brought to me through various tribes from around the country who have concerns about the settlement. There have been large meetings of different tribes who have come out in support of these ideas that they have brought to me. I think it is very reasonable for the Senate, if we can arrange for a limited time for debate on the specifics and not be asked in a unanimous consent on the last evening before Members of this body have scattered home to their States, when they are no longer here. They have been told they are not going to vote again until the middle of September.

I think it is reasonable to ask the Senate to have a discussion on this and then a vote. If the Senate, in its wisdom, decides that is what they want and they want to pass this as written, then the will of the Senate has been worked. That is why I raise these concerns tonight.

With great admiration for the chairman, who has worked so well, in a bipartisan way on our committee, we have worked together on legislation on Indian affairs. He is chairman and I am vice chairman. I can understand his concerns and wanting to get this settled. I do too. I feel obligated to bring forth the concerns I have heard from across this country and bring them here.

That is the reason I object to the settlement tonight, and I would love to have our leaders work together to bring this forward to the floor for discussion, debate, and then an up-or-down vote.

I yield the floor.

Mr. DORGAN. Mr. President, let me describe the difficulty with the procedure my colleague described. We can't just bring something up for a vote, because if somebody here doesn't like it, they object. Then you have to file a cloture motion, and it takes 48 hours to get a cloture vote. Then you have 30 hours postcloture. That is what we run into. I agree with that; let's put the best idea up and have a vote on it. If you don't like the settlement and decide that somehow these plaintiffs are not worthy, despite the fact they have been bilked for 130 years, then vote no. But we can't even get a vote.

At any rate, I will wait and see if there is a better idea that will get votes in the Senate or are we going to continue every 30 days or so to say to this Federal judge that we understand a settlement was negotiated and reached on behalf of the United States of America, but we don't intend to vote for it?

I have another bill at the desk. Before I ask unanimous consent, I will describe it. In the piece of legislation we passed today, dealing with FMAP, and funding for teachers, and so on, there was a provision that was first described as a pay-for but actually scored as zero, which meant it was a pay-for that had zero impact. It does have an impact on American Indians, and I wanted to describe it briefly.

When the Economic Recovery Act was passed, we proposed that at least a small amount of money go to Indian reservations around this country because they had the highest rates of unemployment. So there was put in place a piece of legislation that provided an Indian guaranteed loan program account. There was $6.8 million remaining in that account that would support a substantial number of projects around the country—somewhere in the neighborhood of $80 million—that would put a lot of people to work—investing in new infrastructure and projects. That legislation—the so-called pay-for that is scored as zero in the bill passed today—in my judgment, we need to rescind that action because it had no impact on the legislation the Senate passed. But it will have a substantial impact on loan guarantees for these Indian reservations, most of which have the highest rates of unemployment in the country.

I have spoken to a good many people about the need to do this. Again, I have been on the phone to the Congressional Budget Office. They say that a zero score—as I introduced it today, it will not score. Therefore, I believe it is very important to do.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3761, which is at the desk; that the bill be read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements related to the bill be printed in the RECORD, as if read.

The PRESIDING OFFICER. Is there objection?

Mr. BARRASSO. Mr. President, reserving the right to object, this is something my colleagues have not had a chance to review. As a result, and not knowing the specific details and with colleagues now traveling back to their home States, on behalf of them, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, I understand my colleague from Wyoming suggests there are some here who may not be acquainted with this legislation. I have spoken to both Republicans and Democrats today, during the course of the proceedings, because I think it is very important. I think this is something we need to fix as well. I understand my colleague from Wyoming is objecting on behalf of others.

Let me make one other point on this. I have spent a fair amount of time talking to Senator KYL about this. He is on an airplane at the moment. He was not able to hear from the Congressional Budget Office before he left town. I do hope, even though there is an objection now—and to be fair to my colleague, he is objecting on behalf of other Senators with respect to this—that we can find a way to repair this because I think it is very important that we do so.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated August 5, 2010 from the CBO.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 2010.

Hon. BYRON L. DORGAN,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, CBO has reviewed a draft bill to ensure that amounts appropriated to the Bureau of Indian Affairs under the American Recovery and Reinvestment Act of 2009 remain available until September 30, 2010. The draft bill would repeal a provision in H.R. 1586, the FAA Air Transportation Modernization and Safety Improvement Act, as passed by the Senate on August 5, 2010, that would rescind certain unobligated balances from the Indian Guaranteed Loan Program Account.

CBO estimates that for the purpose of budget enforcement procedures in the Senate, passage of the draft bill would be considered to have no budgetary effect, because it would be amending legislation that had not yet cleared the Congress.

We also estimate that if the draft bill is passed by the Senate, passage of both bills by the House would lead to about $3 million more in direct spending than passage of just H.R. 1586 because the rescission in H.R. 1586 would be repealed. For the purpose of budget enforcement procedures in the House, that $3 million would affect the cost of whichever bill cleared the House later.

That $3 million cost would not count for the purpose of statutory pay-as-you-go procedures, because the funds affected were designated as an emergency requirement when originally appropriated.

I hope this information is helpful to you. If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Jeff LaFave who may be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Mr. DORGAN. With that, I yield the floor.

TRIBUTE TO HERCULEZ GOMEZ

Mr. REID. Mr. President, today I come to the Senate floor to congratulate Herculez Gomez, a dedicated and disciplined soccer player from Las Vegas, who was one of 23 men to represent the country during the 2010 FIFA World Cup in South Africa as part of the U.S. Men's National Team. Herculez, who currently plays in Mexico's Professional First Division for Pachuca F.C., made the final cut after being selected from the 30-man provisional World Cup U.S. roster.

As the oldest of five children, Herculez was born in Los Angeles to Mexican-American parents and later moved to Las Vegas where he was raised. While attending Las Vegas High School, he joined the high school's soccer league, where he cultivated a passion that would launch his career in the MLS league, and later earn him an unexpected, but well-deserved slot to represent his home State of Nevada and the United States in the 2010 World Cup this past June.

Throughout the years Herculez has developed a very successful soccer career, playing for several teams both in the United States and Mexico. Despite having suffered several physical injuries, such as broken foots and torn ligaments, through perseverance and patience Herculez has made a name for himself as dedicated player and rising star. While playing with the Puebla F.C. in Mexico, he became the first American player to score the most number of goals for a foreign league, netting 10 goals in the 2010 Mexican season.

During the 2010 FIFA World Cup, Herculez played in three of the four U.S. men's team World Cup games, and started in one of them. Although the team's quest for our first World Cup ended in the round of 16, Herculez represented Nevada and his country brilliantly and I look forward to seeing bigger and better performances from this Las Vegan star.

FOR-PROFIT COLLEGES

Mr. DURBIN. Mr. President, lately it seems that there is nothing the Senate can agree on. We argue on partisan lines over every issue imaginable.

But I know of at least one issue that would bring every Member of the Senate to the floor in agreement: Pell grants.

This is a program designed to help poor students get the education they need to give themselves and their families a better future. Millions of Americans have seen the benefits of the Federal investment in Pell grants first hand.

Over the past 2 years, the Congress has provided significant increases in funding to the Pell grant program. We have raised the maximum Pell grant to an all time high of $5,550 and we set a course so the grants will continue to rise reaching almost $6,000 in 2017.

I have supported those increases. The recent expansion of the Pell grant program is essential for our economic recovery as Americans are returning to college to learn new skills.

But the investment does not come without a cost. To finance the higher Pell grant levels, we invested $17 billion from the Recovery Act and $36 billion from the recent reconciliation bill.

And we still have a shortfall this year caused by the tremendous new demand for Pell grants.

I have spoken before about my concern that increases to Federal student aid are diminished by the skyrocketing cost of higher education at many colleges and universities, but today I want to discuss a new threat to the Federal Pell grant program—in the form of for-profit colleges.

I am worried that a portion of the investment of taxpayer funding into higher education may be going to waste at the hands of for-profit colleges.

For-profit institutions of higher education have experienced a meteoric rise. Two decades ago, the phrases ''for-profit college'' or ''proprietary school'' would have conjured up images of the beauty school around the corner or the trade school down the street. Most of those schools were small mom-and-pop operations. Some were bad apples that wasted taxpayer money and some provided needed training to students with no other opportunities, but their impact was small.

That is no longer the case. Today, the largest recipient of Federal financial aid is a for-profit institution that enrolls over 450,000 students, many of those online.

Enrollment at for-profit colleges has grown by 225 percent over the past 10 years.

The 14 publicly traded companies in the industry enrolled 1.4 million students as of 2008.

Because of the high price of tuition and the active recruitment of low-income students, for-profit colleges receive a tremendous amount of Federal financial aid funding. For-profit colleges received $4.3 billion in Pell grants in 2009.

We also need to examine the funding that for-profit schools are receiving from other Federal sources.

Along with the billions of dollars in Pell grants and Federal student loans, the for-profit college industry also receives significant funding from the Department of Defense through tuition assistance and from the Department of Veterans Affairs through the G.I. bill.

Some for-profit institutions serve active-duty students and veterans well by offering flexible course schedules, distance learning, and course credit for military training.

But there are also reports of for-profit colleges aggressively targeting military personnel. One prominent for-profit has 452 military-focused recruiters. It is troublesome that so much money is spent on recruiting students whose tuition is paid by the Federal Government.

The tuition payments for active military and veterans funding does not count towards the 90 percent Federal funding limitation, which makes Defense and G.I. bill funding particularly attractive to for-profit colleges.

Their tactics are working. Seven of the top 10 recipients of G.I. bill funding in the last school year were for-profit colleges.

It is time we examined these sources of funding. This week, Senator WEBB and I are sending letters to Secretary Gates and Secretary Shinseki asking some important questions about the Federal investment in for-profit colleges as well as the quality controls over these institutions.

And students who attend for-profit colleges are more likely to borrow student loans than students attending public or nonprofit colleges. And they take out larger student loans.

In 2008, one-quarter of graduates from for-profit schools had borrowed more than $40,000 to finance their education.

There are good trade schools and for-profit colleges, and they serve an important purpose with job training that provides a way up the economic ladder.

But that is not the case across the board. Too often, those loans and Pell investments are not paying off.

For-profit schools enroll just 10 percent of all students in higher education, but their students use 25 percent of all Federal aid and represent over 40 percent of all student loan defaults.

Students are enrolling in for-profit colleges in search of opportunity. At some of these schools they learn important skills, graduate, and move on to good careers.

But too many students drop out or graduate only to realize that the education they have borrowed so heavily for has not provided them the skills or credentials they need to find employment.

These students will often find their high monthly student loan payments impossible to meet and stop paying.

A few weeks ago, the Chicago Tribune told the story of Denise Parnell. Denise is a single mother who dreams of becoming a nursing assistant.

She enrolled at an Illinois for-profit college where she completed an 8-month program that she was promised would lead to a career.

But in June, Denise and the other students in her program learned that the school's program wasn't approved by the State Department of Public Health. Denise was not eligible to take the exam she needed to become a certified nursing assistant.

Denise had wasted a year of her life in a program leading nowhere. And even worse, she owes more than $13,000 in student loans for her trouble.

Before she enrolled at that for-profit college, I wish Denise had looked to her local community college.

There, she would find many programs of study that could give her the skills she needs to start a new career as a health care worker. But community colleges are not able to compete with the marketing skills of for-profit colleges.

Many for-profit colleges spend substantial sums of money on recruiting and marketing through television commercials, billboards, phone solicitation, and other direct marketing.

In fact, many for-profit colleges spend barely half of their budget on education and nearly one-third on recruiting and marketing. At least one prominent school actually spends less on teaching than it does on marketing.

This is a recipe for disaster. Low-income students come to for-profit colleges in droves, lured by promises of high-paying careers, flexible courses, and easy financial aid.

But when they enroll, they may find that far less money is put into educating them than on recruiting them.

Today, the Government Accountability Office released a report documenting the recruiting practices of for-profit colleges.

Senator HARKIN asked GAO to send undercover investigators to determine if for-profit colleges' admissions representatives were engaged in deceptive marketing tactics.

GAO sent undercover applicants to 15 for-profit colleges, including two in Illinois.

At every single one, they found that recruiters made deceptive or otherwise questionable statements.

And at four of the schools, the for-profit college representatives actually encouraged fraud.

Some of the tapes of those encounters would shock you.

The recruiters made false claims about potential salaries, program duration, cost, and graduation rates. Other recruiters encouraged students to lie on their financial aid forms.

In one video, the representative informs a prospective applicant that some graduates are making $1,000 a day as barbers in the District of Columbia. That would be a salary of around $250,000 per year. The average barber in DC makes $19,000.

In another video, the recruiter claims that you don't have to pay back your student loans at all. She says that unlike a car loan, no one will come after you for not paying a student loan.

In several videos, recruiters refuse to let the applicant speak to financial aid officers until he enrolls in the school.

Throughout, the representatives of the for-profit colleges employ aggressive tactics and convey false information to prospective students in order to sign them up.

Why is all this pressure placed on students? Money.

In many for-profit schools, recruiters' salaries, bonuses, or promotions are determined by how many students they sign up.

As a result, they try to bring in as many students as possible—regardless of their ability to succeed or complete the program—and load them up with loans.

Students deserve full and complete information when enrolling in a college and taking on large amounts of debt.

Students should be informed about debt loads, completion rates, job placement rates and salaries, and accreditation information so that they and their families can make smart choices.

Instead, students are being misled, misinformed, and lied to.

Students are not the only ones being taken advantage of by the worst for-profit colleges. Taxpayers are on the hook as well when Pell grants are wasted or when student loans are defaulted on.

When a student cannot repay his loan, the college he attended bears no responsibility. Instead, the taxpayers take the loss.

Steve Eisman, profiled in the book ''The Big Short,'' has discussed the similarities between the subprime mortgage industry and the for-profit college industry. Some of his predictions are startling.

He estimates that over the next 10 years, former students of for-profit colleges will owe $330 billion on defaulted loans and fees. Given our current fiscal situation, that is not a cost we can bear.

Eisman believes that if we don't rein in this industry, we will face another social disaster akin to the collapse of the housing industry. I hope that does not come to pass.

This is a situation that demands our attention.

Along with several of my colleagues in the House and Senate, I've asked the Government Accountability Office to review the quality of for-profit colleges and make recommendations based on its findings.

I commend Senator HARKIN for holding oversight hearings in his committee on this important issue, including a hearing this week on marketing and recruitment by for-profit colleges. I look forward to working with him on legislative action.

I also commend the administration and specifically the Department of Education for their engagement on this issue.

Unfortunately for the taxpayer and for countless students, the previous administration loosened many regulations that have made it easier for abuses to occur. I am pleased to see the current administration back on the appropriate track. The Department of Education has proposed a number of new regulations that will address some of the abuses in the industry.

Several of my colleagues are working with me on the President's Deficit Reduction Commission. One of the principles guiding our work is not just what we're spending, but how wisely.

Does it make sense for the Federal Government to send Pell grants to schools that are spending more of that money on marketing than on education? Does it make sense for the Federal Government to guarantee loans to students who are given no realistic chance at the career they think they are training for?

We need to look carefully at this trend in for-profit schools. If enrollment has increased by 225 percent over 10 years, while $4 billion in Federal dollars went to for-profit schools last year, and 40 percent of their students are defaulting on their loans . . . this may not make sense.

REMEMBERING SENATOR ROBERT C. BYRD

Mrs. LINCOLN. Mr. President, the death of Senator Robert Byrd is a tremendous loss to the Senate, the State of West Virginia, and the entire Nation. As the longest serving Member of Congress, his political career spanned multiple Presidencies, and he was a witness to countless American advances and achievements. He has served his state and our country for more than half a century, and he will be greatly missed.

Senator Byrd embodied the history and traditions of the Senate, and his incredible knowledge of our Constitution, Congress and the legislative process benefited every Member who served alongside him. I met with Senator Byrd when I was first elected to the Senate, and I will be forever grateful for his generosity and willingness to assist his colleagues.

I will always remember Senator Byrd as a committed public servant who was deeply devoted to his State and his country. He was known as the conscience of the Senate for his dedication to the body's history, legislative process and rules, serving as a principled legislator. He made many sacrifices to give his life to public service, and we owe a lot to Senator Byrd for this reason. I am deeply saddened by his passing and know he will be missed.

Mr. CHAMBLISS. Mr. President, I rise to pay tribute to a colleague whose devotion to this body, and to this Nation, was personal, heartfelt and legendary. I am talking about none other than the senior senator from West Virginia, Senator Robert Byrd.

Senator Byrd's time on Earth was a life characterized by commitment. He exemplified this rare quality through his 70-year marriage to his high school sweetheart Erma James Byrd. But this was far from the only deep commitment in Senator Byrd's life. His dedication to the U.S. Senate was proved by his actions and his storied career. His life in the Senate began in 1958 with a victory that included 59 percent of the vote, the smallest margin of victory in Senator Byrd's half century-plus career. During his 57 years in Congress, Byrd worked with 12 future Presidents. He was known for telling his colleagues that he did not serve under any Presidents, but alongside them.

In Senator Byrd's portrait in the Old Senate Chamber, his image is surrounded by his wife, the Bible, and the U.S. Constitution. This is only fitting, considering that Senator Byrd used references from the Bible and the U.S. Constitution in many of his speeches and in his everyday dealings with fellow lawmakers. In a speech by Senator Byrd on October 13, 1989, he said, ''The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand, against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and grandchildren when they ask of us as Caesar did to the centurion, 'How do we fare today?' and the centurion replied, You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.' ''

I can say that Senator Byrd is deserving of the praise of West Virginians, and, indeed, all Americans, for his devotion to the Senate and to our Nation. He will be missed by his colleagues, and we are grateful for his life's work.

Mr. MCCAIN. Mr. President, no Senator has ever loved the institution of the U.S. Senate more than Senator Robert Byrd. I firmly believe that. He truly believed that the upper Chamber of Congress was the greatest deliberative body on Earth and he always strived to preserve its traditions and history for the generations to come as well as being the Senate's foremost instructor on Senate procedure and process.

I was able to be a ''student'' of Senator Byrd's instruction when we worked together in 2005 to preserve Senate rule XXII, commonly known as the ''filibuster.'' Senator Byrd joined with me, along with six other Republican Senators and six Democrat Senators to form what became the ''Gang of 14.'' During the meetings between these 14 Members, which were often held in my office, I fondly recall the silence that would overcome the room when Senator Byrd spoke about the history of the filibuster and the rights of the minority in the Senate. It is not often that 13 members of the Senate are quiet for any given period of time. But Senator Byrd's stature and intellect brought the room to a standstill.

Senator Byrd is remembered for being a strong majority leader and minority leader for his party. But as he reminded all of us during those meetings in my office, when he served as majority leader during President Reagan's time in office, Senator Byrd did not lead his Democratic caucus to filibuster any of President Reagan's judicial nominees. That was a different time with different leaders, but Senator Byrd's actions reflect his sincere desire for statesmanship and his respect for the President's nominees. His speech on the Senate floor in 2005 regarding the filibuster reflected this desire when he said:

> I rise today to make a request of my fellow Senators. In so doing, I reach out to all Senators on both sides of the aisle, respectful of the institution of the Senate and of the opinions of all Senators, respectful of the institution of the Presidency as well. I ask each Senator to pause for a moment and reflect seriously on the role of the Senate as it has existed now for 217 years, and on the role that it will play in the future if the so-called nuclear option or the so-called constitutional option—one in the same—is invoked. I implore Senators to step back—step back, step back, step back—from the precipice. Step back away from the cameras and the commentators and contemplate the circumstances in which we find ourselves. Things are not right, and the American people know that things are not right. The political discourse in our country has become so distorted, so unpleasant, so strident, so unbelievable . . .

He was not only a leader in 2005 against removing the judicial filibuster rule, he was a life-long leader in the Senate against allowing Senators to issue secret holds. His motives were noble, and he fought for its elimination until the end. In his final speech, entered into the RECORD but not delivered, he defended an individual Senator's right to block legislation in secret. ''Our Founding Fathers intended the Senate,'' he lectured colleagues last month in one of his last appearances, to have ''unlimited debate and the protection of minority rights.''

Senator Byrd's respect for Senate rules and procedure were second only to his defense and passion for the Constitution. Because of his leadership, we were able to establish September 17 as Constitution Day. Now, annually, students across the country will learn about and celebrate the document that governs our Nation and hopefully understand the significance of this unparalleled document that has established freedom and sovereignty of our citizens for hundreds of years.

Senator Byrd spent practically all of his adult life serving the American people for which we are all grateful. Even when he disagreed with his peers in the Senate, he respected their intellect and views. I am honored to have served beside him. He once said, ''On the great issues, the Senate has always been blessed with senators who were able to rise above party and consider first and foremost the national interest.'' I agree and hope the Senate continues to attract candidates who will rise above politics for the good of our country and who will appreciate the history of the institution as Senator Byrd did.

Senator Byrd gave his life to the service of his country and the Senate and the Nation will miss him and the important leadership and sense of history that he brought to this body every day.

Mr. BEGICH. Mr. President, today I would like to add to the heartfelt sentiments we have heard expressed by many colleagues and many more

around the country over these past several weeks in paying tribute to our departed colleague, Senator Robert C. Byrd of West Virginia.

As an American, pondering what Senator Byrd has done, the history he has been a part of, and the path he took from the small towns of southern West Virginia's coalfields, is inspiring. From the perspective of a new Senator, I must say that the life and career of Senator Byrd is more than a little daunting. I have served just shy of 20 months, and I have voted in this Chamber slightly more than 600 times.

Those numbers seem like rounding errors compared to the numbers we have heard over the last several days in reference to the service of Senator Byrd: Elected to nine full terms, more than 51 years in the Senate—more than 4 years longer than the next longest serving Senator; he cast nearly 19,000 votes, 18,689, including 4,705 consecutive votes; he was twice majority leader; served also as Whip, conference secretary, minority leader, and President pro tempore; and he served on the Appropriations Committee continuously since being placed there in 1959 by then-majority leader Lyndon Johnson as a freshman in this body—more than 3 years before I was born and only about 2 weeks after Alaska became a State.

I am told by colleagues who served longer with Senator Byrd that while he was proud of those facts, the record he cherished the most was the time he spent with the love of his life, his childhood sweetheart and wife of 68 years, Erma. Senator Byrd was a man of deep faith, but from what I have heard of them as a couple, I do not doubt that all the glories of the afterlife pale for Senator Byrd compared to rejoining Erma.

I came to the Senate too late to hear most of his greatest speeches, but when he spoke, whether it was about a funding bill or the wars that we continue to wage, you listened. We all felt a great sadness when Senator Kennedy died last year, but many of us probably came to appreciate the depth of the historical significance of his departure from this body months earlier when we heard and saw another of the great legislators in American history, Robert C. Byrd, weep openly and unabashedly as he paid tribute to his friend and colleague. My service with Senator Byrd was nowhere as lengthy as his with Senator Kennedy, but I am profoundly affected by the honor of knowing the man, even for these past 2 years.

In the short time we did serve together, I have still been able to learn from Senator Byrd. He was a statesman and a pillar of this institution, and a genuine historical figure that my son Jacob will learn about in school. But the thing that I will take from watching Senator Byrd that showed every day that we served together was that nothing was more important than the work he did for the people of the State that sent him here. All of us look to the people of our States for guidance on the matters of the day, and certainly Senator Byrd was attuned to the thoughts of the people of West Virginia. But there was more to it than just knowing what the people of his State thought.

His whole career was about making West Virginia a better place, expanding its infrastructure, educating its people, supporting its industries, and providing the circumstances in which economic development could take root and flourish. Improving the lives of the people of his State was what motivated Senator Byrd to come here almost 19,000 times for votes on any number of issues.

As I think of the impact Senator Byrd's career has had on West Virginia, I cannot help but think of the similarities between our two States. Alaska and West Virginia are both mostly rural, energy-producing States with pockets of intractable poverty. It is a mark of respect for his success at changing the world for the better that West Virginia has fewer poverty-stricken residents, and that remote regions of his state are less difficult to travel to and from than when Senator Byrd was first elected to Congress. He was an ardent supporter of the Appalachian Regional Commission, ARC, which was created to help solve the problems of poverty and hopelessness in his State by upgrading insufficient public infrastructure, building and maintaining educational facilities, and providing access to public and private sector assistance to improve health care, foster economic development and diversity, and provide opportunities for the people of the region beyond energy extraction and the few other traditional industries that existed there.

It is no surprise that when my predecessor, Senator Ted Stevens, was looking for a way to improve the lives of Alaskans, he saw in the ARC that his close friend and colleague, Senator Byrd, had worked so hard to support a model for the Denali Commission that he believed could create similar hope and opportunity in our State. My colleagues and I in the Alaska congressional delegation today are just as dedicated to the potential the Denali Commission represents for our State. We can only hope to have as much positive impact on the lives of Alaskans as Senator Byrd had with those of the West Virginians he was so proud to represent.

I do not have as many great stories about Senator Byrd as many of our other colleagues, but I will close with observations about the man, hard at work doing what he knew was right for his people, which inspired me. As the Senate worked to reform the Nation's health care system last year, a number of votes were late at night or early in the morning, and as many will remember, the weather last December was uncharacteristically cold and snowy. As an Alaskan and a relatively young man, getting to the Capitol during a blizzard was not a big ordeal. Watching Senator Byrd, in his nineties and in obvious frail health, make his way to the Senate Chamber time and time again in his wheelchair, including for a final vote very early on the morning of Christmas Eve, was an inspiration. Seeing it then, and reflecting on it in the last several days, made me appreciate more fully the man's dedication to the people he served.

Every State deserves Senators with those motivations, and while I will always marvel at the man's encyclopedic knowledge of the Senate and countless other things, the thing I will emulate about the life and career of Robert C. Byrd, for however long the voters of Alaska choose to have me as their Senator, is that my job is to make the lives of Alaskans better.

I believe Senator Byrd would approve.

Mr. BROWN of Massachusetts. Mr. President, today I rise to speak about our Nation's longest serving Senator who dedicated his life to public service. Senator Byrd first came to the Senate the same year I was born, 1959, and I took office just a few months before he passed away. Though I did not have the opportunity to know him well, each day I learn more of his legacy and his impact on what he referred to as the Second Great Senate.

Robert Byrd was a staunch defender of the Constitution and the institution of the Senate. Many have told the story of how he carried his pocket Constitution in his jacket wherever he went to remind us all of that document's importance in making the laws of today. His speeches on the Senate floor were legendary and illustrated his devotion to the place where he served for more than 50 years.

In his role as a Senator from West Virginia, Robert Byrd worked tirelessly to modernize his State and end its economic isolation. But he did more than just serve his State. Robert Byrd's dedication to the complexity and the many traditions of the Senate was extraordinary. He was passionately, and often solely, committed to the Founders' wise intent that the Senate was to remain a bulwark against the power of the Presidency.

Through relentless effort, dedication, and commitment, Robert Byrd rose from humble beginnings to become one of our Nation's most skilled legislators. I thank him for his many years of public service in representing West Virginia and our Nation. My thoughts and prayers go out to his family and friends as they mourn his great loss.

Mr. BENNETT. Mr. President, I rise today to offer my sincere condolences following the passing of my friend and colleague, Senator Robert C. Byrd. This is obviously the end of an era. Senator Byrd has seen the landing of man on the Moon, the passage of the Civil Rights Act, the resignation of one President and the impeachment trial of another, and countless other significant and historical landmarks during his unparalleled Senate career.

Each of us has his or her own memories of Senator Byrd's kindness and devotion to the Senate as an institution. The place will not be the same without him.

My wife Joyce and I extend our deepest condolences to his daughters and the entire Byrd family.

HONORING OUR ARMED FORCES

Mrs. BOXER. Mr. President, I rise today to pay tribute to 38 servicemembers from California or based in California who have died while serving our country in Operation Enduring Freedom since March 24, 2010. This brings to 185 the number of servicemembers either from California or based in California that have been killed while serving our country in Afghanistan. This represents 15 percent of all U.S. deaths in Afghanistan.

LCpl Rick J. Centanni, 19, of Yorba Linda, CA, died March 24 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Centanni was assigned to 4th Light Armored Reconnaissance Battalion, 4th Marine Division, Marine Forces Reserve, based out of Camp Pendleton, CA.

SgtMaj Robert J. Cottle, 45, of Whittier, CA, died March 24 while supporting combat operations in Helmand province, Afghanistan. Sergeant Major Cottle was assigned to 4th Light Armored Reconnaissance Battalion, 4th Marine Division, Marine Forces Reserve, based out of Camp Pendleton, CA.

Sgt Kenneth B. May, Jr., 26, of Kilgore, TX, died May 11 while supporting combat operations in Helmand province, Afghanistan. Sergeant May was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Jeffery W. Johnson, 21, of Tomball, TX, died May 11 while supporting combat operations in Helmand province, Afghanistan. Corporal Johnson was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

PO Zarian Wood, 29, of Houston, TX, died May 16 in Helmand Province, Afghanistan, of wounds sustained from an improvised explosive device blast while on dismounted patrol. Petty Officer Wood was assigned as a hospital corpsman to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

SSgt Adam L. Perkins, 27, of Antelope, CA, died May 17 while supporting combat operations in Helmand province, Afghanistan. Staff Sergeant Perkins was assigned to 7th Engineer Support Battalion, 1st Marine Logistics Group, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Jacob C. Leicht, 24, of College Station, TX, died May 27 while supporting combat operations in Helmand province, Afghanistan. Corporal Leicht was assigned to the 1st Light Armored Reconnaissance Battalion, 1st Marine Division, 1st Marine Expeditionary Force, Camp Pendleton, CA.

PFC Jake W. Suter, 18, of Los Angeles, CA, died May 29 while supporting combat operations in Helmand province, Afghanistan. Private First Class Suter was assigned to 3rd Battalion, 3rd Marine Regiment, 3rd Marine Division, III Marine Expeditionary Force, Kaneohe Bay, HI.

Cpl Donald M. Marler, 22, of St. Louis, MO, died June 6 while supporting combat operations in Helmand province, Afghanistan. Corporal Marler was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Derek Hernandez, 20, of Edinburg, TX, died June 6 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Hernandez was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Sgt Brandon C. Bury, 26, of Kingwood, TX, died June 6 while supporting combat operations in Helmand province, Afghanistan. Sergeant Bury was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Sgt John K. Rankel, 23, of Speedway, IN, died June 7 while supporting combat operations in Helmand province, Afghanistan. Sergeant Rankel was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Michael G. Plank, 25, of Cameron Mills, NY, died June 9 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Plank was assigned to 7th Engineer Support Battalion, 1st Marine Logistics Group, I Marine Expeditionary Force, Camp Pendleton, CA.

LCpl Gavin R. Brummund, 22, of Arnold, CA, died June 10 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Brummund was assigned to 3rd Battalion, 6th Marine Regiment, 2nd Marine Division, I Marine Expeditionary Force, Camp Lejeune, NC.

Cpl Jeffrey R. Standfest, 23, of St. Clair, MI, died June 16 while supporting combat operations in Helmand province, Afghanistan. Corporal Standfest was assigned to 3rd Combat Engineer Battalion, 3rd Marine Division, III Marine Expeditionary Force, based at Marine Corps Air Ground Combat Center Twentynine Palms, CA.

LCpl Michael C. Bailey, 29, of Park Hills, MO, died June 16 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Bailey was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, based at Marine Corps Air Ground Combat Center Twentynine Palms, CA.

SGT Nathan W. Cox, 27, of Fremont, CA, died June 16 at Landstuhl Regional Medical Center, Landstuhl, Germany, of injuries sustained June 14 when insurgents attacked his unit with small arms fire at Near Forward Operating Base, Khogyani, Afghanistan. Sergeant Cox was assigned to Headquarters and Headquarters Company, 1st Special Troops Battalion, 1st Brigade Combat Team, 101st Airborne Division (Air Assault), Fort Campbell, KY.

SN William Ortega, 23, of Miami, FL, died June 18 in HelmandProvince, Afghanistan, of wounds sustained from an improvised explosive device blast while conducting combat operations against enemy forces. Seaman Ortega was assigned as a hospital corpsman to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Kevin A. Cueto, 23, of San Jose, CA, died June 22 while supporting combat operations in Helmand province, Afghanistan. Corporal Cueto was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, based at Marine Corps Air Ground Combat Center Twentynine Palms, CA.

Cpl Claudio Patino IV, 22, of Yorba Linda, CA, died June 22 while supporting combat operations in Helmand province, Afghanistan. Corporal Patino was assigned to 3rd Battalion, 7th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, based at Marine Corps Air Ground Combat Center Twentynine Palms, CA.

Cpl Daane A. Deboer, 24, of Ludington, MI, died June 25 while supporting combat operations in Helmand province, Afghanistan. Corporal Deboer was assigned to 1st Combat Engineer Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Sgt Joseph D. Caskey, 24, of Pittsburgh, PA, died June 26 while supporting combat operations in Helmand province, Afghanistan. Sergeant Caskey was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Larry D. Harris Jr., 24, of Thornton, CO, died July 1 while supporting combat operations in Helmand province, Afghanistan. Corporal Harris was assigned to 3rd Battalion, 1st Marine Regiment, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

SPC Roger Lee, 26, of Monterey, CA, died July 6 at Qalat, Afghanistan, of wounds sustained when insurgents attacked his vehicle with an improvised explosive device. Specialist Lee was assigned to the 1st Battalion, 4th Infantry Regiment, Hohenfels, Germany.

SSG Marc A. Arizmendez, 30, of Anaheim, CA, died July 6 at Qalat, Afghanistan, of wounds sustained when insurgents attacked his vehicle with an improvised explosive device. Staff Sergeant Arizmendez was assigned to the 1st Battalion, 4th Infantry Regiment, Hohenfels, Germany.

LCpl Tyler A. Roads, 20, of Burney, CA, died July 10 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Roads was assigned to 3rd Battalion, 6th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force, Camp Lejeune, NC.

SSgt Christopher J. Antonik, 29, of Crystal Lake, IL, died July 11 while supporting combat operations in Helmand province, Afghanistan. Staff Sergeant Antonik was assigned to 1st Marine Special Operations Battalion, U.S. Marine Corps Forces Special Operations Command, Camp Pendleton, CA.

SPC Chase Stanley, 21, of Napa, CA, died July 14 at Zabul Province, Afghanistan, of wounds sustained when insurgents attacked his military vehicle with an improvised explosive device. Specialist Stanley was assigned to the 618th Engineer Support Company, 27th Engineer Battalion (Combat Airborne), 20th Engineer Brigade (Combat), Fort Bragg, NC.

GySgt Christopher L. Eastman, 28, of Moose Pass, AK, died July 18 while supporting combat operations in Helmand province, Afghanistan. Gunnery Sergeant Eastman was assigned to the 7th Engineer Support Battalion, 1st Marine Logistics Group, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Paul J. Miller, 22, of Traverse City, MI, died July 19 while supporting combat operations in Helmand province, Afghanistan. Corporal Miller was assigned to 3rd Combat Engineer Battalion, 3rd Marine Division, III Marine Expeditionary Force, based at Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

SSG Brian F. Piercy, 27, of Clovis, CA, died July 19 in Arghandab River Valley, Afghanistan, of injuries sustained when insurgents attacked his unit using an improvised explosive device. Staff Sergeant Piercy was assigned to the 2nd Battalion, 508th Parachute Infantry Regiment, 4th Brigade Combat Team, 82nd Airborne Division, Fort Bragg, NC.

Cpl Julio Vargas, 23, of Sylmar, CA, died July 20 while supporting combat operations in Helmand province, Afghanistan. Corporal Vargas was assigned to the 3rd Assault Amphibian Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

Maj James M. Weis, 37, of Toms River, NJ, died July 22 while supporting combat operations in Helmand province, Afghanistan. Major Weis was assigned to Marine Aircraft Group 39, 3rd Marine Aircraft Wing, I Marine Expeditionary Force, based out of Camp Pendleton, CA.

LtCol Mario D. Carazo, 41, of Springfield, OH, died July 22 while supporting combat operations in Helmand province, Afghanistan. Lieutenant Colonel Carazo was assigned to Marine Aircraft Group 39, 3rd Marine Aircraft Wing, I Marine Expeditionary Force, based out of Camp Pendleton, CA.

SGT Daniel Lim, 23, of Cypress, CA, died July 24, at Qalat, Afghanistan, of injuries sustained when insurgents attacked his military vehicle with an improvised explosive device. Sergeant Lim was assigned to 5th Battalion, 3rd Field Artillery Regiment, 17th Fires Brigade, Joint Base Lewis-McChord, WA.

SSG Conrad A. Mora, 24, of San Diego, CA, died July 24, at Qalat, Afghanistan, of injuries sustained when insurgents attacked his military vehicle with an improvised explosive device. Staff Sergeant Mora was assigned to 5th Battalion, 3rd Field Artillery Regiment, 17th Fires Brigade, Joint Base Lewis-McChord, WA.

PO2 Justin McNeley, 30, of Wheatridge, CO, died from wounds sustained from an incident in Logar province, Afghanistan, on July 23. Coalition Forces recovered his remains July 25 after an extensive search. Petty Officer 2nd Class McNeley was assigned to Assault Craft Unit One (ACU–1), San Diego, CA.

LCpl Shane R. Martin, 23, of Spring, TX, died July 29 while supporting combat operations in Helmand province, Afghanistan. Lance Corporal Martin was assigned to 1stLight Armored Reconnaissance Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, CA.

EXECUTIVE CALENDAR HOLD

Mr. BROWNBACK. Mr. President, I rise today to inform the body that I have placed a hold on Executive Calendar nomination No. 1051, the nomination of Ambassador Frank Ricciardone to be Ambassador to the Republic of Turkey.

COMMENDING SENATOR ALAN K. SIMPSON

Mr. BARRASSO. Mr. President, in Wyoming's 120 year history, only 21 people have served as U.S. Senator for our State. One stands out as a compassionate, skilled and illustrious figure. United States Senator Alan K. Simpson is a lifelong public servant who is dedicated to his family, to Wyoming, and to the United States.

Al Simpson has fought to uphold the values and ideals of our country for most of his life. Whether he was serving in the U.S. Army in Germany, the Wyoming House of Representatives or in the U.S. Senate Chamber, his commitment and contributions were evident. When the Nation calls on Al Simpson to serve, he is always there to work and fight for our best interests.

United States Senator Alan K. Simpson served in this Chamber from 1979 to 1997. Fortunately for Wyoming and our Nation, his service did not end when he retired. He has enthusiastically served numerous groups and organizations, which all have benefitted from his presence. From his beloved alma mater, the University of Wyoming, to the world renowned Buffalo Bill Historical Center, Al Simpson devotes his time, talent and treasure. When Al sees an unmet need in our community, he works to see that it is addressed. Wyoming—and America—are better because of him.

This year, the Boys and Girls Clubs of Central Wyoming have selected Al Simpson as their Man of the Year. While Al has received many honors throughout his life, to be honored by the Boys and Girls Clubs is very special to him.

The Boys and Girls Clubs of Central Wyoming plays a vitally important role in our State. They serve all youth regardless of economic circumstances. They continue to expand thanks to the generous support of the McMurry Foundation, the Martin Family Foundation, the Daniels Fund, the Casper Star Tribune and the Reader's Digest Foundation. Their inspiration and work has spread to adjacent counties.

The work of the Boys and Girls Clubs' dedicated staff and volunteers creates a positive environment for all children. As a result of the Boys and Girls Clubs of Central Wyoming, hundreds of Wyoming youth will have the opportunity to gain the experiences and build the skills needed for success. Their mission is the same as Al's—to make our community and our Nation a better place.

This award is special to Senator Al Simpson because his life's success is due in large part to the strength of his family. He lovingly called his mother Lorna 'the velvet hammer.' His father Senator and Governor Milward Simpson was Al's model for public service and civic leadership. His big brother Pete Simpson explains, ''The extent to which we became men we owe to our father.'' Even Pete helped mold Al into the man who continues to have a positive impact on Wyoming and our Nation. Al readily admits that he and Pete were a spirited duo and gave their parents heartburn. Certainly, Al would have benefitted from the influence of a Boys and Girls Club! However, he was fortunate that the strong love and solid support of his parents carried him through a tumultuous adolescence.

It was Al's good fortune that Ann Schroll accepted his proposal for marriage. Over the years, Ann has been a guiding force for Al. He regularly says he would not have accomplished anything without Ann by his side.

Many years ago, in a high school commencement address, Al said, ''The real reason I made it in life is because there were other people who believed in me, even when I didn't believe in myself. They were people willing to give me a second chance. Those are the people I never forgot in life: parents, teachers, many people who took time with me, and for me. . . . '' Just like Al had folks who stood by him and held him accountable, the staff and volunteers at the Boys and Girls Clubs of Central Wyoming believe in our youth. Al Simpson is a wonderful choice for the 2010 Man of the Year award. He is thankful for the support he received as a youth and is committed to give all

young people in Wyoming a second chance.

It is because of his strong family values and his sense of duty to his community that the Boys and Girls Clubs Man of the Year is so meaningful to Al Simpson. This award tells this great statesman that Wyoming is thankful for his leadership.

I am so proud to call Al Simpson my friend. He is a respected mentor and adviser. It is fitting and terrific that the Boys and Girls Clubs of Central Wyoming have named him Man of the Year—and I ask that my colleagues join me in sending our congratulations to Al for this well-deserved honor.

REMEMBERING CONGRESSMAN EMILIO DADDARIO

Mr. DODD. Mr. President, I rise today to honor the life of former Connecticut Congressman Emilio Daddario who passed away on July 6, 2010.

One of the unique strengths of the United States of America is that our government derives its power from the people. It is dependent upon an educated populace, engaged in public affairs, and prepared to offer their services to make our society better and fairer for all of our benefit.

That system has worked well for more than 200 years thanks to citizens such as Emilio Daddario.

He was born in Newton Center, MA, on September 24, 1918. As a young man, he moved south to Middletown, CT, to attend Wesleyan University where he starred on the baseball and football teams. He was an exemplary athlete who twice received MVP honors in football, and was named team captain in 1938.

Upon his graduation in 1939, Emilio chose to pursue a career in law. After beginning law school at Boston University, he graduated from the University of Connecticut in 1942. He successfully passed the bar and moved back to Middletown to begin private practice. But then the call to serve his country came.

In 1943, he enlisted as a private in the U.S. Army. He was sent to the Mediterranean theater during World War II. There he was a key member of the team which captured Rodolfo Graziani, then-chief of staff to Italian Dictator Benito Mussolini, at the Hotel Milan in 1945. His distinguished service earned him the rank of captain, as well as the Legion of Merit, Bronze Star Medal, and the Italian Medaglia d'Argento.

After the war, he could have easily gone back to private legal practice and no doubt would have been very successful at it. Instead, he chose to continue his military service as a member of the Connecticut National Guard and to pursue a life in the public arena by running for mayor of Middletown.

At just 28 years old, fresh from his service overseas, Emilio Daddario won that election. He served as mayor from 1946 until 1948 and was appointed judge of the Middletown Municipal Court.

In 1950, the Nation called on him again. This time, the 43 Division of the Connecticut National Guard, of which he was a member, was sent to engage in the Korean war. His military service in that conflict as a member of the Far East Liaison Group earned him promotion to the rank of major.

Upon returning to the United States in 1952 he chose to resume private law practice, this time in Hartford, CT. But the call to serve proved to be too strong, and in 1958, Daddario ran for the opportunity to serve the people of Connecticut's 1st Congressional District.

He won that election, as well as five more, serving as a member of the U.S. Congress until 1971. While in Congress, he sat on the House Science Committee where he became an advocate for science and technological innovation. He chaired two subcommittees and also in the planning and development of the Apollo missions to the moon.

In 1970, Emilio decided not to run for reelection to the House, and instead ran for Governor of Connecticut. He did not win that race. But he sought ways to remain involved in public policy, in particular issues related to science and technology. He returned to Congress in 1973, not as a member, but as the Director of the Office of Technology Assessment.

He also went on to serve as the president of the American Association for the Advancement of Science, and as cochair of the American Bar Association's Association for the Advancement of Sciences, Conference of Lawyers and Scientists.

Emilio Daddario was just the sort of American citizen that our Nation's Founders were hoping for, and his legacy is one of exemplary public service, and commitment to making our Nation a better place for future generations. He was a devoted husband and father, and I know that he will be deeply missed. My deepest sympathies and prayers go out to his children, Richard, Anthony, and Stephen, and to the rest of his family.

90TH ANNIVERSARY OF WOMEN'S RIGHT TO VOTE

Mr. BINGAMAN. Mr. President, I rise today in honor of the 90th anniversary of women gaining the right to vote on August 26, 1920, and to acknowledge the celebration of this anniversary by the community of Las Cruces, NM.

The struggle for the right to vote began in 1848 at a convention in Seneca Falls, NY, hosted by Lucretia Mott, Mary Ann McClintock, and Elizabeth Cady Stanton. This convention began the seventy-two year struggle by women to win the right to vote, which was also a struggle to rise from second class citizenship and a struggle to gain equality. Women throughout the United States are empowered by the efforts of the brave and pioneering suffragists Susan B. Anthony, Carrie Chapman Catt, and Alice Paul. These women serve as an inspiration to those who secure leadership positions in industry, government, the military, and academia.

Las Cruces was founded in 1849 and became a town of the Territory of New Mexico in 1907. After gaining the right to vote, the women of Las Cruces sought elected office. These women include Bertha Paxton, who was the first female elected to the New Mexico State House of Representatives in 1922, Mrs. E. C. Wade, who was the first female elected as a Trustee in the town of Las Cruces in 1932, Ellen Steele, who was the first female elected as a New Mexico State Senator in 1985 from Dona Ana County and Dolores C. Archuleta who was the first Native American female elected to the Las Cruces City Council in 2001. In continuation of this tradition, the first female Governor will be elected by New Mexicans on November 2, 2010.

To celebrate and commemorate the 90th anniversary of the ratification of the 19th amendment to the U.S. Constitution, women will continue to advocate for responsible and responsive government through the election process. The League of Women Voters of Greater Las Cruces will hold a celebration with an informative panel on women's history of performance and films on the suffragists and the role of women in the political system to further commemorate this praiseworthy day.

I join with the League of Women Voters, the people of Las Cruces, and the people of New Mexico in celebration of this important day, August 26 when women finally won the right to vote and greatly enhanced their great contributions to our government and our society.

Mr. CARDIN. Mr. President, tomorrow marks the 45th anniversary of the Voting Rights Act, a landmark piece of legislation which helped guarantee the right to vote to all Americans. As we approach the upcoming midterm elections, it is important to remember the journey of voting rights in America. Without this right, words and phrases like ''democracy,'' ''land of the free,'' and ''equality'' lack true meaning.

The right to vote traveled a long ugly road—a road we must all remember. Edmund Burke once said ''those who do not remember history are destined to repeat it.'' Some would say they are doomed to repeat it. For this reason, on this day and every day, we should remember how Americans, Black and White; young and old; men and women; stood, marched and fought together for equal access to the voting booth. We must ensure that all barriers to voting are removed.

There are many people who contributed to the voting rights movement. Today I would like to highlight one woman—Mrs. Fannie Lou Hamer, a woman who was ''sick and tired of being sick and tired'' when it came to the denial of equal voting rights. Hamer, a great American hero, led a

life most people could not imagine today. Despite having polio and only 4 months of schooling, Hamer became a matriarch of the voting rights movement.

On August 31, 1962, Hamer decided to exercise her constitutional right to vote by traveling 26 miles in Mississippi to register only to be confronted by the highway patrol and literary test requirements. After being denied her right to vote she didn't just sit down, she stood up and joined the Student Nonviolent Coordinating Committee and traveled all across the country speaking and registering other people to vote.

Hamer also helped organize ''Freedom Summer'' in 1964. She and thousands of civil rights supporters, many of them White college students, traveled to Mississippi and other Southern States to try to end the long time political disenfranchisement of African Americans in the region. Despite these nonviolent efforts for equality, on the very first day of Freedom Summer, three volunteers were brutally murdered. As America continued to march toward equality the Nation and its political leaders began to realize the horrific battle being waged against African Americans seeking equal treatment under the law.

As violence and frustration mounted, President Johnson pushed Congress to act and pass voting rights legislation. After research, multiple hearings and the longest filibuster in Senate history, Congress passed the Voting Rights Act of 1965. This bill provided all Americans—regardless of color—with nationwide protections against barriers and access to the voting booth. It contained protections against systematic methods of disenfranchisement by States and localities. Since its enactment, Congress has reauthorized the landmark legislation in an effort to remain vigilant against any forms of disenfranchisement.

In 2006, when Congress last took up reauthorization of this legislation, civil rights leader Congressman JOHN LEWIS said, ''forty-one years ago I gave a little blood on that bridge. So when I see what's happening in New Orleans and the Gulf Coast, it's a beginning of an effort not only to violate the letter but the spirit of the Voting Rights Act of 1965. And that must not be allowed to happen.'' With overwhelming bipartisan support, the House of Representatives passed the bill by a vote of 390–33 and the U.S. Senate passed the bill by a vote of 98–0.

Despite the bipartisan support and a large array of evidence demonstrating the continuing need for this legislation, some have argued that this legislation is no longer warranted. To those people, I say you are wrong. I have seen examples in my own State that prove how necessary this legislation is today. During my Senate campaign, just 4 years ago—the very same time the Congress was providing near unanimous support for the Voting Rights Act—I had the unfortunate experience of witnessing deceptive practices and tactics used to undermine the constitutional right to vote. Lines were inexplicably longer and slower at polling locations in African-American districts and not simply because there were more people voting. Phone calls were made to minority districts reminding them to vote on Wednesday, not Tuesday; and a fraudulent sample ballot was targeted to confuse minority voters. I remind you that this was in *2006*, not 1956.

Just two years later, in the 2008 election, substantial barriers were implemented making it difficult for eligible voters to vote. These included the purging of voter rolls, misleading voter information and voter intimidation. Take for example, an election administrator in Mississippi improperly purging approximately 10,000 voters from the rolls from her home computer; or the local prosecutor in Ohio who requested via subpoena personal information for 40 percent of voters who had registered during the same day registration and voting period in the State. These are real examples of incidents occurring today—45 years after we passed the Voting Rights Act.

Despite attempts to ignore or chip away at the protections provided to all Americans by the Voting Rights Act, this legislation remains relevant and provides the most significant and essential tool in ensuring continuity and the integrity of our democratic system. Our former colleague Ted Kennedy once said we need to ''seek the reign of justice in which voting rights and equal protection of the law will everywhere be enjoyed.'' On this 45th anniversary of the Voting Rights Act, I urge my colleagues to continue their bipartisan support for this critical legislation and for equal access to the voting booth for all.

Mrs. GILLIBRAND. Mr. President, I rise today to speak on behalf of the women of America to recognize, honor, and celebrate the 90th anniversary of their voting rights on August 26, 2010—Women's Equality Day. I know my colleagues join me, in acknowledging the tremendous contributions women have made to America and the historic significance of reaching this milestone in women's history.

The 72-year struggle of suffragists, from the first women's rights convention held in Seneca Falls, NY, in July 1848 to the passage of the 19th amendment of the U.S. Constitution on August 26, 1920, bears witness to the sacrifice and dedication of the leaders of the early women's rights movement who never wavered from their intent to reach the goal of full enfranchisement.

We must thank Elizabeth Cady Stanton, born in 1815 in Johnstown, NY, who organized the first women's rights convention with Lucretia Mott and other courageous women in 1848. Their early advocacy for voting rights, protection from domestic violence, the right to own property, and other social reforms that promoted equality are what we continue to support for women today. The ''Declaration of Sentiments'' speech Mrs. Stanton delivered at that July convention called for ''all men and women'' to be recognized as created equal under the law. Her celebrated 50-year partnership that began in 1851 with Susan B. Anthony brought to the public consciousness the importance of equality rights for women. That is a sacred trust we must continue to support.

On August 26, 1970—the 50th anniversary—the National Organization of Women, NOW, called upon women nationwide to strike for equality in protest of the fact that women still did not have equal rights, 40 years after passage of the 19th amendment. In New York City, 50,000 women marched down Fifth Avenue to demonstrate in support of the women's movement and securing equality rights, as did women in 40 other cities across America that day. U.S. Representative Bella Abzug addressed the NYC crowd and was instrumental in getting Congress in 1971 to officially recognize August 26 as Women's Equality Day.

In 1776, Abigail Adams, wife of John Adams, sent an urgent message to her husband, who was a delegate to the Second Continental Congress, stating: ''In the new Code of Laws, I desire you would remember the ladies.'' It took 144 years for women's equality rights to be sanctioned by Congress, and I ask, Mr. President, that we take this opportunity on August 26, 2010, to honor this 90th anniversary and the remarkable contributions women have made to this country. The American people owe a debt of gratitude to the early suffragists for remaining steadfast in the face of overwhelming opposition in advocacy on behalf of the equality rights for all American citizens that our Constitution supports today.

SECURE AND RESPONSIBLE DRUG DISPOSAL ACT

Ms. KLOBUCHAR. Mr. President, I thank my colleagues for their support in passing S. 3397, the Secure and Responsible Drug Disposal Act by unanimous consent this week. I thank the Senate cosponsors of this bill—Senator GRASSLEY, Senator BROWN of Ohio, Senator GILLIBRAND, Senator COLLINS, Senator CORKER, Senator FEINGOLD, Senator KOHL, Senator SCHUMER and Senator DURBIN. I especially thank my lead cosponsor, Senator CORNYN, and his counsel Gustav Eyler for their significant efforts on behalf of this important legislation.

When the Drug Enforcement Administration brought this issue to my attention, I was eager to work on it because this is such a commonsense bill.

We know that prescription drug abuse is on the rise and what is even scarier is that it is on the rise among teenagers. In fact, teens abuse prescription drugs more than any illicit drug

besides marijuana. And according to the Partnership for a Drug-Free America, 55 percent of teens say that it is easy to get prescription drugs from their parents' medicine cabinets. We also know that up to 17 percent of all prescription drug medication goes unused each year.

This bill is an important step towards getting unused, unwanted or expired medication off families' shelves and into the hands of proper authorities. The bill makes it possible for State and local law enforcement ''take-back'' programs to accept controlled substances as well, which is something that is currently very difficult for them to do. I introduced this legislation because I believe we have to give families a better option than either leaving dangerous medication in their homes or flushing such medication into the water supply.

Parents know that keeping unwanted prescription drugs in their homes increases the risk that young people will find them, but current law provides them with few alternatives. By making it easier for people to dispose of controlled substances they no longer need, we can reduce teens' access to these drugs and help curb teen drug abuse. This bill amends the Controlled Substances Act to allow the Attorney General to draft regulations permitting authorized entities to accept and dispose of controlled substances. These regulations will enable state, local, and private entities to operate drug take-back programs for all prescription drugs, while taking the necessary steps to prevent unlawful diversion and promote safe disposal.

Senator CORNYN recounts with great specificity the provisions of this bill that were added after consultation with many of our House colleagues and their staffs. I want to mention those members whose contributions to this bill have improved it greatly: Representatives HENRY WAXMAN, JOE BARTON, JAY INSLEE, BART STUPAK, and LAMAR SMITH. I am grateful to their offices for working with us to get this bill to a place where it could obtain the unanimous support of the U.S. Senate, and I second Senator CORNYN's comments about the specific contributions of each of those individuals and their offices.

The provisions that we added after collaboration with House offices, along with the bill's ''no cost'' estimate from the Congressional Budget Office, are among the many reasons the bill enjoys the support of 41 State attorneys general, the Department of Justice, and the National Association of Chain Drug Stores. They also prove that this bill is bicameral in its design, as well as bipartisan.

I want to thank all of my colleagues again for their support.

Mr. CORNYN. Mr. President, I rise to thank and congratulate my colleagues for passing the Secure and Responsible Drug Disposal Act by unanimous consent. I am proud to have worked closely with Senator KLOBUCHAR to draft and introduce the bill, and I thank her and her chief counsel, Paige Herwig, for their ideas and advocacy of commonsense drug disposal solutions.

The Secure and Responsible Drug Disposal Act will make a cost-free change to the Controlled Substances Act to permit State and private entities to accept unused controlled substances through drug take-back programs. As the Senate unanimously recognized, the Secure and Responsible Drug Disposal Act is necessary because up to 17 percent of prescribed medication goes unused every year.

State, local, and private entities already have established drug take-back programs to keep some of this unwanted medication away from children and drug abusers. But the Federal Controlled Substances Act, CSA, currently prevents these drug take-back programs from accepting the most dangerous medications—controlled substances. The CSA particularly prohibits people prescribed controlled substances from giving them to any person or entity without express permission from the Drug Enforcement Administration. As a result, individual consumers and long-term care facilities now either stockpile unwanted controlled substances or dispose of them in improper ways, such as flushing them into the water supply. This can lead to drug diversion or water pollution.

Diverted prescription drugs contributed to a 114-percent increase in overdose deaths involving prescription opioids between 2001 and 2005, and the number of treatment admissions for prescription opioids increased 74 percent from 2002 to 2006. Troublingly, over one-third of new prescription drug abusers are teenagers, who now abuse prescription drugs more than any controlled substance except marijuana.

This bill will fix the problems of unwanted prescription drug stockpiling and improper disposal by amending the CSA to allow the Attorney General to draft regulations permitting authorized entities to accept and dispose of controlled substances. These regulations will enable state, local, and private entities to operate drug take-back programs for all prescription drugs in a safe and effective manner consistent with diversion controls.

In discussing how the bill will allow drug take-back programs to accept unwanted controlled substances, I want to highlight certain provisions we added to the bill after collaborating with House colleagues and their staff. First, in authorizing new drug disposal regulations, the bill makes clear that ''the Attorney General shall take into consideration the public health and safety, as well as the ease and cost of program implementation and participation by various communities.'' Representative JAY INSLEE, who has been a strong advocate for drug disposal programs, suggested this important provision. It ensures that the planned drug disposal regulations will give States and private entities wide latitude to design the most effective take-back programs for their communities. This includes considering the differences between rural and urban communities.

Second, the bill notes that the Attorney General's regulations ''may not require any entity to establish or operate a delivery or disposal program.'' Representative JOE BARTON, along with other members of the House Energy and Commerce Committee, proposed this language to clarify that no State, town, or business will have to run a drug take-back program unless they want to do so. This provision is a welcomed change from the type of unfunded mandates we so often see in Federal laws.

Third, the bill allows long-term care facilities to dispose of their residents' medications, and it permits ''any person lawfully entitled to dispose of [a] decedent's property'' to deliver the decedent's unused medication for disposal. These common-sense provisions were advanced by Representatives BART STUPAK, HENRY WAXMAN, LAMAR SMITH, and other House members. They address the specific concerns of long-term care facilities and the practical worries of anyone who loses a loved one.

These collected provisions, along with the bill's ''no cost'' estimate from the Congressional Budget Office, are among the many reasons the bill enjoys the support of 41 State attorneys general, the Department of Justice, and the National Association of Chain Drug Stores. They also prove that this bill is bicameral in its design, as well as bipartisan.

By passing this bill, we have taken a major step toward getting unwanted prescription drugs out of medicine cabinets and off our streets. We have given State, local, and private groups more authority to serve their communities, and we have done so in a cost-free manner.

I believe the Secure and Responsible Drug Disposal Act exemplifies the type of bipartisan legislation Congress should look to pass. I thank my colleagues again for supporting it unanimously, and I look forward to it becoming law.

75TH ANNIVERSARY OF SOCIAL SECURITY

Mr. BAUCUS. Mr. President, I celebrate and honor the venerable life, not of a person, but of the most important and successful domestic program in our Nation's history. On August 14, Social Security will turn 75.

In a special Message to Congress in June 1934, President Franklin Delano Roosevelt stated the promise of Social Security, saying:

> If, as our Constitution tells us, our Federal Government was established among other things, to promote the general welfare,' it is our plain duty to provide for that security upon which welfare depends.

President Roosevelt outlined his intention to ''undertake the great task of

furthering the security of the citizen and his family through social insurance.'' Executive Order 6757 created the committee on Economic Security, putting his plan into action. The committee included 5 Cabinet-level officials and 21 government experts from several Federal agencies.

At the committee's 25th birthday celebration, Francis Perkins, who was Secretary of Labor and member of the Committee on Economic Security, recounted the work of that committee. And she remembered an embarrassing oversight in the rush to create it—the committee had not been funded. But that was not going to stop its members. Relying on a small personal loan from one committee member, the committee hired unemployed stenographers and typists and recruited professionals and experts to help out. They sent a telegram that stated:

> We have no money. We can pay your railroad fare and your expenses if you really need expenses while you are in Washington, but there is no salary.

The response was huge. A team of great minds converged on Washington, DC, in the heat of August, long before air conditioning. They worked tirelessly. And about 6 months later, in early January 1935, they presented their committee report to the President. He, in turn, brought it to Congress.

Congress heard the call. Or perhaps Congress heard the voices of its constituents. Or perhaps Members of Congress carried with them the pictures of closed factories, desolate farms, and breadlines that weaved around city blocks. Unemployment topped 20 percent, and the homeless population was growing.

In a 1962 speech, Francis Perkins described the backdrop of the creation of Social Security:

> People were so alarmed the specter of unemployment—of starvation, of hunger, of the wandering boys, of the broken homes, of the families separated while somebody went out to look for work—stalked everywhere. The unpaid rent, the eviction notices, the furniture and bedding on the sidewalk, the old lady weeping over it, the children crying, the father out looking for a truck to move their belongings himself to his sister's flat or some relative's already overcrowded tenement, or just sitting there bewilderedly waiting for some charity officer to come and move him somewhere. I saw goods stay on the sidewalk in front of the same house with the same children weeping on top of the blankets for 3 days before anybody came to relieve the situation!

Congress went to work. Committees held hearings, and a long list of individuals and groups, charities, hospitals, industries, actuaries, historians, and interested citizens testified. There were debates and arguments, compromises and drafts, more drafts and then more meetings and compromises. And then, 7 months later, on Wednesday, August 14, 1935, at about 3:30 in the afternoon, President Roosevelt signed the Social Security Act into law.

Upon the law's enactment, the President appointed a three-person Social Security Board to run the new program. One of the Board's first daunting tasks was to register employers and workers by January 1, 1937, when workers would begin earning credits toward old-age insurance benefits. The Board contracted with the Post Office to distribute applications, and numbers were assigned in local post offices. Long before computers, typists created each card in typing centers and delivered it to Social Security's headquarters in Baltimore. Between November 1936 and June 1937, Social Security issued more than 30 million Social Security numbers through this manual process. By June 30, 1937, Social Security had established 151 field offices, and these field offices took over the task of assigning Social Security numbers.

Over the course of the next several decades, Social Security expanded to help more people secure themselves, as President Roosevelt said, ''against the hazards and vicissitudes of life.'' In 1939, Congress broadened the program to include payments to dependents and survivors of retirees. In 1956, Congress created the disability program and later expanded the program to include benefits for dependents of disabled workers.

The Social Security Act of 1965 created a new social insurance program called Medicare that extended health coverage to almost all Americans aged 65 or older or receiving disability benefits.

In 1969, under the Federal Coal Mine Health and Safety Act, Social Security began processing claims for disabled coal miners suffering from black lung disease and to their dependents or survivors.

Legislation passed in 1972 provided for automatic annual cost-of-living allowances and created the Supplemental Security Income program. SSI, funded from general revenues, provides a small benefit to people with limited income who have reached age 65 or are blind or disabled.

The Social Security Amendments of 1980 made many changes in the disability program. Most focused on various work incentive provisions for disability beneficiaries.

In the early 1980s, the Social Security program faced a financial crisis. President Ronald Reagan appointed the Greenspan Commission to study the issues and make recommendations on how to sustain Social Security. In 1983, Congress enacted comprehensive changes in Social Security coverage, financing, and benefit structure.

On December 17, 1999, President Bill Clinton signed the ''Ticket to Work and Work Incentives Improvement Act,'' which placed greater emphasis on assisting beneficiaries in efforts to return to work.

In 2003, Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act to give seniors extra help in paying for prescription medications.

Throughout the years, Congress passed amendments, added programs, and addressed issues with Social Security. Presidents from both parties repeatedly acknowledged Social Security's importance.

President Richard Nixon said, ''This Nation must not break faith with those Americans who have a right to expect that Social Security payments will protect them and their families.''

A few years later, President Jimmy Carter said, ''The Social Security program represents our commitment as a society to the belief that workers should not live in dread that a disability, death or old age could leave them or their families destitute.''

Today, Social Security benefits are essential to the economic security of millions of Americans. An estimated 159 million workers, or about 94 percent of all workers, are covered under Social Security. Social Security is critical, as 52 percent of the workforce has no private pension coverage, and 31 percent has no savings set aside for retirement.

In 2009, nearly 51 million Americans received a total of $672 billion in Social Security benefits. In Montana, 181,000 of our 975,000 residents or about 19 percent of all Montanans receive Social Security benefits. The payments were modest, with the average retiree receiving about $14,000 annually. The average monthly benefit for a disabled beneficiary was about $1,060.

Virginia Reno, vice president for Income Security from the National Academy of Social Insurance testified before the Subcommittee on Social Security: ''If seniors had to count on only their income other than Social Security, almost one out of two would be living in poverty.''

Social Security is anchored by a promise between generations. But its success has been due in large part to the vision and sincerity of its creators and the ongoing commitment of its stewards, the public trustees, Advisory Board members, Members of Congress and the approximately 70,000 employees who work for Social Security. As well, we owe a debt to the thousands of dedicated employees who have worked for Social Security since its inception. For those that have embodied the agency's mission, ''to promote the economic security of the nation's people through compassionate and vigilant leadership in shaping and managing America's Social Security programs,'' we owe a big thank you.

Social Security's success was not built with the stroke of a pen. Social Security did not simply survive for 75 years. Rather, Social Security was built by embracing the promise of assisting people through life's hazards.

In a campaign speech in 1944, President Roosevelt said, ''The future of America, like its past, must be made by deeds—not words.'' Social Security is the embodiment of many good deeds. In times of crisis, over and over again, Social Security has risen to the challenge.

Fifteen years ago, a bomb in Oklahoma City took the life of fifteen Social Security employees, one office volunteer, and 21 office visitors. Social Security employees across the country responded to help survivors and the families of victims. Employees from around the country converged on Oklahoma to assist taking claims, answering questions, and providing comfort to the hundreds of victims and their families.

Following the devastation of September 11, 2001, employees in the New York region immediately came to the assistance of families of those killed in the World Trade Center, at the Pentagon, and at the plane crash site in Pennsylvania, so that claims could be taken and paid as quickly as possible. Social Security allowed payment of survivors' claims with airline manifests or employer records rather than death certificates. Within days, Social Security launched a full-scale outreach effort to find families of victims and help them apply for benefits. A special Web page was set up. Public information spots aired on television. And Social Security contacted about 60 consulates to ensure that foreign survivors who might be eligible for benefits were reached.

By December 2001, Social Security had taken more than 5,000 disaster-related claims. Social Security set up Family Assistance Centers at Pier 94 in Manhattan and Liberty State Park in New Jersey. The New York Regional Commissioner continued to work with the Bureau of Vital Statistics to post death certificates for the survivors of victims whose bodies had not been recovered.

Social Security was also one of the first agencies at the Pentagon Family Assistance Center in Virginia offering assistance to victims and their families. In Pennsylvania, Social Security staff assisted family members of victims on applying for benefits.

In the aftermath of Hurricane Katrina, Social Security moved quickly to ensure that monthly payments to beneficiaries continued uninterrupted. Immediate payment procedures allowed for on-the-spot payments if beneficiaries could not get their benefit check. Social Security opened a temporary office in the Houston Astrodome, and provided service 7 days a week. Social Security employees were on site at FEMA's Family Assistance Centers, and many offices offered extended hours of service through Labor Day weekend to help evacuees.

Just recently, in my home State of Montana, in the old city hall building next to the Libby Police Department in Lincoln County, eight employees from Social Security arrived. They quickly set up a processing center to assist the victims of the Environmental Protection Agency's first-ever public health emergency. The Social Security employees tirelessly answered questions and handled a steady stream of claims from applicants diagnosed with asbestos-related disease. Social Security's work helping the good people in and around Libby Montana was deeply important to me.

Social Security has been described as the bedrock of our industrial society. It has been called the beacon of light for those on life's stormy seas. It has been called a pillar of our democracy. Social Security offers Americans peace of mind.

Social Security has lived up to its message. It has stood as a silent partner to those in need. It has done all this by sending about 99 percent of its annual budget back to the people as benefit payments. Only about 1 percent of Social Security's budget goes toward administrative expenses. The rest fulfills the promise of its mission.

Social Security can and should work for the next 75 years, and for generations beyond that. Now that Social Security is here, now that Social Security has proven itself, it is up to all of us to protect and maintain it. It is up to us to assure the millions of Americans that currently rely on Social Security and the millions more who pay into it that Social Security is a promise that we can and will keep.

In the words of Carl Sandburg, ''In these times you have to be an optimist to open your eyes when you awake in the morning.'' Our optimism can be found in the accomplishments of Social Security. I celebrate its 75th birthday.

Mrs. LINCOLN. Mr. President, next week our Nation celebrates the 75th anniversary of Social Security, a vital program that has provided comfort and security for millions of Americans through the years.

During my career in the Senate, I have fought to protect Social Security benefits for our Arkansas seniors. I believe in the promise our government made to working Americans—that if we work hard, Social Security will be there to help us in our golden years. Social Security has made a healthy and secure retirement possible for tens of millions of Americans, including my own mother.

Since its inception, Social Security has helped provide stability for Arkansans who otherwise may not have had an income at all.

When President Roosevelt signed Social Security into law on August 14, 1935, he said:

> The civilization of the past hundred years, with its startling industrial changes, has tended more and more to make life insecure. Young people have come to wonder what would be their lot when they came to old age. The man with a job has wondered how long the job would last. This law, too, represents a cornerstone in a structure which is being built but is by no means complete. It is, in short, a law that will take care of human needs and at the same time provide the United States an economic structure of vastly greater soundness.

More than 600,000 Arkansans are enrolled in Social Security, and I am proud of my work on their behalf. Last year, I pushed for relief for Arkansas's beneficiaries who would not receive cost-of-living adjustments because of the economy. I have consistently opposed attempts to privatize Social Security, and I do not support a reduction in Social Security's current guaranteed benefits.

I have met with Arkansans from all four corners of the State to hear their concerns about Social Security. I believe that providing adequate resources for the Social Security Administration is a crucial first step toward strengthening this vital program. As the baby boom generation enters retirement, we will be asking more of the Social Security Administration's services, and we must work to make certain the trust funds are well maintained.

As we commemorate the 75th anniversary of Social Security, I remain committed to protecting Social Security benefits for Arkansans and all Americans. I will continue to use my position as the chairman of the Senate Subcommittee on Social Security to fight to ensure seniors receive the benefits they have earned and deserve.

ALCOHOL REGULATORY EFFECTIVENESS ACT

Mrs. FEINSTEIN. Mr. President, I rise to bring the attention of the Senate to a recent joint resolution passed by the California State Legislature. This resolution, S.J. Res. 34, urges Congress to defeat the Comprehensive Alcohol Regulatory Effectiveness Act of 2010, H.R. 5034, a bill that would restrict legal challenges to unconstitutional alcohol regulation laws and negatively impact the American wine industry.

This bill is being described by its proponents as an effort to promote regulation of alcohol and protect the public from dangerous effects. What the bill does instead, however, is to erect new legal barriers which give preference to in-State beer, wine, and spirits wholesalers at the expense of free and open competition. With its broad sweep, the bill cedes Federal authority over licensing, labeling, advertising, taxation policy and other matters.

Under current Federal law, each and every State has authority to set its own law regarding the direct shipment of alcohol. A State can allow direct shipments to consumers, or a State can prohibit it. What a State cannot do, however, is to allow in-State producers to ship directly to consumers while barring out-of-State producers from doing so. This is a constitutional requirement, stated most recently in the case of Granholm v. Heald.

The House bill could not constitutionally alter this system. Instead, it would erect new legal barriers that would make it more difficult for out-of-State producers to enforce their rights to equal treatment under State laws.

I am very proud to say that my State of California is the fourth largest wine-producing region in the world. Our wine industry creates more than 330,000

jobs and contributes $61.5 billion to the States economy each year.

We are not, however, alone. Nationwide, the coast-to-coast wine industry, active in all 50 States, has an economic impact of some $122 billion annually.

And, in fact, 37 States and the District of Columbia currently allow direct shipment of wine from winemakers to consumers. Such laws increase choice for consumers. They also keep small wineries in business as wholesalers grow increasingly consolidated, offering less selection and squeezing out producers in the process.

As the joint resolution passed Monday, August 2, 2010, makes evident, H.R. 5034 threatens serious harm to winemakers in California and across the country, as well as to consumers and competition in these markets. Should it be introduced in the Senate or passed by the House, I will oppose it and will urge my colleagues to do the same.

TIBETAN REFUGEES

Mr. LEAHY. Mr. President, I want to call attention to language in Senate Report 111–237 accompanying the fiscal year 2011 Department of State, Foreign Operations, and Related Programs appropriations bill, which passed out of the Appropriations Committee on July 29, 2010.

That language notes the committee's concern with recent events in Nepal, where Tibetan refugees have been forcibly turned over to Chinese border police. This contradicts Nepal's long and generous history of providing safe passage for Tibetans on route to India, and it is inconsistent with international law. In the past, Nepal has provided safe haven, and the United States, the United Nations, and other donors have provided the funds necessary to care for these people in transit.

This is a matter of grave concern to the Congress and to people everywhere who know of the danger of arrest and imprisonment and the physical hardships Tibetans face, fleeing their homeland by crossing the Himalayas with little more than the clothes on their backs. I hope the Nepali Government will take note of the committee's concern and take immediate steps to reaffirm its policy of permitting Tibetan refugees to travel safely to India.

I ask unanimous consent that this language in Report 111–237 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

''Tibetan Refugees.—The Committee is concerned with recent actions by the Government of Nepal to prevent safe passage for Tibetan refugees, including reports that some fleeing Tibetans have been turned over to Chinese border authorities. The Committee urges the Government of Nepal to reaffirm its long tradition of permitting Tibetans to safely transit Nepal, and continues to support assistance for these refugees as well as Tibetans who have resettled in India.''

CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. BAUCUS. Mr. President, today, the Children's Health Insurance Program turns 13. But instead of facing the difficulties of adolescence, CHIP is enjoying the advantages that come with being one of the most popular programs in the country.

I would like to take this moment to reflect on the history of CHIP and to think about the role that CHIP will play in the future.

Prior to 1997, kids of the working poor had nowhere to go to get health insurance. Their parents' employers didn't offer health insurance benefits, and the individual market offered only low-quality insurance options at unaffordable prices.

Without health insurance, kids couldn't see the doctor for a checkup, couldn't get a prescription for an earache, and couldn't get treatment for common chronic conditions like asthma. Unhealthy kids can't run and play, can't do well in school, and can't grow into healthy and productive adults.

In 1997, Congress took action to address this problem by establishing the Children's Health Insurance Program. And today, we celebrate 13 years of success—expanding high quality coverage to kids all across the country.

I would like to remind my colleagues of CHIP's history—its bipartisan roots and its tremendous success in achieving what we created the program to do: cover low-income, uninsured kids.

Congress enacted the Children's Health Insurance Program as a bipartisan compromise back in 1997, with leadership from Senator ROCKEFELLER, Senator HATCH, and the late Senators Kennedy and Chafee. At that time, Members of Congress wanted to address the rising number of children without health insurance.

The Finance Committee reached a compromise that allowed States to set up Children's Health Insurance Programs that would meet their unique needs. CHIP is optional for States, but within just 2 years of its creation, all States decided to participate to address the health care needs of our country's most vulnerable children.

I am proud to have helped write and pass CHIP 13 years ago. It has been a tremendous success.

In its first decade, CHIP cut the number of uninsured children by more than a third. Today, more than 7½ million children get the doctor's visits and medicines they need to have a healthy childhood, enabling them to become healthy and productive adults.

After 10 years of success, CHIP came up for reauthorization in 2007. In the summer and fall of that year, Congress worked hard to pass a bipartisan reauthorization package. But President Bush vetoed it twice. Ultimately, we had to settle for an extension.

In January of 2009, with two of our former colleagues in the White House, I was thrilled to get started on a CHIP reauthorization bill as soon as possible. Finally, the stars had aligned—President Obama was looking forward to signing the CHIP reauthorization bill, and the Congress was prepared to act. We were finally able to deliver what Americans had asked for—reestablishing kids' coverage as a national priority.

President Obama signed the bill on February 4, 2009. The new law maintained coverage for all children in the program at that time and started on a path to reach more than 4 million additional uninsured, low-income kids.

We had a couple of goals in mind as we drafted the CHIP Reauthorization Act of 2009.

We kept CHIP focused on low-income kids. We prioritized coverage of the lowest-income kids, but without limiting State flexibility in designing CHIP programs. We set up parameters to transition adults out of CHIP and into Medicaid or other appropriate coverage. And we also encouraged States to improve their outreach practices and streamline their enrollment procedures in order to reach all eligible kids.

We maintained State flexibility. We gave States the option to cover legal immigrant children and pregnant women during their first 5 years in America and receive the corresponding Federal match. We also created a State option that allows States to designate CHIP funds to offer premium assistance, helping families afford private coverage offered by employers or other sources.

And we improved the quality of care. The CHIP Reauthorization Act launched a substantial new initiative to improve children's health quality. This initiative invested $45 million a year for 5 years to develop national core measures for children's health quality, improve data collection in CHIP and Medicaid, and promote the use of electronic health records.

The CHIP Reauthorization Act I helped to craft allowed us to cover as many uninsured low-income kids as possible. I made sure that we respected our budgetary limits, and made compromises in good faith with my Republican colleagues. In committee, further compromises were made which I hope strengthened the act even more.

The only disappointment that came out of the 2009 CHIP Reauthorization Act was that we weren't able to come to agreement with Senators GRASSLEY and HATCH, two colleagues that worked tirelessly to reauthorize CHIP in 2007. But I'm proud to say that CHIP's bipartisan reputation has not been marred.

Senators on both sides of the aisle continue to support CHIP and have even used it as a model for other programs. And I have continued to work with Senator GRASSLEY and all Senators on the Finance Committee overseeing the implementation of the CHIP Reauthorization Act.

A year and a half after enactment, more than half the States have taken advantage of the new coverage options in the CHIP Reauthorization Act, including 15 States that expanded income

eligibility levels for CHIP or Medicaid to cover more kids. States have also taken advantage of the enrollment simplification options—making it easier for kids to get enrolled and stay covered.

In health reform, we extended CHIP for an additional 2 years, ensuring that kids will have a stable source of coverage as we expand coverage to other groups. In 2015, Congress will revisit CHIP in a new context. CHIP has been instrumental in providing children with access to care where none existed before, but it may need to take on a different role as health reform is implemented.

Whatever happens in 2015, I am confident that CHIP will continue to be an important part of our health system. CHIP is tried and true, and things just keep getting better and better in the program. As we celebrate CHIP's 13th birthday, we can be proud of everything Congress has done to provide low-income kids with high quality, affordable coverage.

TRIBUTE TO FIRST RESPONDERS

Ms. LANDRIEU. Mr. President, I wish to discuss a heart wrenching tragedy that occurred in my home State earlier this week and to acknowledge the heroic efforts of our local first responders. On Monday evening, under sweltering temperatures that had surpassed 100 degrees, two Shreveport families gathered on the banks of the Red River, in Shreveport, LA, to enjoy a picnic. What is normally a routine summer outing for millions of people across America quickly turned into a disaster.

Seven teenage children from these two families had wandered off into an unfamiliar part of the river. One of the children stepped off of a sand bar and into deeper, more dangerous water and began to scream for help. The other six children followed in an attempt to rescue the drowning teen. None of the seven children knew how to swim, nor did the adults who were with them. As the seven children struggled for their lives against the treacherous waters of the Red River, witnesses called 911 for help.

Teams of first responders from Shreveport and Bossier City were dispatched and arrived on the scene at 6:30 p.m., roughly 10 minutes after the 911 call was made. Dive teams entered the water four at a time in search of the drowning children. Despite the tremendous efforts of the divers, the river's waters claimed the lives of six of the seven children. The lone survivor was rescued by a bystander named Christopher Partlan, before the dive teams could get to the area.

At 7:51 p.m., the first of the victim's bodies was recovered from the water. This unthinkable task continued for more than 2 hours before the last of the victims was recovered at 10:02 p.m.

At this time, I would like to read the names of the first responders from Shreveport and Bossier City who were dispatched to this tragic accident:

Captain John Davis; Fire Engineer Craig Bynog; Firefighter Jared Mourad; Firefighter Chad Alexander; Battalion Chief Tim Thames; and Fire Engineer Jimmy Lockey of the Shreveport Fire Department. Officer Phillip Tucker of the Shreveport Police Department; Fire Driver Chad Arnette of the Bossier City Fire Department; and Christopher Partlan, the bystander who rescued 15-year-old DeKendrix Warner.

All these brave men deserve to be recognized for their heroism. First responders in Shreveport and Bossier and in cities and towns across America protect our communities every day. We depend on them during fires, floods and other disasters and they put their lives on the line to save ours. For that, we owe them a debt of honor and gratitude.

I would also like once again to send my condolences to the Warner and Stewart families for their tragic loss. I know the Shreveport community will wrap its arms around them and pray for them, comfort them and support them during this difficult time.

TENNESSEE VALLEY AUTHORITY

Mr. SESSIONS. Mr. President, I rise today to discuss an important matter involving the future of the Tennessee Valley Authority.

As you may know, TVA is led by a Board of Directors that consists of nine individuals appointed by the President and confirmed by the Senate. These board members serve for staggered 5-year terms.

For some time, it has been understood that each State within TVA's service area should be represented on the board. This makes sense given TVA's diverse energy production and economic development activities, which affect communities in each State differently as do the Authority's various power plants and dams.

Recognizing this, President Bush, in 2006, nominated to the board a fabulous individual from my State, Howard Thrailkill. The Senate confirmed the nomination unanimously.

Mr. Thrailkill has undoubtedly served with distinction. He was president of AdTran, a successful technology company in Huntsville, and he brought to TVA a familiarity with the complexities of running a large organization.

Upon his confirmation, Mr. Thrailkill immersed himself in the financial records, business plans, and technical data surrounding TVA's many functions. He became an expert on the organization in a way that many board members do not. When he identified a poor performing project or a proposal with downsides, he was not afraid to say so. And he was especially familiar with TVA's activities in North Alabama, where he lived.

Undoubtedly, Mr. Thrailkill's willingness to devote his personal time and energy to the position was of great benefit to both TVA and its Alabama customers.

Unfortunately, Mr. Thrailkill's term on the Board is now nearing its end. I was dismayed to learn recently that President Obama apparently failed to recognize the importance of this position to the people of Alabama, and had nominated an individual from another State to fill it.

This is no small matter. Of the seven States that make up TVA, Alabama is the second largest in terms of revenue, the second largest in terms of employees, and the third largest in terms of service area.

Also, Alabama is home to several important TVA facilities, such as Guntersville Hydroelectric Dam, Browns Ferry Nuclear Plant, and the Bellefonte facility—which could become one of the first new nuclear power plants in the country.

Seven States make up the TVA service area. There are nine seats on the board. It is unacceptable that Alabama's long term representation be put in jeopardy.

Accordingly, I have been forced to use my position in the Senate to block the progress of these TVA nominations until this matter could be resolved.

I am pleased to inform the Senate today that after a series of conversations with the White House, we have reached an agreement that the next opening on the board will be filled by a nominee from the State of Alabama.

That vacancy is expected in March of next year, and we have agreed to begin in the next month discussing which individuals should be considered for this important position. I wish to thank the President and his staff for working with me on this compromise.

Senator CARPER, who chairs the Environment and Public Works subcommittee that considers TVA nominations, has also stated his willingness to begin consideration of the Alabama nominee early to ensure he or she is confirmed before the start of the term. I thank him for that offer.

I am pleased we could reach an agreement on this issue, and I look forward to the Senate confirmation of an individual from my State who will offer strong leadership to TVA in the coming years.

Accordingly, I am also pleased today to lift my hold on the nominations to the TVA Board that are currently pending in the Senate. I urge my colleagues to move quickly with the nominations to ensure that the Board of Directors will have a quorum in August so that it may effectively conduct the business before it.

1099 REPORTING REQUIREMENT

Mr. ENZI. Mr. President, I rise to express my concerns about a provision in the new health care law that will impose monumental burdens on small businesses, reduce wages and eliminate jobs.

A provision that was included in the new health care law will require businesses to submit new tax forms every time they purchase more than $600 worth of goods. This new government mandate will impose significant new costs on 26 million businesses across America.

Given the economic challenges that our Nation already faces, this is a burden that we cannot afford. If it is not fixed, this new mandate will slow economic growth and prevent the creation of new jobs. The Commerce Department reported last week that the pace of economic growth is slowing down. U.S. economic growth slowed to an annual rate of 2.4 percent in the second quarter, the weakest showing in nearly a year. According to the Labor Department, wages and salaries are also suffering and the unemployment rate still hovers around 9.5 percent.

If these numbers are going to improve, it's going to be a result of the hard work and ingenuity of our Nation's small business owners. The entrepreneurial small business community has been the driver to pull us out of all recent recessions. They are the key to job creation that will pull us out of this economic downturn as well. Small businesses create 65 percent of all new jobs in America. In Wyoming, that number is a lot higher. We have 62,000 small businesses in Wyoming that employ nearly 70 percent of our workforce. We need to advance policies that encourage small businesses to grow and hire new workers.

Unfortunately, buried in the new healthcare law is a provision that will have the opposite effect. It will cost every business, even the smallest of the small, more money to file their taxes.

Because of the new healthcare law, beginning in 2012 businesses will have to send new tax forms to the IRS for every business to business transaction of $600 or more for both goods and services. This new requirement creates a punishing new paperwork mandate for small businesses.

The new paperwork requirement means that a small business owner will have to file two forms—one to the vendor and one to the IRS—for almost every purchase his or her business makes. Imagine you're a freelance writer and you buy a new laptop. Well, now you have to send Form 1099 to Apple and the IRS or, be labeled a tax cheat. Oh, and you'll need Apple's Taxpayer Identification number too so don't forget to ask the salesman for that.

Complying with the tax code is already one of the most expensive burdens placed upon small businesses. According to the National Federation of Independent Businesses, the typical small business pays as much as $74 per hour to prepare and file various tax-related documents. Because they cannot afford to have their own finance departments, the costs of complying with the Federal tax code are 66 percent higher for small businesses as compared to their larger competitors. The new healthcare law will significantly increase these tax burdens and the costs that come with them.

This new reporting requirement hits small businesses hardest because they typically don't have in house accounting departments and have to hire outside help. Every penny a small business spends on these services is money they can't spend on hiring new workers and expanding their business. Every hour a small business owner spends filling out these new tax forms is time he or she is not making a sale, manufacturing a product or working with a customer.

I understand the challenges this can create for a small business. Before I came to the Senate, my wife and I started and owned several shoe stores back home. When you own a small business, you have to be the CEO, the bookkeeper, the salesman and the person who empties the trash and cleans the toilets.

Every hour that I spent filling out government-mandated paperwork, was an hour I couldn't spend selling shoes. Government mandates, like the new 1099 requirement, have a real cost, and it is small businesses who end up having to pay them. The National Taxpayer Advocate, based inside the IRS, has already warned of the new reporting burden on small business.

This new reporting requirement hurts small businesses at the same time our economy needs them to help our recovery. Small businesses across this country are still struggling to stay open. Rather than forcing these businesses to comply with burdensome new paperwork requirements, we should be finding ways to encourage them to reinvest their money in growing their businesses and hiring more workers.

Our country has always relied on small businesses to grow the economy and create new jobs and they have always been the drivers to pull us out of economic downturns. Given the still difficult challenges facing our economy, the last thing we should be doing is piling on the paperwork that takes their time and precious resources away from creating jobs.

I believe things like the 1099 requirement are causing our entrepreneurs to think twice about taking new risks for fear of more government burdens and regulations. That's the worst thing Washington should be doing right now. Instead, we need to be focused on creating an environment where small businesses can grow and aren't worried about what might be the next new burden thrown on them from Washington.

It seems like a reoccurring bad dream around Washington over the past few years. Washington politicians tuck something into a giant bill that's rammed through Congress without fully understanding the impact in the real world.

This 1099 reporting requirement is just one of the many things in the new health law that need to be re-examined. Our small businesses need to be focused on creating jobs and helping our economy recover, not on new paperwork burdens. When a business is considering making new long term investments in employees or equipment, they shouldn't have to be worried about the next new wrinkle to be uncovered in the health reform law.

We can make a statement right now to America's small businesses that we want you out there creating jobs, hiring new employees and growing your business—not worrying about what Washington will require of you next. Let's tell our small business men and women that we stand behind them, not on top of their backs, and let's repeal this new tax paperwork burden. Mr. President, I yield the floor.

FDA FOOD SAFETY MODERNIZATION ACT

Mr. ENZI. Mr. President, I rise today to talk about an issue important to us all—the safety of our food. Food safety is not a partisan issue—we all want to be confident that the food we eat and give to our children will not make us sick. That is why I have been working with my colleagues in a bipartisan way to pass S. 510, the FDA Food Safety Modernization Act.

This bill goes a long way to bringing the regulation of food into the 21st century. No longer will outdated laws hold the FDA back from protecting us. This bill takes into account the changes in our food supply over the more than 100 years since food safety authorities were first granted to the agency. This bill provides real consumer safety improvements, while maintaining an appropriate balance between regulatory burden and food safety benefit.

I want to thank Senators GREGG, BURR, and DURBIN for their hard work and leadership in developing and introducing this bill. Their efforts to ensure that this was a bipartisan process, starting from a blank piece of paper, were critical to seeing this bill move. I also commend Senator HARKIN, the chairman of the HELP Committee, for prioritizing this bill and moving it through committee.

We, along with Senator DODD, have continued to work together over the last few months, which resulted in only a few issues remaining to debate on the floor. That kind of cooperation is what the American people expect of us. It certainly wasn't easy at times, but this is how we are supposed to legislate, and I am glad we met our obligations.

The House passed a food safety bill 1 year ago. There are significant differences between the House and Senate bills, and I hope we can bring this bill to the Senate floor as soon as possible so that there is sufficient time to conference the two bills and see legislation signed into law this year.

FAIR SENTENCING ACT OF 2010

Mr. KAUFMAN. Mr. President, I rise today to praise the enactment of the

Fair Sentencing Act of 2010, S. 1789, which was signed into law on Tuesday by President Obama. This reform, which significantly narrows the sentencing disparity between crack and powder cocaine from 100:1 to 18:1, is a long overdue victory for a criminal justice system rooted in fundamental fairness.

I am all for tough antidrug laws, but those laws must also be fair. Current law is based on an unjustified distinction between crack cocaine and powder cocaine. The mere possession of 5 grams of crack—the rough equivalent of five packets of sugar—carries the same sentence as the sale of 500 grams of powder cocaine.

As it turns out, this 100-to-1 disparity is unjustified by science. Moreover, it disproportionately affects African Americans who make up more than 80 percent of those convicted of Federal crack offenses.

Law enforcement experts say that the disparity has undermined trust in the criminal justice system, particularly in minority communities.

Making this change a reality required leadership from the very top: from President Obama's personal involvement to great efforts by Senators DICK DURBIN, JEFF SESSIONS, ORRIN HATCH, and others. Achieving this reform took significant political muscle and it took a continuing effort.

I especially want to note the Vice President's early and sustained leadership on this issue.

Back in 2002, when very few in this body wanted to touch this politically toxic problem, then-Senator BIDEN held a hearing that exposed the need to reduce the crack-powder disparity. Particularly significant was his willingness to admit that he, and Congress generally, made a mistake when they created the distinction back in 1986.

In June 2007, Senator BIDEN without any cosponsors on either side of the aisle introduced the first Senate bill that would have equalized the penalties for crack and powder cocaine without raising penalties for powder. The introduction of this bill changed the entire landscape of the crack-powder debate. No longer was the question ''Should the disparity be reduced?'' No longer was the debate about whether the 100:1 disparity was reasonable. The Biden bill shifted the burden to the naysayers to justify why 1:1 wasn't the right policy solution.

After Senator BIDEN assumed his duties as Vice President of the United States, Senator DURBIN picked up the Senate torch and reintroduced the Biden bill. I was proud to join him as a cosponsor of S. 1789. He then worked closely with colleagues on both sides of the aisle to find a compromise that would both satisfy the needs of law enforcement and return fundamental fairness to the sentencing for these sorts of offenses.

I would be remiss if I did not mention one more crucial participant in this long-running effort. As my colleagues in this body know, much of what we accomplish here on behalf of the American people is influenced greatly by our talented staff.

In this case, reducing the disparity between crack and powder cocaine—without increasing penalties for powder—would not likely have been achieved without the dedication of a very talented public servant, Alan Hoffman.

Alan, while serving as then-Senator BIDEN's chief of staff, delivered one of the first pushes that started to roll this stone forward, and he kept at it for many years. It is undeniable that many had significant roles to play in this remarkable achievement. But it is equally undeniable that Alan's longstanding drive to right this wrong and shift the policy debate fundamentally was crucial to our being able to celebrate this accomplishment today.

As my colleagues know, I have spoken many times in the Senate about the outstanding men and women who constitute our Federal workforce. Alan Hoffman has been a loyal and dedicated public servant who deserves credit for his work today.

FINDINGS OF THE NTSB

Mr. CARDIN. Mr. President, I rise today to discuss the findings of the National Transportation Safety Board's final report on its investigation into the fatal June 22, 2009, Metrorail crash on the Red Line near Fort Totten.

This report is a call to action for Congress to pass legislation that will help prevent such tragedies on our Nation's public transit systems from ever happening again.

Last week, the NTSB presented the findings of its year-long investigation into last year's Metrorail crash that killed eight passengers and the train's conductor nine total. The fatal accident also hospitalized 52 passengers with serious injuries and left approximately 30 others with minor injuries.

The investigation concluded:

> The cause of the crash was a series of faulty track circuits that failed to detect the presence of a stopped train on the right-of-way.
>
> The severity of the accident was compounded by the poor crashworthiness of the 30-plus year-old railcars involved in the accident where most of the injuries and fatalities occurred.
>
> Lastly, NTSB determined that safety has not been a priority for WMATA. Simply put, Metro lacks a ''Culture of Safety'' throughout its entire organization.

NTSB Chairman Deborah Hersman aptly put it in her statement regarding the release of its findings: ''Metro was on a collision course long before this accident. The only question was when Metro would have another accident—and of what magnitude.''

The root cause of the crash was a faulty track circuit that failed to detect the presence of a train pulling into Fort Totten Station.

As a result, the system did not signal a second approaching train to hold at a safe distance on the track.

When working properly, the track circuits are designed to detect and trace the presence of trains on the right-of-way. This effectively prevents two trains from occupying the same stretch of track at the same time.

A particularly troubling finding of the NTSB's investigation is that a 2005 ''near accident'' on the Orange and Blue lines' in the Potomac River tunnel coming into the Rosslyn Station was caused by an identical track circuit malfunction to the one that caused the June 22 crash.

In other words, Metro knew, from firsthand experience, about the serious risks track circuit failures present.

The NTSB concluded that if WMATA had taken a lesson from the 2005 ''near accident'' at Rosslyn and made fixing the track circuit failures throughout the system a priority, the June 22, 2009, tragedy would have been avoided entirely.

The second layer of safety meant to prevent a crash in the case of a track circuit failure are automatic alerts sent to Metro Central Command to alert control officers when a track circuit failures occurs.

However, ignoring these warnings were part of Metro's operational protocol.

The NTSB reported that prior to the Red Line crash, track circuit failures were such a frequent occurrence, that Central Command was receiving an average of 3,000 system alerts a week.

Central Command's response to the overwhelming number of alerts was to implement an automatic override program.

The override allowed Metro to operate around the alerts, rather than fixing the circuit failures triggering the alerts.

The constant barrage of alerts ended up creating a culture of complacency rather than creating a culture of urgency.

This negligent managerial approach to solving the warning rather than solving the problem is entirely irresponsible and exemplifies the lack of a Safety Culture at Metro.

Because the approaching train was under automatic control it was completely reliant on receiving the correct operations signals from the track circuits.

Since the system failed, it was on the train's conductor to stop the train. The investigation concluded that operator Jeanice McMillan, of Fairfax, VA, acted quickly and appropriately to do all she could to stop the train.

The curvature of the track, combined with the high speed that the automatic controls had her train travelling at, made it impossible for Ms. McMillan to prevent her train from striking the train ahead.

Based on the emergency brake marks on the tracks, Operator McMillan acted as soon as she had visual contact with the train ahead.

She made a selfless choice to remain at her post and do everything she could

to slow the train, even when she surely must have realized that a collision was inevitable.

Operator McMillan gave her life to save her passengers. Ms. McMillan's heroism surely prevented an even greater tragedy and for that we are all grateful.

The NTSB pointed to the crashworthiness of the railcars as a major contributing factor in the severity of the accident.

These are the first-generation 1000 series cars that are subject to shearing in crash situations.

Metro has known about the compromised crashworthiness of its oldest railcars for many years.

A relatively low-speed accident at the Woodley Park Station in 2004 demonstrated how dangerous these railcars are in a crash situation. Fortunately, in that accident no one was seriously injured.

After the June 22 accident, Metro implemented a plan to place the older 1000 series cars in the center of trains as claiming that this shelters the older, less crashworthy cars in an accident.

The NTSB has pointed out that there is no factual basis for this practice, known as ''bellying,'' in creating safer trains.

The only way to make for safer trains is to get the old, unsafe railcars off the system. I am happy to report, that WMATA is working to replace the 1000 series cars incrementally with newer, safer cars.

In fact, last Monday, Metro announced it has placed the order for the 7000 series cars that will finally replace all of the oldest, most unsafe, railcars on the system.

The NTSB's top-line recommendations to the Washington Metropolitan Area Transit Authority are the following:

Expedite the detection and replacement of all faulty track circuits within the System.

Expedite the replacement or reinforcement of all of the oldest least crashworthy railcars in operation.

Ensure that all new and current railcar cockpits are outfitted with event data recorders.

And lastly, management, starting with the board, must establish a culture of safety that pervades the entire organization.

The last point is incredibly important because despite Metro's ongoing budget woes, making safety a genuine priority would come at no additional cost to WMATA.

The NTSB also had many compelling recommendations for how the Federal Transit Administration should establish better safety guidance.

Because of Metro's unique relationship with the Federal Government, the FTA should provide immediate guidance to Metro on improving the safety of its operation.

Because the FTA has no actual regulatory authority, Congress must take the NTSB's safety improvement recommendations as a call for legislative action.

We must act to ensure that the NTSB's recommendations to FTA can be implemented in a way that achieves results.

Senators DODD, MENENDEZ, MIKULSKI, and I introduced legislation requiring the Transportation Secretary to establish and implement a comprehensive transit Public Transportation Safety program.

With the support of Senator SHELBY, this bill was reported out of committee and is awaiting action on the floor.

This legislation will give the FTA the ability to take decisive actions such as conducting inspections, investigations, audits, examinations of public transit systems.

The Public Transportation Safety Program Act of 2010 came about at the request of the President and Transportation Secretary LaHood.

I applaud the Obama administration for recognizing the need to give the FTA legal enforcement authority of its standards and rules.

This legislation establishes the type of safety enforcement authority for the FTA that currently exists for the Federal Railroad Administration's over commuter rail systems and that the Federal Motor Carrier Safety Administration has for commercial trucking.

It makes sense for public transit systems that receive federal funding to meet federal safety requirements set by the FTA.

These are safety requirements that could have saved the lives lost in last year's Red Line crash and would help make transit systems across the country safer for all users.

Just as I believe that the Federal Government has a role in ensuring Metro is safe for its riders and employees, I also believe the Federal Government has a responsibility to help fund the safe operation of the system since Metro provides the Federal Government and its employees a vital transportation service.

I was proud to work alongside Senators MIKULSKI, WEBB and former Senator John Warner to include major new funding authorization for Metro in the Federal Rail Safety Improvement Act, which was signed into law in 2008.

This law authorizes $1.5 billion over 10 years in federal funds for WMATA, and is matched dollar-for-dollar by the local jurisdictions, for capital improvements.

This arrangement will finally provide Metro with the dedicated funding the system needs.

President Obama's fiscal year 2011 budget request to Congress includes $150 million for Metro.

This builds on the substantial downpayment Senators MIKULSKI, WEBB, MARK WARNER and I were able to secure for Metro last year. I am happy to see that the Appropriations Committee has included this request in the Transportation appropriations bill reported out of Committee.

This is an important investment, but it is not nearly enough to fulfill all of Metrorail's obligations.

Metro maintains a list of ready-to-go projects totaling about $530 million and $11 billion in capital funding needs over the next decade.

When Metro was a relatively new system it was the epitome of safe and reliable public transit.

After 34 years of operation, and a managerial focus on system expansion rather than system preservation, the backlog of maintenance needs have taken its toll.

I find it unacceptable that the transit system in our Nation's Capital does not have enough resources to improve safety and maintain its aging infrastructure.

My deepest sympathies remain with the families and friends whose lives are forever affected having lost someone dear to them in last year's tragedy.

I want them to know that you and the loved ones you lost are not forgotten.

This tragedy has served as a constant reminder and inspiration for my work to fix the problems that led to the tragedy.

I call on my colleagues to honor the memory of those by working to pass the Public Transit Safety Act so that we can prevent similar tragedies from happening in the future.

SMALL BUSINESS TAX RELIEF

Mr. GRASSLEY. Mr. President, we spent nearly 6 weeks debating a bill that would help small business.

My friends on the other side of the aisle exclaimed that the bill was a jobs bill, one that would help small business—the engine of our economy.

The senior Senator from Louisiana—for whom I have great admiration as an advocate for small business—said, ''If the Democrats aren't for small business, I don't know what we're for.''

Well, the small business jobs bill was not passed by this body.

My friends on the other side will claim that Republicans blocked the bill.

But I think my friends need to look in the mirror when placing blame on their inability to govern.

Even if the small business jobs bill would have passed, the tax measures in that bill are only a drop in the bucket when it comes to the taxes and increased regulation small business is going to have to endure.

That's right, although Democratic leadership and the White House continue to say that they are for small business, any legislative measure that has been advertised as helping small business has not lived up the hype.

Let's start with the new health care reform law.

During the debate over health care reform, my friends on the other side of the aisle—including top officials in the White House—explained that the new law would provide tax credits to small business to help them pay for health insurance.

My friends said it so many times, you would almost think that the so-called tax credit was the best thing since sliced bread.

Many Democratic Senators based their vote in favor of the health care reform bill solely on the belief that the small business tax credit for health insurance would help struggling small businesses.

Well, even after the White House spent taxpayer dollars to send postcards to 4 million small businesses informing them of the so-called tax credit for health insurance, the tax credit has been a dud.

That is not according to this Senator; that is according to small business owners and brokers who are in the business of selling insurance to small business.

For example, just the other day—Thursday, July 29—the Bloomberg news organization wrote an article noting that the response to the so-called tax credit for small business ''has been cool'' according to ''health-plan brokers across the country.''

Here are some quotes from the article about the small business tax credit:

James Stenger, director of business development for Benefit-Mall, said, ''The reality is it doesn't meet the hype . . . It's had very little traction so far . . .''

Russ Childers, a broker in Americus, GA, said, ''It fell short of what was needed to help businesses.''

Todd Page, of Warrenville, IL, said, ''We've really wanted it to work, because we'd sell more . . . It just hasn't worked out, and most firms have been disappointed.''

Thomas Harte, president of Landmark Benefits, Inc., said, ''We're not seeing more people becoming insured as a result of a subsidy coming their way.''

They are not the only ones decrying the so-called tax credit for health insurance.

The chief executive officer of the largest organization representing small business—the National Federation of Independent Business—questioned the effectiveness of this tax credit.

Small business owners who also had high hopes that the credit would help them were surprised and extremely disappointed when they found out they did not qualify for the credit.

A May 20 Associated Press article chronicles these frustrations.

I would like to read one passage from the article before I move on. The article said:

> Zach Hoffman was confident his small business would qualify for a new tax cut in President Barack Obama's health care overhaul law. But when he ran the numbers, Hoffman discovered that his office furniture company wouldn't get any assistance with the $79,200 it pays annually in premiums for its 24 employees. 'It leaves you with this feeling of a bait-and-switch,' he said.

Every day, I hear from Iowa small business owners who are frustrated with the so-called small business tax credit for health insurance.

I have been told that—after gathering all of the required information and paying an accounting professional to calculate all of the phaseouts and limitations—the time and cost almost outweighs any benefit for those businesses lucky enough to qualify.

Steven Yeater of Wilton, IA, the co-owner of a products finishing business, wrote me a letter telling me that the tax credit is ''(1) not well thought out or discussed, (2) ridiculously complicated for a small business owner to understand and implement, and (3) once again, Congress is over-selling/over-promising the benefits of the tax credit.''

This is just one example where the Democratic majority has failed small business.

This is one example where the Democratic majority has touted a so-called benefit for small business that did not live up to its hype.

And now, small business is faced with mounting tax increases and regulatory burdens.

What do I mean?

The new health care reform law included 20 tax increases. Thirteen of them fall on individuals and families, and 7 of them hit businesses.

These tax increases will be devastating for small business. Moreover, these tax increases far outweigh the benefit of the so-called small business tax credit for health insurance that some businesses are lucky enough to receive.

And this is not the only tax increase small business will face. When Congress returns after the August recess, we are going to debate the bipartisan tax relief that was enacted back in 2001 and 2003. That tax relief is set to expire at the end of this year unless Congress acts. Allowing the bipartisan tax relief to expire will result in the largest tax increase in our Nation's history.

My friends on the other side of the aisle have indicated that they would like to extend the bipartisan tax relief for the ''middle class.''

I want to emphasize that this means that my Democratic colleagues want to extend 80 percent of the bipartisan tax relief that they like to call the Bush tax cuts.

Actually, the only reason why they call it the Bush tax cuts is to vilify the tax relief. But my friends seem to support 80 percent of the tax cuts they enjoy vilifying so often.

Which brings me to my final point. My friends on the other side of the aisle would extend some of the tax relief but not all of it. My friends want to allow the top marginal tax rates—and a number of hidden taxes that affect these taxpayers—to expire. Why? Because my friends say the country—our Federal Government—cannot afford to give tax cuts to the ''rich.''

But, it is not the rich who are going to be burdened if the rates were allowed to expire; it is small business that will suffer.

So in closing, I refer back to the statement of the distinguished Senator from Louisiana, which was, if Democrats are not for small business, I don't know what we are for.

The Democratic leadership is not for extending all of the bipartisan tax relief. So I will leave it to others to decide whether or not my Democratic colleagues are for small business.

I ask unanimous consent to have the items to which I referred printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Bloomberg Government in Development, July 29, 2010]

SMALL BUSINESS SLOW TO EMBRACE HEALTH TAX CREDITS, BROKERS SAY

(By David Lerman and Liz Smith)

One of the ways President Barack Obama envisioned expanding coverage under the health overhaul was by giving small businesses a tax credit worth tens of thousands of dollars to help cover their employees.

Though 4 million postcards were mailed to eligible firms, response has been cool, say health-plan brokers across the country. The reason is that the credit starts to phase out for companies that pay average annual wages of more than $25,000, leaving out many businesses in higher-wage states and discouraging others who don't think the credit will help.

''The reality is it doesn't meet the hype,'' said James Stenger, director of business development for BenefitMall, which sells small-group plans in New Jersey. ''It's had very little traction so far.''

Todd Page, vice president of sales at JLBG Health in Warrenville, Illinois, said about 40 percent of the 460 small businesses his firm contacted were eligible for the credit. Only about seven would get the full benefit and be able to claim a credit equal to 35 percent of the premiums they pay.

Independent brokers sell small-group policies from insurers such as UnitedHealth Group Inc. and Aetna Inc. to firms with up to 50 employees and can assess how tax incentives affect coverage decisions.

Karen Mills, administrator of the U.S. Small Business Administration, said complaints about the credit's limited reach are premature.

''I think this is all still in anecdote land,'' Mills said in an interview. ''The math says it's likely to be positive.''

Mills said the income cap was necessary because Congress was intent on keeping program costs under control. ''It's just trying to get to the people who need the help the most.''

ESTIMATED SAVINGS

The Congressional Budget Office estimates the tax credit will save small businesses $40 billion by 2019, and Obama said it will help millions of companies solve one of their biggest worries: offering health insurance to their workers.

The plan is intended for enterprises such as independent printers, mechanics shops and restaurants, which lack the negotiating power that big companies have with insurers. The biggest breaks go to the smallest, least-wealthy workforces under the plan.

TARGETED EMPLOYERS

The Internal Revenue Service said the plan is for employers who pay at least half the cost of individual coverage for their employees in 2010. From 2010 to 2013, the maximum credit goes to companies with 10 or fewer full-time employees that pay annual average wages of $25,000 or less.

The credit is completely phased out for employers that have 25 or more workers or that pay average wages of $50,000 a year or more. Because eligibility rules are partly

based on the number of employees, brokers complain that the tax break diminishes relatively quickly. For example, a firm with 14 workers that pays an average of $30,000 gets to claim a credit worth 19 percent of premiums paid.

The Obama administration said the program can help as many as two thirds of the nation's 6 million small businesses, based on Small Business Administration figures.

''It's worth perhaps tens of thousands of dollars to your companies,'' Obama said in a May 25 speech at the White House. ''And it will provide welcome relief to small business owners, who all too often have to choose between hiring or keeping your health care for yourselves and your workers.''

Mills said ''a huge proportion'' of these small businesses haven't been able to afford insurance or get access to it.

''This could very well tip the scales for some of them,'' she said.

COST OF LIVING

Many businesses who buy small-group health insurance have 10 or fewer employees. Most won't enjoy anything close to that 35 percent maximum credit because they pay more than $25,000 in average wages, the brokers said.

Stenger said the average family plan in New Jersey costs $1,500 to $1,800 a month. So a tax break that ends up cutting premium costs by 10 percent, for example, wouldn't induce firms to start offering coverage.

''The impact is a lot less than the crafters of this provision thought it would be, at least in New Jersey,'' he said.

'BLEEDING WOUND'

Brokers in other regions said the income issue isn't isolated to high-cost states like New Jersey.

''The income hurts the worst,'' said Russ Childers, a broker in Americus, Georgia. ''It fell short of what was needed to help businesses.''

The National Federation of Independent Business, a small-business lobbying group, disputed the administration's estimates for how many businesses will benefit.

''It's the equivalent of putting a band aid on a profusely bleeding wound,'' said Michelle Dimarob, head of legislative affairs for the federation. ''It won't solve the number-one problem for small businesses.''

The group in May joined Florida's legal challenge to the health-care reform law, becoming the first private organization seeking to overturn the measure.

Some 46 percent of companies have fewer than 10 workers, and many of those businesses insure only owners' families, Dimarob said. The credit, which expires in its current form in 2014 and fully in 2016, isn't likely to change this, she said. The credit can increase to 50 percent for the last two years if owners purchase insurance through a state exchange.

MICHIGAN INSURERS

Insurers in Michigan are scaling back attempts to sell to small businesses, said Steven Selinsky, the incoming president of his industry's trade group, the National Association of Health Underwriters. Selinsky closed his agency that sold small-group health insurance.

''After the economy collapsed, people just weren't purchasing,'' said Selinsky, who now works for BeneSys Inc., a third-party insurance administrator for unions. ''It's just not doing what we had hoped.''

Page, the Illinois broker, said his staff has provided 61 new quotes for potential clients and has sold two new policies to that group.

''We've really wanted it to work, because we'd sell more,'' said Page, whose clients include doctors' offices and auto-body repair shops. ''It just hasn't worked out, and most firms have been disappointed.''

Thomas Harte, president of Landmark Benefits Inc., who serves about 400 employers in New Hampshire and Massachusetts, said he hadn't come across any clients eligible for the tax credit. He has a long list of customers that exceed allowable income thresholds, or who have too many full-time workers.

''We're not seeing more people becoming insured as a result of a subsidy coming their way.''

BLUE CROSS GAINS

One exception to the experience of many insurance brokers has been Blue Cross and Blue Shield of Kansas City, which started an intensive advertising campaign to promote the tax credit when the law was enacted.

The group sold 227 plans to small businesses in the past three months—an 80 percent increase in sales compared with a normal three-month period, said Tom Bowser, chief executive officer.

Even with the added business, Bowser said most small businesses in the Kansas City market don't qualify for the tax credit. Of the firms with fewer than 25 employees, no more than a quarter of them qualify, he said.

HELP FOR IDAHO

The credit has potential to help in Idaho because its economy is dominated by small businesses averaging eight workers, said Scott Leavitt, owner of an insurance brokerage in Boise and the immediate past president of the health underwriters association. On the other hand, Idaho's average per capita income is $33,000, and more than $35,000 for his block of customers, he said.

About a quarter of his clients could see some relief, though it would only be significant for 12 percent, he said.

Administration officials say they expect more businesses to warm to the incentives.

''These tax credits will make it easier for small businesses to give their workers the insurance they need,'' said Nicholas Papas, a spokesman for the White House. ''We're working diligently to ensure small businesses know about this credit.''

''Small businesses are looking into it because they're not dumb,'' Mills of the Small Business Administration said. ''People want to provide health insurance. The reason is they're losing good employees when they don't.''

FACT CHECK: TAX CUT MATH DOESN'T ADD UP FOR SOME

FACT CHECK: 'BROAD' HEALTH CARE TAX CUT FOR SMALL BUSINESS LEAVES OUT SOME COMPANIES

(By Ricardo Alonso-Zaldivar, Associated Press Writer)

WASHINGTON (AP).—Zach Hoffman was confident his small business would qualify for a new tax cut in President Barack Obama's health care overhaul law.

But when he ran the numbers, Hoffman discovered that his office furniture company wouldn't get any assistance with the $79,200 it pays annually in premiums for its 24 employees. ''It leaves you with this feeling of a bait-and-switch,'' he said.

When the administration unveiled the small business tax credit earlier this week, officials touted its ''broad eligibility'' for companies with fewer than 25 workers and average annual wages under $50,000 that provide health coverage. Hoffman's workers earn an average of $35,000 a year, which makes it all the more difficult to understand why his company didn't qualify.

Lost in the fine print: The credit drops off sharply once a company gets above 10 workers and $25,000 average annual wages.

It's an example of how the early provisions of the health care law can create winners and losers among groups lawmakers intended to help—people with health problems, families with young adult children and small businesses. Because of the law's complexity, not everyone in a broadly similar situation will benefit.

Consider small businesses: ''The idea here is to target the credits to a relatively low number of firms, those who are low-wage and really quite small,'' said economist Linda Blumberg of the Urban Institute public policy center.

On paper, the credit seems to be available to companies with fewer than 25 workers and average wages of $50,000. But in practice, a complicated formula that combines the two numbers works against companies that have more than 10 workers and $25,000 in average wages, Blumberg said.

''You can get zero even if you are not hitting the max on both pieces,'' Blumberg said.

Hoffman used an online calculator to figure his company's eligibility. At least three are available: from the House Energy and Commerce Committee, which helped write the legislation; from the progressive Center for American Progress; and from the National Federation of Independent Business, which is seeking to overturn the law in federal court. All produced the same result.

''I think (the administration's) intentions are good, but the numbers and applications don't come out to what they intend,'' said Hoffman, part owner of Wiley Office Furniture, a third-generation family business in Springfield, Ill.

The Treasury Department, which administers the new credit, did not dispute the calculations.

''The small-business tax credit was designed to provide the greatest benefit to employers that currently have the hardest time providing health insurance for their workers—small, low-wage firms,'' said Michael Mundaca, assistant secretary for tax policy. ''Small employers face higher premiums and higher administrative costs than large firms and in many cases cannot afford to provide coverage.''

Small business owners are a pivotal constituency in the fall congressional elections, and Democrats are battling to win them over. Major benefits of the health care law—competitive insurance markets, more stable premiums and a ban on denying coverage to those in poor health—don't take effect until 2014. But the health care credit is available starting this year.

It can be a boon for smaller companies paying lower wages. Betsy Burton, owner of The King's English Bookshop in Salt Lake City, estimates that she will get a credit of roughly $21,000 against premiums of about $67,800. She has 11 full-time equivalent employees averaging $26,100.

''What it means is that I can afford to carry this insurance and insure people's families,'' said Burton. ''I was afraid that we were fast approaching a time when I would have to choose between insuring my employees and closing my doors.''

Burton believes offering health insurance is the right thing for an employer to do—and also makes good business sense because it helps her retain valued employees. Except at the beginning, she has provided coverage for most of the 33 years the bookstore has been in business.

Slightly more than a third of companies with fewer than 10 employees offered coverage in 2008, down about 10 percent since the start of the decade, according to an Urban Institute analysis.

Hoffman, the furniture store owner whose business missed out on the credit, says he understands that lawmakers writing the

health care legislation had a limited amount of money to work with. But his company's premiums rose 15 percent this year, and it's a struggle to keep paying.

To get the most out of the new federal credit, Hoffman said he'd have to cut his work force to 10 employees and slash their wages.

''That seems like a strange outcome, given we've got 10 percent unemployment,'' he said.

DEAR MR. WYATT: I am contacting you as I believe you are the individual who assists Sen. Grassley on tax matters connected to his Senate Finance Committee position.

I am writing you to comment on the Small Business Health Care Tax Credit.

Some brief background about our company:

We are a small manufacturer of abrasives in Wilton, IA, currently employing 17 full-time people.

Our major competitors are the Chinese, Korean, and Japanese sandpaper manufacturers and the recession has hit us hard.

We provide some of the following historical benefits to our employees:

We pay 100% of all employees' health insurance premiums;

We provide $40,000 of life insurance to each employee;

We contribute approximately 14% of each employee's compensation into a profit-plan for their retirement;

Paid vacation;

Approximately 2 weeks paid time off during Christmas which does not count against an employee's vacation time;

What the recession has done to us:

Like many small businesses, we are losing money;

This has caused us to hire some workers through a local temporary business to replace full-time employees as we have turnover and as we try to expand into other areas to keep our business going;

For the last 2 years we have only been able to contribute the 3% safe harbor to the profit-sharing plan (for at least the prior decade we contributed the full roughly 14% of compensation to the profit-sharing plan);

We were forced to change the safe harbor profit-sharing contribution from a 3% mandatory to a matching type plan since a few of the temporary workers will have met the 1,000 hours/12 month rule—essentially punishing the full-time work force as we don't have the discretionary cash to make the contributions for the temps (a whole other tax issue for small businesses); and

We have continually had to reduce some health benefits (via increasing deductible to $1,000; however, we continue to pay 100% of the premium cost).

Now back to the Small Business Health Care Tax Credit.

Early on I had high hopes that the credit would be quite helpful in defraying the health care premium costs. We currently pay $11,410.39 per month in Wellmark BCBS premiums (nine on the single plan at $413.67/month and eight on the family plan at $960.92/month) for a total annual premium cost of $136,924.68; and this is before anyone gets sick as we self-insure for the co-insurance. Our annual premium increase will be communicated to us by Wellmark about August and I anticipate another 20+% jump.

However, now some of the details of the credit are leaking out. Today I received the attached letter from our CPA firm, RSM McGladrey. I point you to the limitations and phase-out of the credit. Are you kidding me? By the time I gather all the required information, pay RSM McGladrey to calculate all the phase-outs, the resulting credit will not even cover the expected annual premium increase from BCBS!

What small business is this helping? This is about like all the back to work credits, or whatever they are called, which we concluded with RSM McGladrey are not worth the manpower costs to fully investigate and gather the information.

This credit is worthless. If Congress thinks this is going to encourage small businesses to keep providing health care for their employees, they are grossly mistaken. It just isn't meaningful enough to even enter into the equation in making a decision of what to do for my employees.

Effective today, we can no longer hire someone and provide them with subsidized health insurance beyond what is required by law. We hope to continue with existing employees, but clearly, with what little bit I know about the Health Care Act, come 2014 we are dropping our health plan; if not sooner.

I would hope as Senator Grassley's Finance Committee tax assistant, someone who would understand ''the devil in the details'', you will pass on to him my frustrations. Such frustrations with respect to the Small Business Health Care Tax Credit being, but not limited to: (1) not well thought out or discussed; (2) ridiculously complex for a small business to understand and implement; and (3) once again, Congress' over selling/promising the benefit of.

I would greatly appreciate if you would convey my thoughts on this matter to Senator Grassley to help him understand what is happening with small business on this issue.

Sincerely,

STEVEN D. YEATER,
Co-Owner.

SPRINGFIELD CENTENNIAL CELEBRATION

Mr. RISCH. Mr. President, I rise today to acknowledge the centennial of the town of Springfield in my home State of Idaho.

On September 13, 1910, the County Commission of Bingham County approved a plat plan for the town-site of Springfield. It was an ambitious vision of a city on the shores of Springfield Lake—a body of water created years earlier to supply irrigation water from Danilsen creek. The area was a popular stopping place on Goodale's cutoff along the Oregon Trail.

In Springfield, 1910 was a busy and exciting time. Water from the Aberdeen-Springfield Canal reached Springfield. The Oregon Short-Line railroad came through and provided service to the community. And in June, a group of women organized the Springfield Domestic Science Club with a focus on community service.

The club quickly became a force in the community, establishing a hot lunch program at the local school and creating and managing the Springfield Cemetery, something members did until 1946. The club also sponsored many educational, cultural and entertainment events.

The Aberdeen-Springfield Canal was a major asset to the area. Not only did it provide much-needed water to the surrounding agricultural land, it provided jobs for many of the early settlers. The canal, begun in 1895, was dug using horse-drawn equipment and manual labor.

Today, the canal is a tribute to private enterprise. No government money was used during its construction. It is owned by its shareholders under a Carey Act corporation and is a ''not for profit'' organization, which financed it by the sale of shares in the company. The canal was completed at a cost of about $886,000, irrigates about 63,000 acres of field and helps produce crops valued at roughly $140 million each year.

On August 28, 2010, the Springfield community will honor its early pioneers with a centennial celebration. During the festivities, a monument in honor of the early settlers will be unveiled. The monument identifies those settlers who formed the backbone of the community by building the canal, operating the markets and shops and organizing the schools and churches. The names of these early pioneer families with the vision of seeing the desert bloom are:

Anderson, Baird, Bedwell, Berg, Blackburn, Bradley, H. Chandler, W. Chandler, Criddle, Cushman, Edwards, Evans, Gravatt, Grover, Hawker, Holland, Houghland, Judge, Line, Leach, Lloyd, Lofgreen, Loomis, Parmalee, Reid, Rupe, Sainz, Sellers, Shelman, Stoddard, Stufflebean, Snyder, Sommercorn, Thurston, Wells, Whyte, Willis.

Although the present day Springfield town-site did not quite live up to the vision laid out in the original plat, those living in the community strive to honor their heritage. Out of that sturdy pioneer stock have come doctors, lawyers, politicians, farmers, ranchers, chemists, accountants, educators, firemen, homemakers, artists, laborers, mechanics, business owners, civil servants, religious leaders and military servicemembers.

I congratulate the people of Springfield on this occasion and pay tribute to those pioneers and others like them across our land, who, with vision, determination and hard work, created what we now enjoy.

TRIBUTE TO MARK KOSTER

Mr. BURR. Mr. President, today I wish to honor and recognize Mark Koster. This month, the Senate will bid farewell to one of the unsung heroes of this body. Mark, an associate counsel in the Office of Senate Legislative Counsel, is retiring and concluding his career on Capitol Hill.

Over the last two decades, there is hardly a major Federal education law that doesnt have Marks imprint. Marks areas of focus have included higher education, special education, career and technical education, literacy, elementary and secondary education, and a number of early education programs. Mark has more bipartisan legislative accomplishments than many Members of Congress.

Mark has made certain our ideas are drafted into legislation with technical precision, and his dedication to his

work over the past two decades exemplifies true professionalism. Mark has treated every legislative initiative equally, no matter if he was drafting a relatively small amendment or a major reauthorization proposal for the Elementary and Secondary Education Act, the Higher Education Act, or the Individuals with Disabilities Education Act. Senators and their staffs all knew that when one saw Marks legislative signature, ''KOS,'' atop a document that the draft that had emerged from legislative counsel was in perfect technical shape and it was now up to us, as Members of the Senate, only to argue the draft's merits and relevance, not the format.

As a member of the Senate HELP Committee, I am proud and honored to say that we, both present and former committee members, have considered Mark our staff, even though he has never been on the HELP Committee's payroll. Mark has been one of our cornerstones because he has always treated every HELP member and staffer with the greatest respect. Additionally, Mark has demonstrated a rather large dose of patience in dealing with time constraints, deadlines, and all the various personalities that traverse the Halls of the Senate.

Although those of us who are members of the HELP Committee have consumed most of Marks time during his years as legislative counsel, Mark has always been of great assistance to every other Senate office that has needed aid in drafting education-related issues. All of us, Republican, Democrat, and Independent, have been lucky to have had Mark Koster on our side.

Mark, we thank you for your service and dedication. The HELP Committee will always consider you both an honorary member and a part of our family. We and the entire Federal education lawmaking process will miss you. May your next chapter in life be even more successful and more rewarding than the one that is coming to a conclusion. We wish you, your lovely wife, Kathy, and your two children the very best.

EDUCATION JOBS FUND

Mr. CORNYN. Madam President, as an elected representative of the great State of Texas, I swore a solemn oath to uphold and defend the Constitution. So it is a great disappointment to discover that some Members of the other body are attempting to undermine the separation of powers enshrined in our Constitution. I am speaking, of course, about the House-passed language that was included in Senate amendment No. 4575, which I opposed earlier today.

The language in the amendment unfairly requires the State of Texas to maintain fiscal year 2011 levels of State funding for elementary, secondary, and higher education spending for 2 additional fiscal years in order to receive a portion of the $10 billion Education Jobs Fund. This places an undue burden on a single State that is likely an unconstitutional condition on funding in violation of the Supreme Court's holding in South Dakota v. Dole.

Specifically, the language conditions Texas's receipt of Federal education dollars on an event that would violate the Texas Constitution. The Texas Governor cannot make the required assurances because the Texas legislature, not the Governor, decides how to spend the State's money. Any attempt by the Governor to bind the legislature's hands would be ineffective because that office lacks the power, and the mere attempt could violate the Texas Constitution. Nor can the Governor make an assurance regarding the actions of a future legislature, as the amendment requires. Such conditions, which cannot be lawfully met, can have no possible relation to the Federal interest in education spending.

According to the Congressional Research Service, the State's share of the $10 billion is estimated to be over $830 million. By ensuring that the State will not be able to access these funds, the Texas provisions effectively create a significant and substantial amount of discretionary funds available to the Secretary of Education. The practical effect of this petty, partisan gamesmanship will be to saddle future generations of Texans with a debt for which they are unlikely to receive any benefit.

This was a shameful, irresponsible exercise in raw political power. Texas students deserve more than to be political pawns. Forcing the legislature and Governor to choose between violating the Texas Constitution or accepting Federal dollars is an abuse of Federal power and is a clear threat to the separation of powers. A State's elected government should not be made subjects of political appointees and unelected bureaucrats at the Department of Education.

ADDITIONAL STATEMENTS

REMEMBERING BISHOP DR. JERRY LOUDER

• Mrs. BOXER. Mr. President, I am honored to recognize the career accomplishments and service of the late Bishop Dr. Jerry Louder—clergyman, educator, community leader, and author. Dr. Louder was born in Riverside in 1947 and remained dedicated to his community throughout his life. Dr. Louder passed away on July 2, 2010.

As a student at Pacific High School in San Bernardino, Jerry Louder excelled in academics and athletics. He advanced his education at the University of California, Riverside and earned a dual major bachelor's degree, a master's degree, and a doctorate. Dr. Louder later completed a second doctorate at Friends International Christian University and began his ministry in 1970.

Dr. Louder was an acknowledged leader among his ministerial peers. He served as pastor of New Jerusalem Foursquare Church for 22 years and became founding pastor of New Jerusalem Christian Center. He was heavily active in a diversity of clergy groups in San Bernardino and Riverside counties, including the Riverside Clergy Association; the Riverside Area Pastors' Association; the Inland Area Ministers' Alliance; and the Riverside Interfaith Fellowship. He also served as president of the United States Pastors' Association, a communication network of nearly 100,000 pastors representing more than 40 denominations and independent churches.

Riverside mayor, Ron Loveridge, described Dr. Louder as a ''community healer.'' In addition to helping forge stronger relations between the Riverside Police Department and the communities it serves, Dr. Louder also cofounded and served as executive director of the Opportunities Industrialization Center, which led to his founding the Riverside Opportunity Center to address the needs of the poor, homeless, and marginalized in his community. These and other similar efforts earned the recognition of many groups and organizations throughout his life, including being named a 2010 Alumnus of the Year by the Riverside Community College District.

I extend my heartfelt condolences to Dr. Louder's family, friends, colleagues, and all those whose lives were influenced by Dr. Louder's commitment, compassionate leadership, and personal and professional integrity. He will be truly missed.•

TRIBUTE TO ABRAHAM WEINRIB

• Mr. BROWN of Ohio. Mr. President, Columbus, OH, the State's capital city, is home to more than 710,000 Ohioans who trace their heritage from a mix of races, religions, and ethnicities. Many Columbus residents can trace their heritage back to Germany, Italy, and England. Neighborhoods like German Village, Italian Village and Victorian Village are examples of places these new Americans created in the early 20th century.

Recent waves of immigration have brought men and women from Somalia, Vietnam, and Mexico to the city and our State.

Throughout the demographic changes to Columbus, there remains one small community that continues to draw from the strength of their shared experiences.

Mr. President, 217 Holocaust survivors reside in the city of Columbus and its suburbs from Bexley to New Albany. Among the unforgettable stories told by these heroic men and women is 97-year-old Abraham Weinrib, of the Berwick neighborhood, southeast of Columbus.

Mr. Weinrib's journey from hardship to hope began in 1939 when he and his family were forced from their home in Lodz, Poland. After being forcefully removed from his home in Lodz, he fled

to Warsaw, Poland, where on September 6, 1939 at the age of 25 Mr. Weinrib was arrested by the Nazi's.

For the next 5½ years, he was sent to a total of nine concentration camps.

In Hanover, Germany, he was a slave laborer at the Continental rubber factory, where he made tires for Nazis to use against the Allied troops.

At Bergen-Belsen, he was forced to drag dead prisoners to a ditch to be buried in mass graves.

On April 14, 1945, Mr. Weinrib, weak with typhus, fell asleep on top of one of these mass graves. That night, he woke up from the open grave and stumbled into nearby barracks. There he found English troops liberating the camp.

Unfortunately, Mr. Weinrib's parents, two older brothers, and most of his extended family were among the more than 6 million Jews who perished during the war.

Mr. Weinrib spent the next year in a Swedish hospital recovering from years of starvation, beatings, and a gunshot to his forehead.

After regaining his strength, Mr. Weinrib began to attend events through a Holocaust survivor's club in Sweden. There he met a young woman named Anna who was freed from Auschwitz in 1945. Together, they spent more than a year recovering in the hospital and several more years recovering at home in Sweden. By 1950, Anna and Abraham Weinrib married and had their first child, Ruth, in 1952.

In 1954, after living with his sister Hela who also survived the war Mr. and Mrs. Weinrib left Stockholm and moved to Columbus where Mr. Weinrib's brother's Morrui and Chaim lived. In Columbus, Mr. Weinrib was hired by Sam Melton to work at a Capitol Supply factory. Mr. Weinrib quickly rose through the ranks from lineworker to manager. Meanwhile, Mr. and Mrs. Weinrib raised three children, sending them to school and working hard to ensure they had every opportunity that was robbed from their own youth.

Prior to Anna's passing in 1979, Mr. Weinrib rarely spoke of his experiences during the war. But since then, he uses his own experience to ensure that future generations never forget the tragedy of the Holocaust.

Abraham Weinrib has become a fixture at the Jewish Community Center in Columbus and frequently speaks to students throughout the community. At one recent speaking engagement, a student asked Mr. Weinrib what his experiences during the Holocaust can teach younger generations. Without hesitation, he responded with his thick polish accent, that ''life is short; you have to be nice to each other.''

Then, Mr. Weinrib referred to a heartbreaking experience he remembers during his time at Auschwitz. The Nazi's were separating prisoners into two lines, those who were old enough and healthy enough to work, and those who were not. One young mother was unwilling to be separated from her young daughter. Both were sent to the crematorium.

Abraham Weinrib has seen firsthand what intolerance, prejudice, and hate can do to undermine our basic humanity. He talks about how unfair and challenging life can be but does not attribute his survival or the survival of three of his siblings to any sort of miracle. Instead, he attributes his survival to the ability to persevere.

His own children have also used the strength of their father to succeed. The three Weinrib children—Bruce, Ruth, and Irene—overcame many of the hardships often faced by first-generation children: parents with a limited understanding of English, low paying jobs, and the feeling of being an outsider. By any measure, all three children have succeeded. Ruth and Bruce are both graduates of the Ohio State University. All three children have postsecondary degrees, and all have made Abe a proud grandfather of seven grandchildren.

The impact Abraham Weinrib has had on his family and community is clear and the message he shares is powerful. Elie Wiesel said ''Not to transmit an experience is to betray it.'' Abraham Weinrib is helping to ensure that generations to come will learn his enduring lessons.

Thank you, Abraham Weinrib, for all that you do to make our State and Nation live up to our highest ideals.●

TRIBUTE TO JIM WEATHERLY

● Mr. COCHRAN. Mr. President, I am pleased to commend Jim Weatherly of Pontotoc, MS, for his contribution to American music through prolific song writing and the attention that he has brought to the many talented artists in my home State of Mississippi.

This weekend, Pontotoc County will celebrate Jim Weatherly's accomplishments at its annual Bodock Festival. Governor Haley Barbour has designated a ''Jim Weatherly Day'' as part of the festival. I believe this is a fitting tribute to a man who is a source of pride for many in Mississippi.

Jim Weatherly has not only excelled in the arts; he has also excelled both academically and athletically. While I was a law school student at the University of Mississippi, Weatherly was a member of the Ole Miss football team. As quarterback, Weatherly led the Ole Miss Rebels to an unbeaten and untied season, resulting in a national championship in 1962 and Southeastern Conference Championships in 1962 and 1963. As a star quarterback at my alma mater, Weatherly earned three letters and was honored as a member of the All Southeastern Conference team in 1964.

Jim Weatherly first started writing songs around the age of 12. He moved to Los Angeles, CA, in 1966 to pursue a career in the music industry. Weatherly has written pop, R&B, country, gospel and jazz songs, some of which have become classics. Weatherly has authored numerous hits for artists such as Gladys Knight and the Pips, Dean Martin, Kenny Rogers, Reba McIntire, Kenny Chesney, Hall & Oates and The Temptations. Some of his well-known hits include ''Midnight Train to Georgia,'' ''Love Finds Its Own Way'' and ''Where Peaceful Waters Flow.'' He was nominated for a Grammy in the R&B Songwriter of the Year category and helped win numerous Grammys and awards for other artists. He has released seven albums, including a Christmas album that he wrote and recorded.

The American Society of Publishers, Authors, and Composers named Weatherly Country Songwriter of the Year in 1974. Weatherly is also a member of the Nashville Songwriters Hall of Fame and the Mississippi Musicians Hall of Fame.

Weatherly's ''Midnight Train to Georgia'' was inducted into the Grammy Hall of Fame in 1999. In 2001, The National Endowment for the Arts and the Recording Industry Association of America ranked this song 28th among 365 Songs of the Century.

Since moving back to the Southeast, Weatherly has continued to write, publish and record songs. Weatherly recently cowrote an album with Vince Gill that sold over 5 million copies, and he continues to have No. 1 country hits on the charts.

I congratulate Mr. Weatherly on being honored by his hometown of Pontotoc, MS, and on his long, illustrious career. I wish him the best in his future endeavours.●

TRIBUTE TO MICHEL BAIK

● Mr. DODD. Mr. President, it is with a heavy heart that today I pay tribute to fire fighter Michel Baik, who sadly lost his life on July 24, 2010.

A lifelong resident of Bridgeport, Michel graduated from Central High School, where he played football. Throughout his life, he remained engaged in sports playing softball and basketball and was also an active member of the St. Nicholas Antiochian Orthodox Church congregation.

He was well known as a loving husband and father who was very engaged in the lives of his children, Andrew, Thomas, and Margaret. He coached Junior Varsity basketball, volunteered with the Boy Scouts, and was a constant presence at their various school plays, sports events, and dance recitals.

For many years, Michel worked for companies like Norelco and Alcon Data, as well as at the Connecticut Post newspaper as distribution manager. He also helped teach computer skills to the unemployed as an instructor at a nonprofit workforce development organization called Career Resources.

Then, in 2007, he decided to take on a new challenge. He trained hard, studied hard, and ultimately became—at the age of 47—the oldest ''probey,'' or rookie, member of the Bridgeport Fire Department. It was a job he loved, and he

was proud to have been able to serve his community as a member of the department and the Ladder 11 team.

When a person becomes a firefighter, they are not simply taking a job; they are following a calling.

We have all felt our chests tighten and our pulses quicken with anxiety at the sound of a fire engine screaming through town. For most of us, this signals two important things: There is an emergency somewhere nearby, and—more importantly—that help is on the way.

Of course, for the people riding on those rigs, all the commotion is just another day at the office. They are focused solely on the task at hand.

When the unthinkable happens—a devastating hurricane, industrial accident, terrorist attack, or three-alarm fire—these brave men and women are the first on the scene and the last to leave. In between, they give all they have to make sure the emergency is contained and our communities are safe.

For Michel Baik and firefighters all over our Nation, the call to serve means facing danger every day. The commotion of an emergency becomes secondary to the need to help people, and the dangers they personally face must take a backseat to the task at hand.

That was the case on the afternoon of July 24, 2010, when Michel and his colleague, fire lieutenant Steven Velasquez, were conducting a search-and-rescue mission on the third floor of a burning house in Bridgeport. They were deepest into the blaze, looking for people in need of assistance and trying to ventilate the structure. None of the inhabitants of the home were injured. But tragically, both of these courageous men lost their lives, despite the quick action of their colleagues to pull them out of danger and get them to the hospital.

Tragedies are inherent in this profession, and the risks are shared by every single person who has ever gotten the call, rushed to their gear, and has run headlong into danger in order to save the life of someone else. These shared risks help to bind those called to take them together in a solemn way.

Firefighters will do anything for one another, both on the job and when the worst happens. The more than 7,000 of their fellow firefighters—from as far away as western Canada—who attended the memorial services for Fire Fighter Baik and Lieutenant Velasquez were an impressive testament to that bond.

I believe that the eulogy offered in tribute to Michel Baik by International Association of Fire Fighters president Harold Schaitberger at his memorial service speaks well of this solemn commitment. Through these difficult times, the community which Michel served, and those he served with, can provide support and comfort to his loved ones, and I will ask that President Schaitberger's words be printed in the RECORD.

Of course, no tribute will ever be enough to ease the suffering of their families. I offer my deepest condolences to Mich's wife Laurie, his children, and his entire family. Their sacrifice is unimaginable, and they will always be in our thoughts and prayers.

I know that we can never make this right for them. But we must celebrate the life and service of Firefighter Michel Baik and make sure that his memory—as a role model and true hero—lives on and helps to inspire others to take up the call to serve.

I ask that President Schaitberge's words to which I referred be printed in the RECORD.

The information follows:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

President Harold Schaitberger

EULOGY FOR FIRE FIGHTER MICHEL BAIK, BRIDGEPORT LOCAL 834, JULY 30, 2010

To Fire Fighter Michel Baik's mother Mary, to his wife Laurie, to his children Andrew, Thomas and Margaret, and to his sister Rania—thank you for allowing me the honor of taking part in this beautiful service to commemorate Mitch's life, his service, and his sacrifice.

To Mitch's family, to his friends, to his brothers and sisters in the Bridgeport Fire Department and Local 834, and to his extended fire fighter family, I stand before you like the man we honor today, a servant unto God, to offer the thoughts and prayers on behalf of our General Secretary Treasurer, our Executive Board, and the 298,000 fire fighters we represent across two great nations.

These are the times that words are a poor substitute as we try to make sense of such a profound loss and provide comfort to each other in this time of great sadness. I know words can do little to heal the heart-wrenching pain that we all feel. But I also know that I—and that all of Mitch's brothers and sisters in the fire service who traveled from across two nations to be here—want you, Mitch's family, to see and feel the love and the sorrow that each and every brother and sister in the fire service family feels today.

These emotions are as strong and as heartfelt as anything I can say. They are as genuine as anything I've written on these pieces of paper in my hand.

I want you to know that all of us have come here today to put our collective arms around you. Many of us are gathering for a second time today. We also paid tribute to Lieutenant Steven Velasquez.

Sadly, we are back together again and it's no easier the second time to say goodbye to one of our own.

Many outside of our ranks will refer to Mitch and Steven as heroes. But they didn't set out to be heroes and they didn't think of themselves that way. No, if they were here they would simply tell you they were just doing their jobs.

I did not have the honor of knowing Mitch personally, but I do know who he was. I do know that like many who came before him Mitch was drawn to ''The Job'' like countless young men and women who follow their childhood dreams—who experience the calling to service to become fire fighters. But for much of his life Mitch pursued other dreams, and at age 47—two years ago—he answered the calling.

He entered this close knit profession like so many of his brothers and sisters in dress blues who surround us now, with a humble confidence, eager to put in the hours with no expectation or desire for public recognition.

He summoned the quiet courage that resides in all who come to this work, and he decided he could do it. He was determined—not only that he wanted to do it—but that he needed to do it. And at age 47 he realized a life-long dream, and he joined us on ''The Job.''

Mitch was so excited and so proud when he became a fire fighter. He held up his badge to show his kids what Dad had done. He was Local 834's oldest probey.

Though he was a rookie, Mitch approached the job like the man he was—accustomed to hard work and long hours and eager to sacrifice for his family and his community.

The journey he took to get on the job is remarkable.

Sadly, it takes a tragedy like this to remind us just how fragile life can be and how our own journeys can end all too quickly.

Sadly, too often it takes a tragedy for a community and its citizens to recognize the courage, dedication, commitment, sacrifice, and service that people like Mitch make day in and day out.

And sadly, it takes a tragedy for the rest of the world to see the sacrifice that their families make.

So today as we pay our respects to Mitch we also pay our respects to his family—for giving more than you should ever be asked to give. And we pay our respects to you for the sacrifice you have made.

Remembering and honoring our fallen is the most solemn, most revered tradition in the fire service.

Every year across the United States and Canada a hundred or more fire fighters make the ultimate sacrifice. And when one of our brothers or sisters falls, the fire service family comes together.

We come together no matter how near or how far to make it clear to you—Mitch's family—that our hearts ache.

We want you to know that his brothers and sisters in the fire service loved him—but we understand that you loved him more.

We want you to know that we will miss him tremendously—but we know you will miss him more.

We have gathered to embrace you and let you know that your extended family is here, standing with you—and we're not going away.

For almost a century we've come together in times of loss to show the love and respect we have for our family and to stand strong for our IAFF brothers and sisters, including here in Bridgeport.

We use the tradition-bound symbols of our profession—the men and women in their crisp dress blues, the bagpipers and drummers who play their mournful songs, the Honor Guard standing at attention—to salute those we have lost. And then the ring of the Bell sends them home.

This is how we cope.

This is how we mourn.

This is also how we salute YOU.

From all of us in this great union—this brother and sisterhood called the IAFF—we want you to know that your loved one may be gone—but he will never be forgotten.

Mitch's name will remain, forever etched in the granite walls of our Fallen Fire Fighters Memorial in Colorado Springs.

We do that to show that he left an indelible mark on our lives, that he will forever be a part of our fire fighter family—and so will all of you.

Thank you Brother Baik for the gift of your life.

May you rest in peace. God bless you and may God bless the fire fighters on the front lines everywhere.●

REMEMBERING THEODORE H. FOCHT

• Mr. DODD. Mr. President, today I wish to honor the life of Theodore H. Focht, a former lawyer, educator, and public servant who passed away on April 22, 2010, at the age of 75. I extend my deepest condolences to his wife of 53 years, Joyce, his sons, David and Eric, and his grandson Jason.

Over the course of more than four decades, starting with his graduation in 1959 from law school at the College of William and Mary, Theodore—or Ted, as he was more commonly known to his family and friends—enjoyed an illustrious legal career that took him from academia to the halls of Congress to senior leadership positions at the Securities Investor Protection Corporation, or SIPC. Throughout his career, Ted earned a well-deserved reputation as an extremely knowledgeable and experienced voice on matters related to securities law and as a dedicated and hardworking public servant.

Following a stint as a legal assistant at the Securities and Exchange Commission in the early 1960s, Ted became a faculty member at the University of Connecticut School of Law in my home State, where he taught classes on securities regulation, administrative law, and property law. In 1969, Ted took a leave of absence from his work at UCONN and moved to Washington, DC, to take on a temporary assignment as special counsel to the House Committee on Interstate and Foreign Commerce.

When Ted took that position on Capitol Hill, the House Commerce Committee was in the middle of working to pass legislation that would provide critical new protections to U.S. investors from bankrupt and financially troubled brokerage firms. As the committee's special counsel on securities policy, Ted jumped right into the issue, playing an absolutely instrumental role in crafting the Securities Investor Protection Act. This legislation, which was signed into law by President Nixon, created the SIPC—a nonprofit entity that insures the assets of investors against brokerage firm failures—and with it, an important new layer of security and sense of confidence for Americans who wanted to invest in the stock market.

But Ted's work on investor protection issues did not end with the enactment of that landmark bill. Following its creation, Ted became the SIPC's president and general counsel, where he successfully shepherded the corporation through its first two decades of existence. Between 1971, when he took the helm at the SIPC, until 1994, when he retired from the corporation, Ted became inextricably linked to the organization's work and mission. Indeed, I believe that Ted's work with SIPC, both in helping to build the organization as a young congressional staffer and run it after establishment, are among the most striking aspects of his impressive professional legacy.

And so I would like to take this opportunity today to thank Ted for his years of dedication to the law—whether as a professor helping to shape the minds of young law students at UCONN, or as a senior executive at the SIPC working to build a safer environment for Americans to invest.

And I once again extend my most heartfelt condolences to all of the people who knew and loved him.•

REMEMBERING SERGEANT ORVILLE SMITH

• Mr. DODD. Mr. President, today I honor the life of a true American hero. Police SGT Orville Smith, a 39-year veteran of the Shelton, CT, Police Department, died July 7, 2010, of injuries he sustained while in the line of duty. I express my deepest condolences to his family, colleagues on the Shelton Police Force, and the entire community of Shelton for this tragic loss.

It goes without saying that American law enforcement officers such as Sergeant Smith are a very rare and special breed. Every day, police officers around the country go to work with a singular objective—to selflessly protect the communities and the people that they know and love. It is an incredibly rewarding career, but one fraught with potential dangers and sacrifices. And unfortunately, men and women in law enforcement are all too often forced to make the ultimate sacrifice, giving their own lives in defense of their fellow citizens.

That is exactly what Orville Smith, the first Shelton police officer to be killed in the line of duty since 1964, did. Late in the evening on July 3, while directing traffic outside of a local fireworks event commemorating the July 4 holiday, Sergeant Smith was struck by a drunk driver. He passed away 4 days later, leaving behind a loving wife, two children, four grandchildren, and a legion of fellow police officers who, during his nearly four decades of service on the force, came to know Sergeant Smith for his fearlessness and unflinching dedication to his job.

Indeed, to say that Sergeant Orville Smith was committed to public service and helping his fellow citizens regardless of the personal sacrifice required is, in my view, a bit of an understatement. From his service as a U.S. marine in the Vietnam war to his work as a volunteer firefighter, Sergeant Smith made protecting and defending his community and countrymen his life's mission.

While he planned to retire from the force next year, his heart truly belonged to the Shelton Police Department. It is therefore fitting that Shelton Police Chief Joel Hurliman called him ''one of the bravest guys I ever met'' and went on to say, ''He wasn't scared of anything, except retirement.''

It was that kind of professional dedication and unwavering commitment to public service that made Sergeant Smith not only an exemplary police officer but a wonderful human being. He spent his entire life devoted to helping others and relished every minute of it. Several weeks ago, on the eve of Independence Day, he died that way, too—loyally and courageously fulfilling his duty to ''protect and serve'' until the very end.

I express my deepest gratitude to Sergeant—Smith or ''Smitty'', as he was more commonly known by his friends at the Shelton Police Department—for his tremendous record of service to the people of my State and the Nation. I once again extend my most heartfelt condolences to all those who knew and loved him. While the death of a loved one is never easy to accept, it is my hope that the fact that Sergeant Smith died doing what he loved will bring them some measure of comfort during the months and years ahead.•

REMEMBERING LIEUTENANT STEVEN VELASQUEZ

• Mr. DODD. Mr. President, it is with a heavy heart that I pay tribute to LT Steven Velasquez, who sadly lost his life on July 24, 2010.

We have all felt our chests tighten and our pulses quicken with anxiety at the sound of a fire engine screaming through town. For most of us, this signals two important things: There is an emergency somewhere nearby, and—more importantly—that help is on the way.

Of course, for the people riding on those rigs, all the commotion is just another day at the office. They are focused solely on the task at hand.

When the unthinkable happens—a devastating hurricane, industrial accident, terrorist attack, or three-alarm fire—these brave men and women are the first on the scene and the last to leave. In between, they give all they have to make sure the emergency is contained and our communities are safe.

They do this every day of the week, every week of the year. Being a firefighter certainly isn't a job for the faint of heart. In fact, it is not so much a job as it is a calling.

At least it was for Steven Velasquez. His 20-year career took him from a position with the Fire Department of Prince Georges County, MD, to the rank of Lieutenant in the Bridgeport Fire Department in my home State of Connecticut.

Along the way, he built a reputation as a tremendously dedicated team member and as someone whose discipline and bravery made him a leader. This reputation, and the urging of many of his colleagues, helped secure him a place on the department's elite Rescue Squad—despite the fact that there were others in line for the prestigious assignment before him.

In his 16 years in Bridgeport, Velasquez never took a sick day. He was committed to his family, his community, and to his fellow firefighters.

His attitude and work ethic led to his being awarded the Bridgeport Fire Department's third highest honor in 2000, the Medal of Merit.

But awards and accolades were not why Lieutenant Velasquez became a firefighter. In fact, he never displayed the many citations he had received throughout his career on his uniform. He also turned down a job with the New York City Fire Department.

The reason being?—Bridgeport has more fires.

For Lieutenant Velasquez, and firefighters all over our Nation, the call to serve means facing danger every day. The commotion of an emergency becomes secondary to the need to help people, and the dangers they personally face must take a backseat to the task at hand.

That was the case on the afternoon of July 24, 2010, when Lieutenant Velasquez and his colleague, Michel Baik, were conducting a search-and-rescue mission on the third floor of a burning house in Bridgeport. They were deep into the blaze, looking for anyone who may need help, and trying to ventilate the structure.

None of the inhabitants of the home were injured. But tragically, both of these courageous men lost their lives, despite the quick action of their colleagues to pull them out of danger and get them to the hospital.

Tragedies are inherent in this profession, and the risks are shared by every single person who has ever gotten the call, rushed to their gear, and has run headlong into danger in order to save the life of someone else. These shared risks help to bind those called to take them together in a solemn way.

Firefighters will do anything for one another, both on the job, and when the worst happens. The more than 7,000 of their fellow firefighters—from as far away as western Canada—who attended the memorial services for Steven Velasquez and Michel Baik were an impressive testament to that bond.

I believe that the eulogy offered in tribute to Lieutenant Velasquez by International Association of Fire Fighters President Harold Schaitberger at his memorial service speaks well of this solemn commitment. Through these difficult times, the community which Steven served, and those he served with, can provide support and comfort to his loved ones.

Of course, no tribute will ever be enough to ease the suffering of their families. I offer my deepest condolences to Lieutenant Velasquez's wife Marianne, his son Aaron, his daughter Salina, and to his entire family. Their sacrifice is unimaginable, and they will always be in our thoughts and prayers.

I know that we can never make this right for them. But we must celebrate the life and service of Lieutenant Velasquez and make sure that his memory—as a role model and true hero—live on and help to inspire others to take up the call to serve.

I ask to have printed in the RECORD President Schaitberger's words to which I referred.

The material follows:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

President Harold Schaitberger

EULOGY FOR LT. STEVEN VELASQUEZ, BRIDGEPORT LOCAL 834, FRIDAY, JULY 30, 2010

Lieutenant and IAFF Local 834 member Steven Velasquez—just 40 years on this Earth—was taken too soon.

To Steven's mother, Carol, thank you for giving me the honor of being here today to celebrate your son's life.

To his bride Marianne, his son Aaron and his daughter Salina, to his sister Cindy and his brother Jason, to his family and friends, to his brothers and sisters in the Bridgeport Fire Department, and to his extended fire fighter family, I have traveled here today to make sure you know that the thoughts and prayers of our General Secretary-Treasurer, our entire International Executive Board, and the more than 298,000 members of the International Association of Fire Fighters, the Bravest in North America, are with you today.

I know that my words won't make you forget your pain or forget your loss.

But I hope I can help you understand that to those of us who have come from cities and towns across two great countries—''Stevie V.'' was family to us.

Even though many of us didn't have the privilege of knowing Stevie personally, we know who he was.

We know him because there is so much about those who enter this profession of ours that are so similar.

A quiet courage, humble, understated—never wanting to bring attention to themselves or their work.

Their willingness to serve a community and a public and their readiness to sacrifice—that's how we know who ''Stevie V.'' was.

Everyone who goes on what we call ''The Job'' becomes part of this extended family.

We all know what this career can demand and we all know how cruel the consequences can be.

Everyone who has taken the oath to serve in our profession comes into it knowing the risk, and being here today reaffirms just how dangerous this job is.

We know when we get into this calling that it could take any one of us at any time.

It can take us after 30 years on the job or after 30 days.

That's why we are one big family—no matter where we really call home—because everyone here knows just how rewarding—and yet how brutal, this job is.

And even while we know the consequences nothing prepares us to cope with the grief that we feel when we lose a brother or a sister in the line of duty—let alone two.

Many of us are together for the first time today.

We will come together again this afternoon to honor Mitch Baik.

We will come together and we will be there for each other because no one in our fire service family should ever have to go through this alone.

And no family member of a fallen fire fighter should ever have to go through this alone.

But Mitch's loss and Stevie's loss will not prevent us from celebrating their lives today.

It will not prevent us from celebrating their service to their community today.

It will not prevent me from saying that my heart is broken that they are gone but we were blessed to have them in our lives.

Stevie Velasquez was both a young man and a grizzled veteran.

At just 40 years of age he already had two decades in the fire station.

He already was wise beyond his years.

For 20 years in two departments Stevie demonstrated his work ethic and set an example for others to follow.

That's why he received the Medal of Merit—the department's third-highest award—in? 2000.

That's why he made lieutenant five months ago.

Bursting at the seams with enthusiasm ready to hop on a rig and respond to any call afraid of nothing, eager to experience everything, and ready to give everything he had to do The Job.

He had an efficient, studious approach.

He understood the importance of training and the importance of being prepared.

Committed, duty bound, ready to serve in the hardest, most rewarding job imaginable—that's who Stevie was.

Ready to rush to the aid of strangers, no questions asked—that's who he was.

Ready to protect his community, ready to comfort those in need, ready to lead people to safety who couldn't find their way out—that's who he was.

A devoted family man standing vigil over his newborn daughter's bedside while she gained the strength she needed to persevere—that's who he was.

He protected his community and his family—that's who ''Stevie V'' he was.

Like many of us he probably considered himself lucky to be a fire fighter, lucky to be able to answer the call, lucky to do something he loved.

But we were the lucky ones.

The Bridgeport Fire Department, Local 834, the IAFF—we were the lucky ones.

His brothers and sisters in Prince George's County Maryland where Stevie started his career in the fire service—they were the lucky ones.

His wife, his children, his parents, his brother and sister—you were the lucky ones.

That's what I would tell him if he were standing here today.

We had quite a gift in Lieutenant Steven Velasquez.

And that's why we feel cheated that we have to give him back to the Lord so soon.

But we will not forget him.

How could we?

A young gun . . . a rising star.

A shining example of courage, of professionalism.

Stevie's name will be etched in our Wall of Honor in Colorado Springs.

His name will remain there forever, engraved in that beautiful granite wall—to be honored every year as part of our Fallen Fire Fighter Memorial service.

To Stevie's family, we want you to know that you aren't alone.

You should know that long after the last word of the last eulogy, the IAFF and Local 834 will be here for you. Today, tomorrow, and for years to come.

To Lieutenant Steven Velasquez, who gave his life so others could live, from your 298,000 brothers and sisters in the IAFF—thank you for the gift of your life. May you rest in peace. God bless you and may God bless the fire fighters on the front lines everywhere.●

TRIBUTE TO KEVIN M. SIMPSON

● Mrs. GILLIBRAND. Mr. President, today I thank and congratulate Kevin M. Simpson, an individual who has already enjoyed a distinguished career as a public servant and who is preparing once again to answer the call to service.

Kevin is a skilled attorney and litigator, and early in his career he made

the decision to devote his formidable legal talents to public service. He defended numerous Federal agencies in a variety of matters during his years as a young trial attorney with the Department of Justice.

In 1997, he served as minority counsel to the Senate Governmental Affairs Committee during its campaign finance investigation. During 1998, Kevin was Deputy Chief Investigative Counsel to Minority Members of the House Judiciary Committee during the impeachment of President Clinton. In 1999, he became impeachment counsel to Senate Minority Leader Tom Daschle and the Minority Members of the United States Senate.

Following his service in the legislative branch, Kevin returned to the executive branch as the Deputy General Counsel of Programs and Regulations at the Department of Housing and Urban Development, a position he held until the end of the Clinton administration. It was my pleasure to work with Kevin Simpson at HUD. Kevin earned a reputation for achieving results—all while maintaining unwavering respect for his colleagues and a dedication to fairness and courtesy. He made a difference, and he turned rivals into friends in the process.

It was this commitment to making a difference that led Kevin to join Max Stier, another outstanding HUD alumnus, in launching the nonpartisan, nonprofit Partnership for Public Service.

Armed with the seeds of an exciting idea and a generous financial commitment from the late philanthropist Samuel J. Heyman and his wife Ronnie, Max Stier and Kevin Simpson built the Partnership for Public Service to inspire a new generation to serve and transform the way government works. This impressive organization works with Federal agencies to improve their leadership and management, conducts groundbreaking research, and works closely with universities and job seekers, especially young people, to build new pipelines of talent into government service. In less than a decade, the Partnership has made a measurable, positive impact on our government and the story of the Partnership's success cannot be told without Kevin Simpson in a leading role. As the Partnership's Executive Vice President and General Counsel, there are few achievements in the history of the Partnership in which Kevin has not played a pivotal part.

After doing so much to improve the effectiveness of the Federal Government and inspiring a new generation to serve, Kevin is once again answering the call to service—he will soon leave the Partnership for Public Service for his new position as Principal Deputy General Counsel at the Department of Housing and Urban Development. These are extraordinary times for our Nation and our government, and we need extraordinary talent. Kevin Simpson will bring to HUD his intellectual heft, a keen strategic mind and his natural ability to build bridges; he is a stellar addition to an already strong leadership team led by a most able Secretary.

I thank Kevin Simpson for his years of service to and on behalf of our government and the Federal workforce, and I congratulate him on this next chapter of his public service career. I know all of those who have worked with Kevin share my optimism that our Nation will be a better place thanks to his pursuit of excellence in Federal service.●

RECOGNIZING CAMDEN'S AEROJET FACILITY

● Mrs. LINCOLN. Mr. President, today I congratulate employees of the Aerojet facility in Camden, AR, for recently achieving the National Safety Council's ''Million Work-Hours Award.''

Camden Aerojet received the award for reaching one million man hours without ''a day away from work injury or illness'' between July 7, 2009, and June 14, 2010. In addition to achieving the prestigious ''Million Work-Hours Award,'' the Camden facility also garnered Aerojet's President Safety Award.

I commend each and every employee at Camden Aerojet for this accomplishment, which speaks volumes about their dedication and professionalism. Safety should always be a top priority, and I am proud of these employees for their steadfast efforts to maintain a safe, secure workplace.

I also commend Alice Floyd, Safety Manager at the facility, for her dedicated efforts to maintain safety, and Paul Rich, executive director, for his leadership and commitment to safety.

Camden's Aerojet facility helps provide jobs and economic security for countless Camden-area residents. I am proud of the entire Aerojet team for this significant achievement of winning the ''Million Work-Hours Award.''●

TRIBUTE TO MICHAEL FREY

● Mrs. MCCASKILL. Mr. President, today I pay tribute to Mr. Michael Frey, a disabled Missouri veteran whose courage, perseverance, and fortitude are remarkable and in keeping with the finest traditions of Missouri and American values: hard work, independence, humbleness, selfless sacrifice, and more.

As a young 19-year old soldier in Vietnam, Mr. Frey served as a squad leader in Alpha Company 3/21 of the 19th Infantry Brigade. On July 14, 1969, Mr. Frey and the members of Alpha Company were ambushed near the Chu Lai base camp. His spinal cord was shattered by enemy fire, and the injuries rendered him paralyzed from the neck down and dependent on a ventilator for assistance in breathing. Given the extent of his injuries, many doctors would have given Mr. Frey a short time to live, but this special Missourian was about to prove that his case and that he himself was special.

Mr. Frey returned to the United States and began receiving full-time care through St. Louis-area Veterans Administration, VA, hospitals, where he gained the respect and admiration of the hospital staff for his resilience, problem-solving approach, and positivity even as he faced almost unthinkable limitations. On December 7, 1984, 15 years after his spine was shattered in Vietnam, more than double the time individuals with his type of injuries are projected to survive, Mr. Frey moved out of the Spinal Cord Injury facility at Jefferson Barracks Veterans Hospital and into his own home—a remarkable accomplishment for a person with complete tetraplegia.

Since then, Mr. Frey has lived on his own for over 25 years, and he is still going strong. Today he actively manages his daily care with the help of a team of care specialists, and he continues to take full charge of his health through preventative care and regular collaboration with VA doctors. He has the benefit of a strong social network and a self-confidence that has allowed him to bounce back from setbacks. He also remains an avid St. Louis Cardinals fan and regularly attends games. In fact, Mr. Frey developed a special friendship with the late, great St. Louis Cardinals broadcaster Jack Buck, who befriended Mr. Frey in the 1970s and encouraged him along the way.

Having survived over 40 years since his injury, Mr. Frey is one of the longest living tetraplegics in the VA system. I honor him today for his wonderful example in coping with his disability. His spirited approach to life is emblematic of the courage, honor, and strength of this country's veterans who fight for our freedom. His partnership with the many great professionals in the VA healthcare system in St. Louis, who at once serve him and revere him, is uplifting and embodies how our VA system can work best. I join the people of Missouri, and all Americans, in saluting Mr. Frey's courage and to humbly thank him for all that he has done, and for all that he endured, for this country. Mr. Michael Frey is a true American hero.●

REMEMBERING EERO SAARINEN

● Mrs. MCCASKILL. Mr. President, I wish to commemorate the 100th anniversary of the birth of Mr. Eero Saarinen.

Mr. Saarinen was born in Finland on August 20, 1910, immigrated with his family to the United States in 1923, and became an American citizen in 1940. A master of American 20th century architecture, Mr. Saarinen passed away on September 1, 1961.

In 1948, Mr. Saarinen won the Jefferson National Expansion Memorial Competition with his design for the Saint Louis Gateway Arch, creating a monument which, in his words, ''would

have lasting significance and would be a landmark for our time.'' One of our Nation's most iconic monuments, the Gateway Arch symbolizes Saint Louis' role as the ''Gateway to the West'' and celebrates our Nation's westward expansion. Famed architect Cesar Pelli commented that the Arch is ''a perfect combination of a free gesture with a romantic view of modern technology.'' Today, the Arch remains Mr. Saarinen's most widely recognized work.

Mr. Saarinen also designed several well known structures including the Trans World Airlines Flight Center at New York's John F. Kennedy International Airport and the main terminal at Washington Dulles International Airport, which is renowned for its gracefully curving roof, suggestive of flight. Missouri is fortunate to also host the Firestone Baars Chapel. Designed by Mr. Saarinen, the chapel features a unique four-foyer design, and is located on the campus of Stephens College in Columbia.

In addition to his accomplishments in the field of architecture, Mr. Saarinen was also a groundbreaking designer of furniture. In 1956, he created the tulip chair, featured on the original Star Trek television series and considered a classic of industrial design.

In recognition of his many achievements, Mr. Saarinen was elected, in 1954, a member of the American Academy of Arts and Letters, considered the highest formal recognition of artistic merit in the United States. In 1962, Mr. Saarinen was posthumously awarded the Gold Medal from the American Institute of Architects. The highest honor bestowed by the organization, it is conferred in recognition of a ''significant body of work of lasting influence on the theory and practice of architecture.''

On behalf of me and the people of Missouri, it is my sincere pleasure to honor the life, achievements, and enduring contributions of Mr. Eero Saarinen to Missouri and the Nation.●

TRIBUTE TO JOHN ''JACK'' BISCOE

● Ms. SNOWE. Mr. President, I pay tribute to a Maine champion for the wilderness and a strong proponent of protecting our natural world. John ''Jack'' Biscoe, who died last year on November 20, possessed a stirring passion for the uninterrupted forests of Maine, the mighty Penobscot and Kennebec Rivers, and the White Mountains which extend from Maine into New Hampshire.

Jack's passion for the environment was not limited to Maine, and in fact extended to the breathtaking wilderness of Alaska. He first traveled to Alaska in the 1950s tagging salmon in the Aleutian Islands for the U.S. Fish and Wildlife Service. Subsequently, his involvement in the cleanup of the Exxon Valdez oil spill only spurred his engagement in wildlife conservation. At the end of his career, Jack was one of Maine's most renowned organizers behind protecting Alaska's wilderness, and he frequently reminded me that Mainers care about protecting the environment throughout the world.

Upon his return to Maine, Jack's concern for wildlife was channeled through the Sierra Club, and other groups, of which he was an avid member, including the Alaska Wilderness League and the Alaska Coalition of Maine. Jack's zeal for environmental protection never waned and his vision for a better environment never faltered, and we will long remember him as an inspiration of what one person can contribute to the greater good. Jack's life and legacy were emblematic of Maine's deep commitment to retaining our quality of life, and I appreciate the effort that he provided on behalf of our Nation's wilderness.●

RECOGNIZING COURTYARD CAFÉ

● Ms. SNOWE. Mr. President, small businesses are not only the lifeblood of our economy, they are often quite literally the heart of our neighborhoods and communities. One such business is the Courtyard Café in the northern Maine town of Houlton, which is at the top end of Interstate 95 in the United States. Houlton is the county government seat for Aroostook County—the largest east of the Mississippi River geographically—and it serves as a major border crossing with our State's largest trade partner, Canada.

Yet, despite Houlton's critical role in international commerce, it is at its core a prime example of small town America. And although downtowns across America, including Houlton, have been suffering over the past several years, people like Joyce and Henry Transue, the owners of Courtyard Café, have stepped forward to help revitalize these regions by opening small businesses that bring new customers and increases revenues to downtown stores. In recognition of their efforts, today I honor Courtyard Café and its owners for the tremendous work they have done to bring their world-class dining establishment to Houlton.

The Courtyard Café got its start over a decade ago, when Chef Joyce Transue and her husband Henry opened the quaint restaurant on Main Street in downtown Houlton. But the restaurant's origins date back to 1993, when Chef Transue began small catering business that she called the Traveling Gourmet. This operation allowed Chef Transue to merge her passion for cooking with her zeal for beautiful presentation and exceptional hospitality. The Courtyard Café continues this tradition as Chef Transue offers her catering services to local clients either at the restaurant or at a location of their choosing.

The Courtyard Café has quickly earned a reputation for fresh and exciting meals prepared with tremendous skill and attention. Given the abundance of local fruits and vegetables in Aroostook County, most notable potatoes, Chef Transue takes painstaking efforts to carefully incorporate these items into her divergent menu options, while also utilizing other items such as farm-fresh eggs and locally produced maple syrup. All breads, salad dressings, and desserts are homemade at the Courtyard Café, and the restaurant sells its famed Raspberry Vinaigrette, Greek, and White Wine Vinaigrette salad dressings to customers in store or online thanks to a small manufacturing grant she accessed through the Northern Maine Development Center.

The restaurant offers delicious and affordable lunch dishes, and provides fresh seafood, poultry, and meat dishes for its dinner entrees. Desserts made from scratch include seasonal fruit crisp, cheesecake, and tiramisu. In addition, guests can sit at the newly renovated Garden Bar for a more casual dining option. As a truly hands-on owner, Chef Transue takes her craft seriously, and can always be seen in the kitchen arranging meals for customers, starting early in the morning preparing fresh sauces and soups for the day ahead. She has certainly succeeded in providing clients with a small, intimate restaurant tailored to producing exquisite gourmet food in a comfortable setting and relaxing atmosphere.

The Courtyard Café has rightfully gained recognition as an upscale dining destination, with customers travelling from as far away as Presque Isle and beyond just to enjoy the delicious meals prepared by Chef Joyce Transue. Her dedication and enthusiasm for culinary excellence have been exemplary, and I wish her and everyone at the Courtyard Café continued success in their delectable endeavors.●

TRIBUTE TO EDMUND CURRY

● Mr. THUNE. Mr. President, today I wish to recognize Edmund Curry, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Edmund is a graduate of the University of Maryland, where he majored in political science and government. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I extend my sincere thanks and appreciation to Edmund for all of the fine work he has done and wish him continued success in the years to come.●

TRIBUTE TO DANIELLE HANSON

● Mr. THUNE. Mr. President, today I recognize Danielle Hanson, an intern in my Rapid City, SD office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several months.

Danielle is a graduate of St. Thomas More High School in Rapid City, SD.

Currently, she is attending Benedictine College in Kansas, where she is majoring in secondary education. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I extend my sincere thanks and appreciation to Danielle for all of the fine work she has done and wish her continued success in the years to come.●

TRIBUTE TO RYUN HAUGAARD

● Mr. THUNE. Mr. President, today I recognize Ryun Haugaard, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Ryun is a graduate of Milbank High School in Milbank, SD. After high school, he enlisted in the Army as an ordnance specialist and was deployed to Iraq with the 592nd Ordnance Company, 96th Regional Readiness Command. Currently he is attending the United States Military Academy at West Point, where he is majoring in law.

He is a hard worker who has been dedicated to getting the most out of his internship experience. I extend my sincere thanks and appreciation to Ryun for all of the fine work he has done and wish him continued success in the years to come.●

TRIBUTE TO BLAKE NEFF

● Mr. THUNE. Mr. President, today I wish to recognize Blake Neff, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Blake is a graduate of Lincoln High School in Sioux Falls, SD. Currently, he is attending Dartmouth College, where he is majoring in history. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I extend my sincere thanks and appreciation to Blake for all of the fine work he has done and wish him continued success in the years to come.●

TRIBUTE TO PETER NESBITT

● Mr. THUNE. Mr. President, today I recognize Peter Nesbitt, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Peter is a graduate of Roosevelt High School in Sioux Falls, SD. He served in the U.S. Army in Seoul, South Korea for 6 years. Currently, he is attending Georgetown University, where he is majoring in international politics.

He is a hard worker who has been dedicated to getting the most out of his internship experience. I extend my sincere thanks and appreciation to Peter for all of the fine work he has done and wish him continued success in the years to come.●

TRIBUTE TO TRAVIS NORDGAARD

● Mr. THUNE. Mr. President, today I wish to recognize Travis Nordgaard, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Travis is a graduate of Canby High School in Canby, SD. Currently, he is attending Carleton College, where he is majoring in political science and economics. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I extend my sincere thanks and appreciation to Travis for all of the fine work he has done and wish him continued success in the years to come.●

TRIBUTE TO JORDAN VEURINK

● Mr. THUNE. Mr. President, today I wish to recognize Jordan Veurink, an intern in my Washington, DC, office, for all of the hard work he has done for me, my staff, and the State of South Dakota over the past several weeks.

Jordan is a graduate of the University of Sioux Falls in Sioux Falls, SD. Currently, he is attending Texas Wesleyan University School of Law. He is a hard worker who has been dedicated to getting the most out of his internship experience.

I extend my sincere thanks and appreciation to Jordan for all of the fine work he has done and wish him continued success in the years to come.●

NEWELL, SOUTH DAKOTA

● Mr. THUNE. Mr. President, today I recognize Newell, SD. Founded in 1910, the town of Newell will celebrate its 100th anniversary this year.

Located in Butte County, Newell possesses the strong sense of community that makes South Dakota an outstanding place to live and work. Throughout its 100 year history, Newell has continued to be a strong reflection of South Dakota's greatest values and traditions. The community of Newell has much to be proud of and I am confident that Newell's success will continue well into the future.

Newell will commemorate the 100th anniversary of its founding with celebrations held on September 4 through September 6. I would like to offer my congratulations to the citizens of Newell on this milestone anniversary and wish them continued prosperity in the years to come.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES REFERRED

The following bills and joint resolution were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1796. An act to amend the Consumer Product Safety Act to require residential carbon monoxide detectors to meet the applicable ANSI/UL standard by treating that standard as a consumer product safety rule, to encourage States to require the installation of such detectors in homes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1875. An act to establish the Emergency Trade Deficit Commission; to the Committee on Finance.

H.R. 2480. An act to improve the accuracy of fur product labeling, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3040. An act to prevent mail, telemarketing, and Internet fraud targeting seniors in the United States, to promote efforts to increase public awareness of the enormous impact that mail, telemarketing, and Internet fraud have on seniors, to educate the public, seniors, their families, and their caregivers about how to identify and combat fraudulent activity, and for other purposes; to the Committee on the Judiciary.

H.R. 3989. An act to authorize the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of adding the Heart Mountain Relocation Center, in the State of Wyoming, as a unit of the National Park System; to the Committee on Energy and Natural Resources.

H.R. 4438. An act to authorize the Secretary of the Interior to expand the boundary of the Park, to conduct a study of potential land acquisitions, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4514. An act to authorize the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of designating the Colonel Charles Young Home in Xenia, Ohio as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4658. An act to authorize the conveyance of a small parcel of National Forest System land in the Cherokee National Forest and to authorize the Secretary of Agriculture to use the proceeds from that conveyance to acquire a parcel of land for inclusion in that national forest, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 4692. An act to require the President to prepare a quadrennial National Manufacturing Strategy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5138. An act to protect children from sexual exploitation by mandating reporting requirements for convicted sex traffickers and other registered sex offenders against minors intending to engage in international travel, providing advance notice of intended travel by high interest registered sex offenders outside the United States to the government of the country of destination, requesting foreign governments to notify the United States when a known child sex offender is

seeking to enter the United States, and for other purposes; to the Committee on Foreign Relations.

H.R. 5156. An act to provide for the establishment of a Clean Energy Technology Manufacturing and Export Assistance Fund to assist United States businesses with exporting clean energy technology products and services; to the Committee on Commerce, Science, and Transportation.

H.R. 5320. An act to amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency's ability to enforce the requirements of the Act; to reduce lead in drinking water; to strengthen the endocrine disruptor screening program; and for other purposes; to the Committee on Environment and Public Works.

H.R. 5414. An act to provide for the conveyance of a small parcel of National Forest System land in the Francis Marion National Forest in South Carolina, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5566. An act to amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes; to the Committee on the Judiciary.

H.R. 5669. An act to direct the Secretary of Agriculture to convey certain Federally owned land located in Story County, Iowa; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5751. An act to provide for the establishment of a task force that will be responsible for investigating cases referred to the Attorney General under the Lobbying Disclosure Act of 1995, and for other purposes; to the Committee on the Judiciary.

H.J. Res. 90. Joint resolution expressing support for designation of September 2010 as ''Gospel Music Heritage Month'' and honoring gospel music for its valuable and longstanding contributions to the culture of the United States; to the Committee on the Judiciary.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 266. Concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO); to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3101. An act to ensure that individuals with disabilities have access to emerging Internet Protocol-based communication and video programming technologies in the 21st Century.

H.R. 5143. An act to establish the National Criminal Justice Commission.

H.R. 5716. An act to provide for enhancement of existing efforts in support of research, development, demonstration, and commercial application activities to advance technologies for the safe and environmentally responsible exploration, development, and production of oil and natural gas resources.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 5827. An act to amend title 11 of the United States Code to include firearms in the types of property allowable under the alternative provision for exempting property from the estate.

S. 3762. A bill to reinstate funds to the Federal Land Disposal Account.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–7024. A communication from the Under Secretary of Defense (Policy), transmitting, pursuant to law, a report relative to Cooperative Threat Reduction Programs; to the Committee on Armed Services.

EC–7025. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Egypt; to the Committee on Banking, Housing, and Urban Affairs.

EC–7026. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' ((44 CFR Part 67)(Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on August 4, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–7027. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' ((44 CFR Part 64)(Docket No. FEMA–2010–0003)) received in the Office of the President of the Senate on August 4, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–7028. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone'' ((RIN1625–AA00)(Docket No. USCG–2010–0126)) received in the Office of the President of the Senate on August 2, 2010; to the Committee on Commerce, Science, and Transportation.

EC–7029. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Examination Action with Respect to Certain Gain Recognition Agreements'' (LMSB–4–0510–017) received in the Office of the President of the Senate on August 4, 2010; to the Committee on Finance.

EC–7030. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the website address of a report entitled ''Country Report on Terrorism 2009''; to the Committee on Foreign Relations.

EC–7031. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–480 ''Quarterly Financial and Budgetary Status Reporting Temporary Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7032. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–483 ''Renovation Penalty Abatement Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7033. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–484 ''Shirley's Place Equitable Real Property Tax Relief Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7034. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–485 ''King Towers Residential Housing Real Property Tax Exemption Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7035. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–489 ''Data-Sharing and Information Coordination Amendment Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7036. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 18–490 ''Keep D.C. Working Act of 2010''; to the Committee on Homeland Security and Governmental Affairs.

EC–7037. A communication from the Deputy Assistant Administrator of Diversion Control, Drug Enforcement Agency, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Exempt Chemical Mixtures Containing Gamma-Butyrolactone'' (RIN1117–AA64) received in the Office of the President of the Senate on August 4, 2010; to the Committee on the Judiciary.

EC–7038. A communication from the Director of the Regulatory Review Group, Commodity Credit Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Conservation Reserve Program'' (RIN0560–AH80) received in the Office of the President of the Senate on August 5, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–7039. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, notification of the Department's intent to close the Defense commissary store at RAF Fairford, United Kingdom; to the Committee on Armed Services.

EC–7040. A communication from the Secretary of Defense, transmitting, pursuant to law, a report to Congress in response to Section 1230 of the National Defense Authorization Act for Fiscal Year 2010; to the Committee on Armed Services.

EC–7041. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; ''Other rockfish'' in the Western Regulatory Area of the Gulf of Alaska'' (RIN0648–XX70) received in the Office of the President of the Senate on August 5, 2010; to the Committee on Commerce, Science, and Transportation.

EC–7042. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska'' (RIN0648–XX72) received in the Office of the President of the Senate on August 5, 2010; to the Committee on Commerce, Science, and Transportation.

EC–7043. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast

Groundfish Fishery; Biennial Specifications and Management Measures'' (RIN0648–AY94) received in the Office of the President of the Senate on August 5, 2010; to the Committee on Commerce, Science, and Transportation.

EC–7044. A communication from the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, transmitting, pursuant to law, a report relative to the Federal Disability Insurance Trust Fund; to the Committee on Finance.

EC–7045. A communication from the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, transmitting, pursuant to law, the 2010 Annual Report of the Board of Trustees; to the Committee on Finance.

EC–7046. A communication from the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, transmitting, pursuant to law, the 2010 Annual Report of the Board of Trustees; to the Committee on Finance.

EC–7047. A communication from the Acting Deputy Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the third fiscal year 2010 quarterly report on unobligated and unexpended appropriated funds; to the Committee on Foreign Relations.

EC–7048. A communication from the Principal Deputy Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Vietnam, Canada, France, Singapore, and the United Kingdom for the sale and support of the VINASAT–2 Commercial Communications Satellite Program in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–7049. A communication from the Assistant General Counsel for Regulations, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Vocational Rehabilitation Service Projects for American Indians with Disabilities—Final Regulations'' (RIN1820–AB63) received in the Office of the President of the Senate on August 5, 2010; to the Committee on Health, Education, Labor, and Pensions.

EC–7050. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to the Animal Drug User Fee Act for Fiscal Year 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–7051. A communication from the Deputy Assistant Administrator of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Correction of Code of Federal Regulations: Removal of Temporary Listing of Benzylfentanyl and Thenylfentanyl as Controlled Substances'' (RIN1117–AB26) received in the Office of the President of the Senate on August 5, 2010; to the Committee on the Judiciary.

EC–7052. A communication from the Deputy Assistant Administrator of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Control of Immediate Precursor Used in the Illicit Manufacture of Fentanyl as a Schedule II Controlled Substance'' (RIN1117–AB16) received in the Office of the President of the Senate on August 5, 2010; to the Committee on the Judiciary.

EC–7053. A communication from the Deputy Assistant Administrator of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Removal of Thresholds for the List I Chemicals Pseudoephedrine and Phenylpropanolamine'' (RIN1117–AB10) received in the Office of the President of the Senate on August 5, 2010; to the Committee on the Judiciary.

EC–7054. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a quarterly report to Congress relative to the Uniformed Services Employment and Reemployment Rights Act of 1994; to the Committee on the Judiciary.

EC–7055. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, an amended report relative to the Department's activities regarding civil rights era homicides; to the Committee on the Judiciary.

EC–7056. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Visas: Documentation of Immigrants Under the Immigration and Nationality Act as Amended'' (22 CFR Parts 40 and 42) received in the Office of the President of the Senate on August 5, 2010; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DORGAN, from the Committee on Indian Affairs, with amendments:

S. 1703. A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes (Rept. No. 111–247).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

H.R. 1517. A bill to allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service (Rept. No. 111–248).

By Mrs. BOXER, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 3305. A bill to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes (Rept. No. 111–249).

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1609. A bill to authorize a single fisheries cooperative for the Bering Sea Aleutian Islands longline catcher processor subsector, and for other purposes (Rept. No. 111–250).

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2881. A bill to provide greater technical resources to FCC Commissioners (Rept. No. 111–251).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 553. A bill to revise the authorized route of the North Country National Scenic Trail in northeastern Minnesota to include existing hiking trails along Lake Superior's north shore and in Superior National Forest and Chippewa National Forest, and for other purposes (Rept. No. 111–252).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 1017. A bill to reauthorize the Cane River National Heritage Area Commission and expand the boundaries of the Cane River National Heritage Area in the State of Louisiana (Rept. No. 111–253).

S. 1018. A bill to authorize the Secretary of the Interior to enter into an agreement with Northwestern State University in Natchitoches, Louisiana, to construct a curatorial center for the use of Cane River Creole National Historical Park, the National Center for Preservation Technology and Training, and the University, and for other purposes (Rept. No. 111–254).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1080. A bill to clarify the jurisdiction of the Secretary of the Interior with respect to the C.C. Cragin Dam and Reservoir, and for other purposes (Rept. No. 111–255).

S. 1270. A bill to modify the boundary of the Oregon Caves National Monument, and for other purposes (Rept. No. 111–256).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 1272. A bill to provide for the designation of the Devil's Staircase Wilderness Area in the State of Oregon, to designate segments of Wasson and Franklin Creeks in the State of Oregon as wild or recreation rivers, and for other purposes (Rept. No. 111–257).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 1629. A bill to authorize the Secretary of the Interior to conduct a special resource study of the archeological site and surrounding land of the New Philadelphia town site in the state of Illinois, and for other purposes (Rept. No. 111–258).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1719. A bill to provide for the conveyance of certain parcels of land to the town of Alta, Utah (Rept. No. 111–259).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 1787. A bill to reauthorize the Federal Land Transaction Facilitation Act, and for other purposes (Rept. No. 111–260).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

S. 2722. A bill to authorize the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of adding the Heart Mountain Relocation Center, in the State of Wyoming, as a unit of the National Park System (Rept. No. 111–261).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment:

S. 2726. A bill to modify the boundary of the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes (Rept. No. 111–262).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 2738. A bill to authorize National Mall Liberty Fund D.C. to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution (Rept. No. 111–263).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2830. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes

have the authority to use certain payments for certain noncoal reclamation projects (Rept. No. 111–264).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with amendments:

S. 2892. A bill to establish the Alabama Black Belt National Heritage Area, and for other purposes (Rept. No. 111–265).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2907. A bill to establish a coordinated avalanche protection program, and for other purposes (Rept. No. 111–266).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment:

S. 2933. A bill to authorize the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of designating the Colonel Charles Young Home in Xenia, Ohio, as a unit of the National Park System, and for other purposes (Rept. No. 111–267).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2941. A bill to provide supplemental ex gratia compensation to the Republic of the Marshall Islands for impacts of the nuclear testing program of the United States, and for other purposes (Rept. No. 111–268).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

H.R. 86. To eliminate an unused lighthouse reservation, provide management consistency by incorporating the rocks and small islands along the coast of Orange County, California, into the California Coastal National Monument managed by the Bureau of Land Management, and meet the original Congressional intent of preserving Orange County's rocks and small islands, and for other purposes (Rept. No. 111–269).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 129. A bill to authorize the conveyance of certain National Forest System lands in the Los Padres National Forest in California (Rept. No. 111–270).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

H.R. 601. A bill to provide for the conveyance of parcels of land to Mantua, Box Elder County, Utah (Rept. No. 111–271).

H.R. 762. A bill to validate final patent number 27–2005–0081, and for other purposes (Rept. No. 111–272).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 1043. A bill to provide for a land exchange involving certain National Forest System lands in the Mendocino National Forest in the State of California, and for other purposes (Rept. No. 111–273).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2008. A bill to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project (Rept. No. 111–274).

H.R. 2741. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the City of Hermiston, Oregon, water recycling and reuse project, and for other purposes (Rept. No. 111–275).

H.R. 3804. A bill to make technical corrections to various Acts affecting the National Park Service, to extend, amend, or establish certain National Park Service authorities, and for other purposes (Rept. No. 111–276).

H.R. 4474. A bill to authorize the continued use of certain water diversions located on National Forest System land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness in the State of Idaho, and for other purposes (Rept. No. 111–277).

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 3729. An original bill to authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes (Rept. No. 111–278).

By Mr. BAUCUS, from the Committee on Finance:

Report to accompany S.J. Res. 29, A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003 (Rept. No. 111–279).

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany S. 678, a bill to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes (Rept. No. 111–280).

By Mr. AKAKA, from the Committee on Veterans' Affairs, without amendment:

S. 3107. A bill to amend title 38, United States Code, to provide for an increase, effective December 1, 2010, in the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes (Rept. No. 111–281).

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 518. A bill to establish the Star–Spangled Banner and War of 1812 Bicentennial Commission, and for other purposes.

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 3354. A bill to redesignate the North Mississippi National Wildlife Refuges Complex as the Sam D. Hamilton North Mississippi National Wildlife Refuges Complex.

By Mrs. LINCOLN, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 3656. A bill to amend the Agricultural Marketing Act of 1946 to improve the reporting on sales of livestock and dairy products, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. BAUCUS for the Committee on Finance.

*Michael C. Camunez, of California, to be an Assistant Secretary of Commerce.

*Charles P. Blahous, III, of Maryland, to be a Member of the Board of Trustees of the Federal Hospital Insurance Trust Fund for a term of four years.

*Robert D. Reischauer, of Maryland, to be a Member of the Board of Trustees of the Federal Hospital Insurance Trust Fund for a term of four years.

*Charles P. Blahous, III, of Maryland, to be a Member of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for a term of four years.

*Robert D. Reischauer, of Maryland, to be a Member of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for a term of four years.

*Charles P. Blahous, III, of Maryland, to be a Member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund for a term of four years.

*Robert D. Reischauer, of Maryland, to be a Member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund for a term of four years.

By Mr. LEAHY for the Committee on the Judiciary.

Mary Helen Murguia, of Arizona, to be United States Circuit Judge for the Ninth Circuit.

Edmond E-Min Chang, of Illinois, to be United States District Judge for the Northern District of Illinois.

Leslie E. Kobayashi, of Hawaii, to be United States District Judge for the District of Hawaii.

Carlton W. Reeves, of Mississippi, to be United States District Judge for the Southern District of Mississippi.

Denise Jefferson Casper, of Massachusetts, to be United States District Judge for the District of Massachusetts.

Melinda L. Haag, of California, to be United States Attorney for the Northern District of California for the term of four years.

Barry R. Grissom, of Kansas, to be United States Attorney for the District of Kansas for the term of four years.

David J. Hickton, of Pennsylvania, to be United States Attorney for the Western District of Pennsylvania for the term of four years.

Donald Martin O'Keefe, of California, to be United States Marshal for the Northern District of California for the term of four years.

James Thomas Fowler, of Tennessee, to be United States Marshal for the Eastern District of Tennessee for the term of four years.

Craig Ellis Thayer, of Washington, to be United States Marshal for the Eastern District of Washington for the term of four years.

Joseph Anthony Papili, of Delaware, to be United States Marshal for the District of Delaware for the term of four years.

James Alfred Thompson, of Utah, to be United States Marshal for the District of Utah for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER (for himself, Mr. KERRY, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. CASEY, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. HARKIN, and Ms. KLOBUCHAR):

S. 3708. A bill to amend titles XVIII and XIX of the Social Security Act to clarify the application of EHR payment incentives in cases of multi-campus hospitals; to the Committee on Finance.

By Mr. WHITEHOUSE (for himself, Mr. BROWN of Ohio, Mr. FRANKEN, Mr. LAUTENBERG, Mrs. SHAHEEN, Ms. STABENOW, and Mr. REED):

S. 3709. A bill to amend the Public Health Services Act and the Social Security Act to extend health information technology assistance eligibility to behavioral health, mental

health, and substance abuse professionals and facilities, and for other purposes; to the Committee on Finance.

By Mrs. MURRAY:

S. 3710. A bill to improve broadband coverage and service throughout the United States, especially in rural and tribal areas, and spectrum coverage for public safety broadband communication services, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 3711. A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, education, research, and medical management referral program for viral hepatitis infection that will lead to a marked reduction in the disease burden associated with chronic viral hepatitis and liver cancer; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORNYN (for himself, Mr. CRAPO, and Mr. ROBERTS):

S. 3712. A bill to rescind the 3.8 percent tax on the investment income of the American people and to promote job creation and small businesses; to the Committee on Finance.

By Mr. FEINGOLD:

S. 3713. A bill to improve post-employment restrictions on representation of foreign entities by senior Government officers and employees; to the Committee on the Judiciary.

By Mr. CONRAD (for himself and Mr. HATCH):

S. 3714. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for clean coal technology, and for other purposes; to the Committee on Finance.

By Ms. STABENOW (for herself, Ms. CANTWELL, Mrs. MCCASKILL, and Mr. BROWN of Ohio):

S. 3715. A bill to amend the Internal Revenue Code of 1986 to modify certain tax incentives for alternative vehicles, to establish a battery insurance program within the Department of Energy, and for other purposes; to the Committee on Finance.

By Mrs. GILLIBRAND (for herself and Mr. JOHANNS):

S. 3716. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for the installation and maintenance of mechanical insulation property; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. CORNYN, and Mr. KAUFMAN):

S. 3717. A bill to amend the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to provide for certain disclosures under section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

By Mr. CARDIN:

S. 3718. A bill to amend title 38, United States Code, to ensure that beneficiaries of Servicemembers' Group Life Insurance receive financial counseling and disclosure information regarding life insurance payments, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. LINCOLN (for herself and Mr. CONRAD):

S. 3719. A bill to establish a grant program for first responder agencies that experience an extraordinary financial burden resulting from the deployment of employees; to the Committee on Homeland Security and Governmental Affairs.

By Mr. CASEY:

S. 3720. A bill to amend the Workforce Investment Act of 1998, to authorize a national grant program for on-the-job training; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER (for himself, Mr. REID, Mr. INOUYE, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. BINGAMAN, Mrs. MCCASKILL, Mr. CASEY, Mr. MERKLEY, Mr. UDALL of Colorado, Mr. BEGICH, Mr. BURRIS, Mr. MCCAIN, and Mr. KYL):

S. 3721. A bill making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; to the Committee on Appropriations.

By Mr. INHOFE:

S. 3722. A bill to repeal the Zimbabwe Democracy and Economic Recovery Act of 2001; to the Committee on Foreign Relations.

By Mr. COBURN (for himself, Mr. HATCH, Mr. VITTER, Mr. BENNETT, Mr. INHOFE, Mr. CRAPO, Mr. BOND, Mr. GRASSLEY, Mr. GRAHAM, Mr. CORNYN, Mr. MCCAIN, Mrs. HUTCHISON, Mr. RISCH, Mr. BROWNBACK, Mr. WICKER, Mr. ROBERTS, Mr. CHAMBLISS, Mr. VOINOVICH, Mr. JOHANNS, Mr. ISAKSON, Mr. ENZI, Ms. MURKOWSKI, Mr. THUNE, Mr. BARRASSO, Mr. BURR, and Mr. ENSIGN):

S. 3723. A bill to prohibit taxpayer funding of insurance plans or health care programs that cover abortion; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BENNET (for himself, Mr. UDALL of Colorado, and Mr. UDALL of New Mexico):

S. 3724. A bill to direct the Secretary of Education to pay to Fort Lewis College in the State of Colorado an amount equal to the tuition charges for Indian students who are not residents of the State of Colorado; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN (for himself, Ms. SNOWE, and Mr. SCHUMER):

S. 3725. A bill to prevent the importation of merchandise into the United States in a manner that evades antidumping and countervailing duty orders, and for other purposes; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself, Ms. LANDRIEU, Mr. BROWNBACK, and Mr. JOHNSON):

S. 3726. A bill to enhance pre- and post-adoptive support services; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself, Mrs. HUTCHISON, Mr. KOHL, and Mr. ISAKSON):

S. 3727. A bill to amend title 18, United States Code, with respect to the offense of stalking; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself, Mr. HATCH, Mr. GRAHAM, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Ms. SNOWE, Mrs. BOXER, Mrs. FEINSTEIN, Mr. CARDIN, Mr. KOHL, and Mrs. HUTCHISON):

S. 3728. A bill to amend title 17, United States Code, to extend protection to fashion design, and for other purposes; to the Committee on the Judiciary.

By Mr. ROCKEFELLER:

S. 3729. An original bill to authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes; from the Committee on Commerce, Science, and Transportation; considered and passed.

By Mr. ENSIGN (for himself, Mr. UDALL of New Mexico, and Mr. BEGICH):

S. 3730. A bill to direct the Secretary of the Interior to publish in the Federal Register a list of States that have not submitted certain information required under chapter 69 of title 31, United States Code; to the Committee on Energy and Natural Resources.

By Mr. WARNER (for himself and Mr. WICKER):

S. 3731. A bill to require the National Telecommunications and Information Administration to conduct a competition to award grants for the development of nonstationary radio over Internet protocol devices that support mission-critical broadband voice and data communications of public safety personnel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. SHAHEEN (for herself, Mr. REID, Mr. DORGAN, Mr. KAUFMAN, Mr. BEGICH, Mr. BINGAMAN, and Mr. KERRY):

S. 3732. A bill to establish within the Department of Education the Innovation Inspiration school grant program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BENNET (for himself, Mr. ALEXANDER, Mr. FRANKEN, and Mr. BURR):

S. 3733. A bill to amend the Elementary and Secondary Education Act of 1965 to allow State educational agencies, local educational agencies, and schools to increase implementation of schoolwide positive behavioral interventions and supports and early intervening services in order to improve student academic achievement, reduce overidentification of individuals with disabilities, and reduce disciplinary problems in school, and to improve coordination with similar activities and services provided under the Individuals with Disabilities Education Act; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD:

S. 3734. A bill to require the President to submit reports and certifications to Congress on the duties of certain employees who are appointed without the advice and consent of the Senate, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. LINCOLN (for herself and Mr. CHAMBLISS):

S. 3735. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to improve the use of certain registered pesticides; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INHOFE:

S. 3736. A bill to amend the Clean Air Act to allow States to opt out of the corn ethanol portions of the renewable fuel standard; to the Committee on Environment and Public Works.

By Mr. ENZI (for himself, Mr. HARKIN, Mr. BURR, and Mr. FRANKEN):

S. 3737. A bill to amend the Public Health Service Act and title XVIII of the Social Security Act to make the provision of technical services for medical imaging examinations and radiation therapy treatments safer, more accurate, and less costly; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY:

S. 3738. A bill to amend the Internal Revenue Code of 1986 to provide incentives for clean energy manufacturing to reduce emissions, to produce renewable energy, to promote conservation, and for other purposes; to the Committee on Finance.

By Mr. CASEY (for himself, Mrs. MURRAY, Mr. BURRIS, Ms. CANTWELL, Ms. KLOBUCHAR, Mr. BROWN of Ohio, Mr. FEINGOLD, Mr. MERKLEY, Mrs. GILLIBRAND, Mr. SANDERS, and Mr. WYDEN):

S. 3739. A bill to amend the Safe and Drug-Free Schools and Communities Act to include bullying and harassment prevention programs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BEGICH:

S. 3740. A bill to supplement State jurisdiction in Alaska Native villages with Federal

and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children and to reduce alcohol and drug abuse and for other purposes; to the Committee on Indian Affairs.

By Mrs. HAGAN (for herself and Mr. GRAHAM):

S. 3741. A bill to provide U.S. Customs and Border Protection with authority to more aggressively enforce trade laws relating to textile or apparel articles, and for other purposes; to the Committee on Finance.

By Mr. PRYOR (for himself and Mr. ROCKEFELLER):

S. 3742. A bill to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach; to the Committee on Commerce, Science, and Transportation.

By Ms. KLOBUCHAR (for herself and Mr. ALEXANDER):

S. 3743. A bill to amend title 23, United States Code, to incorporate regional transportation planning organizations into statewide transportation planning, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. BOXER:

S. 3744. A bill to establish Pinnacles National Park in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN:

S. 3745. A bill to amend the Consolidated Farm and Rural Development Act to require the Secretary of Agriculture in the case of low-income States to use 95 percent of the national average nonmetropolitan median income for purposes of determining the eligibility of communities in the States for certain rural development funding; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BINGAMAN (for himself, Mrs. SHAHEEN, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 3746. A bill to amend the Energy Policy Act of 2005 to improve the loan guarantee program of the Department of Energy under title XVII of that Act; to the Committee on Energy and Natural Resources.

By Mr. HATCH:

S. 3747. A bill to provide for a reduction and limitation on the total number of Federal employees, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. WYDEN (for himself and Mrs. HAGAN):

S. 3748. A bill to amend title 10, United States Code, to provide for the retention of members of the reserve components on active duty for a period of 45 days following an extended deployment in contingency operations of homeland defense missions to support their reintegration into civilian life, and for other purposes; to the Committee on Armed Services.

By Mr. CONRAD (for himself and Mr. ENSIGN):

S. 3749. A bill to amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity; to the Committee on Finance.

By Mr. BROWN of Ohio:

S. 3750. A bill to amend the Federal Water Pollution Control Act to include certain inland lakes within a coastal water monitoring and grant program; to the Committee on Environment and Public Works.

By Mr. HATCH (for himself, Mr. DODD, Mr. BURR, Mr. REED, Mr. ENSIGN, and Mr. FRANKEN):

S. 3751. A bill to amend the Stem Cell Therapeutic and Research Act of 2005; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DORGAN (for himself, Mr. JOHNSON, Mr. THUNE, Mr. TESTER, Mr. UDALL of New Mexico, and Mr. FRANKEN):

S. 3752. A bill to amend the Energy Policy Act of 1992 to streamline Indian energy development, to enhance programs to support Indian energy development and efficiency, to make technical corrections, and for other purposes; to the Committee on Indian Affairs.

By Mr. REED (for himself, Mrs. SHAHEEN, and Mr. WHITEHOUSE):

S. 3753. A bill to provide for the treatment and temporary financing of short-time compensation programs; to the Committee on Finance.

By Mr. BARRASSO:

S. 3754. A bill to provide funding for the settlement of lawsuits against the Federal government for discrimination against Black Farmers and the mismanagement of Native American trust accounts; to the Committee on Finance.

By Mr. ROCKEFELLER:

S. 3755. A bill to ensure fairness in admiralty and maritime law and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ROCKEFELLER:

S. 3756. A bill to amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. FEINGOLD (for himself and Mr. LEAHY):

S. 3757. A bill to reaffirm United States objectives in Ethiopia and encourage critical democratic and humanitarian principles and practices, and for other purposes; to the Committee on Foreign Relations.

By Mrs. GILLIBRAND:

S. 3758. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish and enforce a maximum somatic cell count requirement for fluid milk; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 3759. A bill to amend the Energy Policy Act of 2005 to authorize the Secretary of Energy to issue conditional commitments for loan guarantees under certain circumstances; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mr. KERRY):

S. 3760. A bill to amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes; to the Committee on Finance.

By Mr. DORGAN:

S. 3761. A bill to ensure that amounts appropriated to the Bureau of Indian Affairs under the American Recovery and Reinvestment Act of 2009 remain available until September 30, 2010; to the Committee on Appropriations.

By Mr. REID (for himself and Mr. ENSIGN):

S. 3762. A bill to reinstate funds to the Federal Land Disposal Account; read the first time.

By Ms. LANDRIEU:

S. 3763. A bill to improve safety and preparedness surrounding offshore energy production and to respond to the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KOHL:

S. 3764. A bill to amend section 1716E of title 18, United States Code, to clarify the application of the exception for the noncommercial mailing of tobacco products to members of the Armed Forces; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself, Mr. LUGAR, Mr. FRANKEN, Mr. AKAKA, Mr. BAUCUS, Mrs. MURRAY, Mr. CONRAD, Mrs. FEINSTEIN, Mr. CARDIN, Mr. TESTER, Mr. BEGICH, Mrs. LINCOLN, Mr. GOODWIN, Mr. MENENDEZ, and Mr. CASEY):

S. Res. 607. A resolution recognizing the month of October 2010 as ''National Principals Month''; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. WICKER, Mr. COCHRAN, Mr. VITTER, Mr. CORNYN, Mr. SESSIONS, Mr. BEGICH, Ms. MURKOWSKI, and Mr. SHELBY):

S. Res. 608. A resolution expressing the sense of the Senate that the Secretary of the Interior should take immediate action to expedite the review and appropriate approval of applications for shallow water drilling permits in the Gulf of Mexico, the Beaufort Sea, and the Chukchi Sea; to the Committee on Energy and Natural Resources.

By Mr. CARDIN:

S. Res. 609. A resolution congratulating the National Urban League on its 100th year of service to the United States; to the Committee on the Judiciary.

By Mr. UDALL of New Mexico (for himself, Mr. BINGAMAN, Mr. BENNET, and Mr. UDALL of Colorado):

S. Res. 610. A resolution recognizing the 40th anniversary of the Cumbres and Toltec Scenic Railroad; to the Committee on Commerce, Science, and Transportation.

By Mr. CARDIN (for himself, Ms. MIKULSKI, and Mr. BAUCUS):

S. Res. 611. A resolution congratulating the Cumberland Valley Athletic Club on the 48th anniversary of the running of the JFK 50—Mile Ultra—Marathon; to the Committee on the Judiciary.

By Ms. MURKOWSKI (for herself, Mr. JOHNSON, Mr. BENNETT, Mr. SPECTER, Mr. DORGAN, Mr. BAYH, Mr. HATCH, and Mrs. MURRAY):

S. Res. 612. A resolution designating September 9, 2010, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; considered and agreed to.

By Mr. CORNYN (for himself and Mr. DODD):

S. Res. 613. A resolution recognizing the 63rd anniversary of India's independence, expressing appreciation to Americans of Indian descent for their contributions to society, and expressing support and optimism for the strategic partnership and friendship between the United States and India in the future; considered and agreed to.

By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Res. 614. A resolution commemorating the 50th anniversary of the publication of

''To Kill a Mockingbird''; considered and agreed to.

By Mr. REID (for himself and Mr. MCCONNELL):

S. Res. 615. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs; considered and agreed to.

By Mr. BURR:

S. Res. 616. A resolution expressing the sense of the Senate that the United States civil—military partnership in Iraq, under the current leadership of General Raymond Odierno and Ambassador Christopher Hill, has refined and sustained an effective counterinsurgency and counterterrorism strategy that has enabled significant improvements in the security, governance, and rule of law throughout Iraq, and that these leaders should be commended for their integrity, resourcefulness, commitment, and sacrifice; to the Committee on Foreign Relations.

By Ms. COLLINS (for herself, Mr. LAUTENBERG, Mr. BURR, Mr. LIEBERMAN, Mr. AKAKA, and Mr. INOUYE):

S. Con. Res. 70. A concurrent resolution supporting the observance of ''Spirit of '45 Day''; to the Committee on Foreign Relations.

By Mr. FEINGOLD (for himself and Ms. COLLINS):

S. Con. Res. 71. A concurrent resolution recognizing the United States national interest in helping to prevent and mitigate acts of genocide and other mass atrocities against civilians, and supporting and encouraging efforts to develop a whole of government approach to prevent and mitigate such acts; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 332

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 332, a bill to establish a comprehensive interagency response to reduce lung cancer mortality in a timely manner.

S. 518

At the request of Mr. CARDIN, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. 518, a bill to establish the Star-Spangled Banner and War of 1812 Bicentennial Commission, and for other purposes.

S. 632

At the request of Mr. BAUCUS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 981

At the request of Mr. REID, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 981, a bill to support research and public awareness activities with respect to inflammatory bowel disease, and for other purposes.

S. 984

At the request of Mrs. BOXER, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 984, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 1619

At the request of Mr. DODD, the names of the Senator from Ohio (Mr. BROWN), the Senator from Virginia (Mr. WARNER) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1619, a bill to establish the Office of Sustainable Housing and Communities, to establish the Interagency Council on Sustainable Communities, to establish a comprehensive planning grant program, to establish a sustainability challenge grant program, and for other purposes.

S. 1741

At the request of Mrs. GILLIBRAND, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1741, a bill to authorize States or political subdivisions thereof to regulate fuel economy and emissions standards for taxicabs.

S. 2814

At the request of Ms. COLLINS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2814, a bill to amend title XVIII of the Social Security Act to ensure more timely access to home health services for Medicare beneficiaries under the Medicare program.

S. 2925

At the request of Mr. WYDEN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2925, a bill to establish a grant program to benefit victims of sex trafficking, and for other purposes.

S. 3215

At the request of Mr. BINGAMAN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 3215, a bill to amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

S. 3474

At the request of Mr. FEINGOLD, the names of the Senator from Kentucky (Mr. BUNNING), the Senator from Iowa (Mr. GRASSLEY), the Senator from Nevada (Mr. ENSIGN), the Senator from Nebraska (Mr. JOHANNS), the Senator from Maryland (Mr. CARDIN) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 3474, a bill to provide an optional fast-track procedure the President may use when submitting rescission requests, and for other purposes.

S. 3493

At the request of Mr. SPECTER, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3493, a bill to reauthorize and enhance Johanna's Law to increase public awareness and knowledge with respect to gynecologic cancers.

S. 3495

At the request of Mr. DORGAN, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 3495, a bill to promote the deployment of plug-in electric drive vehicles, and for other purposes.

S. 3501

At the request of Mr. HATCH, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 3501, a bill to protect American job creation by striking the job-killing Federal employer mandate.

S. 3502

At the request of Mr. HATCH, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 3502, a bill to restore Americans' individual liberty by striking the Federal mandate to purchase insurance.

S. 3508

At the request of Mr. UDALL of New Mexico, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 3508, a bill to strengthen the capacity of the United States to lead the international community in reversing renewable natural resource degradation trends around the world that threaten to undermine global prosperity and security and eliminate the diversity of life on Earth, and for other purposes.

S. 3510

At the request of Mr. CONRAD, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3510, a bill to amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

S. 3572

At the request of Mrs. LINCOLN, the names of the Senator from Virginia (Mr. WARNER), the Senator from Oregon (Mr. WYDEN), the Senator from Wisconsin (Mr. KOHL), the Senator from Missouri (Mrs. MCCASKILL), the Senator from Colorado (Mr. UDALL), the Senator from North Dakota (Mr. CONRAD), the Senator from Florida (Mr. NELSON), the Senator from West Virginia (Mr. GOODWIN), the Senator from Alaska (Mr. BEGICH), the Senator from Montana (Mr. BAUCUS), the Senator from New York (Mrs. GILLIBRAND), the Senator from California (Mrs. BOXER), the Senator from Vermont (Mr. SANDERS), the Senator from Pennsylvania (Mr. CASEY), the Senator from North Dakota (Mr. DORGAN), the Senator from Delaware (Mr. CARPER), the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Michigan (Ms. STABENOW), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Massachusetts (Mr. KERRY), the Senator from Hawaii (Mr. INOUYE), the Senator from Illinois (Mr. BURRIS), the Senator from Michigan (Mr. LEVIN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Nevada (Mr. REID), the Senator from Maryland (Ms. MIKULSKI), the Senator from Illinois (Mr.

DURBIN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 3572, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first law enforcement agency, the United States Marshals Service.

S. 3591

At the request of Mr. ROCKEFELLER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 3591, a bill to provide financial incentives and a regulatory framework to facilitate the development and early deployment of carbon capture and sequestration technologies, and for other purposes.

S. 3654

At the request of Mr. LEAHY, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 3654, a bill to amend title 11 of the United States Code to include firearms in the types of property allowable under the alternative provision for exempting property from the estate.

S. 3657

At the request of Mr. WYDEN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3657, a bill to establish as a standing order of the Senate that a Senator publicly disclose a notice of intent to objecting to any measure or matter.

S. 3661

At the request of Mr. BENNET, his name was added as a cosponsor of S. 3661, a bill to amend the Federal Water Pollution Control Act to ensure the safe and proper use of dispersants in the event of an oil spill or release of hazardous substances, and for other purposes.

S. 3667

At the request of Mr. KERRY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 3667, a bill to amend part A of title IV of the Social Security Act to exclude child care from the determination of the 5-year limit on assistance under the temporary assistance to needy families program, and for other purposes.

S. 3706

At the request of Ms. STABENOW, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 3706, a bill to extend unemployment insurance benefits and cut taxes for businesses to create hiring incentives, and for other purposes.

S. CON. RES. 63

At the request of Mr. JOHNSON, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. Con. Res. 63, a concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO).

S. RES. 322

At the request of Mr. LEVIN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. Res. 322, a resolution expressing the sense of the Senate on religious minorities in Iraq.

S. RES. 586

At the request of Mr. FEINGOLD, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of S. Res. 586, a resolution supporting democracy, human rights, and civil liberties in Egypt.

S. RES. 593

At the request of Mrs. MURRAY, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. Res. 593, a resolution expressing support for designation of October 7, 2010, as ''Jumpstart's Read for the Record Day''.

AMENDMENT NO. 4531

At the request of Mr. JOHANNS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of amendment No. 4531 intended to be proposed to H.R. 5297, an act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY:

S. 3711. A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, education, research, and medical management referral program for viral hepatitis infection that will lead to a marked reduction in the disease burden associated with chronic viral hepatitis and liver cancer; to the Committee on Health, Education, Labor, and Pensions.

Mr. KERRY. Mr. President, a silent killer is loose in America. It contributes to the deaths of 15,000 and threatens the health of 5.3 million Americans each year. It is more common than HIV/AIDS. It is the leading cause of liver cancer, which is on the rise and continues to be a fatal and costly disease. Yet it remains unrecognized as a serious threat to public health. This silent killer is viral hepatitis.

That is why I am introducing the Viral Hepatitis and Liver Cancer Control and Prevention Act of 2010, which authorizes $600 million to develop a national strategy over the next five years to prevent and control Hepatitis B and C.

Most people don't even know they have it until years later when it causes cancer or liver disease. We can help avoid such needless tragedies with prevention and surveillance programs and by educating Americans on the pervasive nature of Hepatitis B and Hepatitis C.

In January, the Institute of Medicine, IOM, released a report entitled ''Hepatitis and Liver Cancer.'' The report concludes that the current approach toward treating hepatitis is not working. Too many Americans at-risk for hepatitis or living with it do not know it and too many health providers are not screening for it. That should come as no surprise because there is no Federal funding of core public health services for viral hepatitis. Also, there is no federally funded chronic Hepatitis B and C surveillance system.

The IOM report calls for a national strategy to prevent and control Hepatitis B and C.

Hepatitis B is 100 times more infectious than HIV and, left untreated, can cause liver disease, liver cancer and premature death decades after infection. About 2 billion people worldwide have been infected with Hepatitis B and about 170 million people are chronically infected with Hepatitis C. Tragically, ⅔ of those infected, on average, are unaware of their status, which increases the chance of spreading the disease.

Dr. Howard Koh, Assistant Secretary of Health, has convened a task force including representatives from all Department of Health and Human Services agencies to develop an action plan to implement the recommendations of the Institute of Medicine Report.

Unless action is taken to prevent chronic Hepatitis B and Hepatitis C, thousands more Americans will die each year from liver cancer or liver disease related to these preventable diseases.

The Viral Hepatitis and Liver Cancer Control and Prevention Act directs the Secretary of Health and Human Services to develop a national plan for the prevention, control and medical management of viral hepatitis in coordination with the Centers for Disease Control and Prevention, CDC, the National Institutes for Health, the National Cancer Institute, NCI, the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, SAMHSA, the Agency for Healthcare Research and Quality and the Department of Veterans Affairs.

The national plan is required to include the following components: education and awareness programs; an expansion of current vaccination programs; counseling regarding the ongoing risk factors associated with viral hepatitis; support for medical evaluation and ongoing medical management; increased support for adult viral hepatitis coordinators; and the establishment of an epidemiological surveillance program to identify trends in incidence and prevalence in the disease.

The Viral Hepatitis and Liver Cancer Control and Prevention Act of 2010 also

enhances SAMHSA's role in hepatitis activities by providing the agency with the authority to develop educational materials and intervention strategies to reduce the risks of hepatitis among substance abusers and individuals with mental illness.

It authorizes nearly $600 million over the next five years to fund the national strategy to prevent and control viral hepatitis.

I believe this investment in hepatitis control and prevention could save our country billions of dollars in the coming years. The baby boomer population is estimated to account for two out of every three cases of chronic Hepatitis C. As these Americans age into Medicare they are likely to develop complications and require expensive medical interventions at great cost to taxpayers. In the next decade, the costs of Hepatitis C to commercial insurance and Medicare will more than double, and within 20 years Medicare costs will increase five-fold. Projecting further out, over the next 20 years, total medical costs for patients with Hepatitis C infection could increase more than 2.5 times—from $30 billion to more than $85 billion.

However, the costs for early detection and intervention are dramatically less than the costs for treatment post-infection. The costs for Hepatitis B vaccinations vary but range from $75 to $165, whereas treatment can cost up to $16,000 per year. Screening for Hepatitis C is also relatively inexpensive compared to treatment that can cost up to $25,000 per year. Untreated, these infections will develop into liver disease that can cost up to $110,000 per hospital admission. We can do better.

Viral hepatitis is an increasingly significant issue for Massachusetts. The Massachusetts Department of Public Health reports over 2,000 cases of newly diagnosed chronic Hepatitis B infection and 8,000 to 10,000 cases of newly diagnosed chronic Hepatitis C infection each year. Viral hepatitis infections are by far the highest volume of reportable infectious diseases to the state. Additionally, there has been and continues to be a striking increase of cases of Hepatitis C infection among adolescents and young adults in the state. The Department of Public Health has received reports on over 1,000 cases in people under the age of 25 years every year since 2007, indicating that there is a new epidemic of Hepatitis C disease.

Resources to address these complex problems have been extremely limited. Federal resources are scarce with the average award per state of $90,000 from the Division of Viral Hepatitis at CDC. That is less than the cost of one hospital admission for liver disease.

The Massachusetts State Legislature has, until recently, provided modest funding to support Hepatitis C initiatives in the state. At this time, all of that funding, $1.4 million annually for the past several years, has been eliminated due to the ongoing fiscal crisis. However, past funding has allowed Massachusetts to develop innovative programs in many areas.

State funds have supported disease surveillance initiatives so that changes in the epidemics can be detected, such as the increase of cases of Hepatitis C infection among young people or to identify cases of viral hepatitis that are being transmitted through non-sterile practices in health care settings. Disease surveillance programs have been used to identify women of childbearing age that are infected with Hepatitis B so that transmission to their babies can be prevented.

The Viral Hepatitis and Liver Cancer Control and Prevention Act of 2010 would provide critical assistance to Massachusetts and other states by starting to provide appropriate levels of funding to address these epidemics of disease.

In Massachusetts, funding would be used to expand disease surveillance efforts so that we can better understand the impact of these infections and direct services appropriately to highly impacted communities. It would help to expand screening and educational services to help identify the large numbers of people in the state living with Hepatitis B and C that have not been identified. It would provide support to address the complex prevention needs of adolescents and young adults who are using drugs and at-risk for infection.

Increased funding for adult immunization would assist the State in better targeting and providing Hepatitis B vaccine to the adults at highest risk, including those that are incarcerated and being treated for drug abuse. Finally, it would also help to provide essential medical management for people already infected with Hepatitis B and C who are not able to access appropriate care currently.

I would like to thank a number of organizations who have been integral to the development of the Viral Hepatitis and Liver Cancer Control and Prevention Act of 2010. I am pleased that 102 hepatitis focused organizations from across the Nation have endorsed the legislation, including the National Viral Hepatitis Roundtable, National Alliance of State and Territorial AIDS Directors, NASTAD, the Hepatitis B Foundation, the Hepatitis C Association, American Association for the Study of Liver Disease, and the Hepatitis Education Project.

We have no time to waste. This legislation, along with strategic investments in public health and prevention programs, can save billions of hard earned taxpayer dollars. It can improve the quality of life for tens of thousands of people all over America. I urge my colleagues to support activities that promote early detection and education and to cosponsor this important legislation.

By Mr. CORNYN (for himself, Mr. CRAPO, and Mr. ROBERTS):

S. 3712. A bill to rescind the 3.8 percent tax on the investment income of the American people and to promote job creation and small businesses; to the Committee on Finance.

Mr. CORNYN. Mr. President, today I am introducing the Economic Growth and Jobs Protection Act of 2010. This legislation would repeal the 3.8 percent tax on investment income that was included in the Health Care Reconciliation Act of 2010, P.L. 111–152, signed into law by the President earlier this year. I am pleased that Senator ROBERTS and Senator CRAPO are cosponsors of this legislation.

We know that taxpayers already face the largest tax increase in history when the 2001 and 2003 tax relief expire at the end of the year. Unless Congress acts, in less than 150 days: the highest individual tax bracket will rise from 35 percent to just under 40 percent; people in the lowest tax bracket will see a 50 percent tax increase, from 10 percent to 15 percent; the marriage penalty will increase; the child credit will be cut in half; and taxes on capital gains and dividends will increase. In other words, every taxpayer will pay higher taxes to Washington.

But while taxpayers may be concerned about the upcoming tax shock, many may not be aware of another unpleasant surprise that will soon follow. The Health Care Reconciliation Act that was jammed through the Senate along partisan lines includes a $123 billion tax on the capital gains, dividends, rents, and interest earned by certain taxpayers. Enacting this permanent tax hike was a mistake then and is a mistake now. It will discourage savings and investment; it will reduce productivity and will depress wages and the standard of living for millions of Americans. According to the Institute for Research on the Economics of Taxation—a non-profit economic policy research and educational organization, a 2.9 percent tax would depress economic growth by 1.3 percent and reduce capital formation by 3.4 percent. The damage on job and economic growth would be even greater from a 3.8 percent investment tax.

Simply put, increasing taxes on investment income is a job killer and increases uncertainty at a time that the Chairman of the Federal Reserve has told Congress that the economic outlook is ''unusually uncertain.'' Taxpayers, including small businesses, are already scheduled to get hit with the largest tax increase in history in less than 160 days if Congress fails to act. In fact, the top tax rate on capital gains will eventually be 23.8 percent as the rate bounces back to 20 percent from 15 percent. And the top tax rate for dividends will eventually rise to 43.4 percent.

Why do we want to pile on the backs of working families and job creators with more taxes that do nothing to create jobs at a time that the national unemployment rate remains 9.5 percent and where in some States, such as Nevada, there is record unemployment? We know the key to job creation is to

grow the economy and allow small businesses to flourish, invest and create jobs.

In fact, according to the Federal Reserve Bank of Boston, we will need several years of very strong growth to reach 5 percent unemployment. For example, to reach 5 percent unemployment by the end of 2013, the economy would need to average 5 percent per year. To reach 5 percent unemployment by 2015 would still take growth of 4.2 percent a year. This is just one reason, that during the health care debate I offered a motion that would have directed the Senate Finance Committee to report the bill back without the 3.8 percent tax on the investment income. Although my attempt to strip out this job-killing tax fell short, I want to take this opportunity to note that 6 of my colleagues on the other side of the aisle supported my motion.

Not only will this legislation protect jobs and the investment security of taxpayers, it will also make sure that Congress restores one of the President's campaign promises. On September 12, 2008, then-candidate Obama promised the American people that, ''Everyone in America—everyone—will pay lower taxes than they would under the rates Bill Clinton had in the 1990s.'' But when combined with the President's budget proposal, this additional tax on investment will raise taxes on many Americans higher than they were under the rates President Clinton had in the 1990s.

I ask that my colleagues support this legislation that will repeal this job-killing tax on small business investment, and thus will protect economic growth, jobs, and the retirement savings of taxpayers. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3712

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Growth and Jobs Protection Act of 2010''.

SEC. 2. REPEAL OF UNEARNED INCOME MEDICARE CONTRIBUTION.

Section 1402 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152) and the amendments made by such section are repealed.

By Mr. FEINGOLD:

S. 3713. A bill to improve post-employment restrictions on representation of foreign entities by senior Government officers and employees; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation that will tighten restrictions on individuals who move between the public and private sector—the so-called revolving door. The legislation that I am introducing today aims to better protect the United States from conflicts of interest posed by this practice, particularly where it comes to senior government officials and employees going on to represent foreign entities—sometimes even the governments of the very foreign countries in which they had just finished representing the United States.

There was a time when public service was held in high esteem, but the ever expanding revolving door between public and private employment has generated cynicism and frustration. By placing meaningful restrictions on how quickly former officials can access this door and where it will take them, we can reverse the trend of government employees going off to lobby for foreign entities by making clear they are not ''for sale.'' This legislation is an important reminder that public service should be treated as an honor and a privilege, and will help to ensure that government officials make decisions based on the best interests of the American people, and not on their future career prospects.

Foreign governments and businesses have come to rely on U.S. lobbyists to advocate for their interests and interact with key policy makers. According to an article in the Milwaukee Journal Sentinel earlier this year, data analyzed by watchdog groups found that ''[m]ore than 340 foreign entities—from governments to separatist groups to for-profit companies—spent at least $87 million on lobbying efforts in the United States between July 2007 and December 2008.'' Former senior government officials are in demand to represent or advise foreign entities after leaving office. Even from the limited data available, it appears at least four recent U.S. Ambassadors—the President's chief representatives abroad—have done this kind of work in recent years. It is not just ambassadors who go on to represent foreign entities, but also deputy secretaries, under secretaries, other categories of executive branch officials, and, of course, former members of Congress.

The bill I am introducing today will strengthen the post-employment restrictions on foreign entity representation that are already in place by both length and scope. It will cover those officials, including in the legislative branch, that are already subject to revolving door restrictions, but expand the current 1-year restriction on representing, aiding or advising a foreign entity with intent to influence to 5 years. It will also expand the definition of prohibited entities to include foreign businesses as well as foreign governments and political parties.

Revolving door restrictions are supposed to protect the U.S. Government and the people it serves from conflicts of interest and from Government officials appearing to cash in on their public service. They help ensure that people representing the United States at the most senior levels are not being influenced by the possibility of securing lucrative jobs from outside entities while still in Government and they help prevent inside knowledge and personal connections to colleagues still in Government from being used on behalf of private parties. These are clearly important and legitimate goals and the current 1-year prohibition on foreign entity representation is insufficient to secure them.

Critics of tightening these restrictions may argue that former Government officials lobbying on behalf of foreign governments can sometimes pursue very laudable aims for those governments, such as securing resources for public health needs. This is surely true. But for every such positive example envisioned, another can come to mind that is notably less constructive, such as lobbying on behalf of governments with reprehensible human rights records. Moreover, I question how healthy it is when a culture of lobbying becomes so prevalent that foreign governments seeking to advance their objectives in the United States may feel obliged to hire their own advocates in this country.

We need to restore faith in government, and we can help to do that by ensuring those who serve at the highest levels do not turn around and use their influence and expertise gained during public service for personal profit and foreign interests. My legislation will help buttress the framework of restrictions that we as members of the Government impose on ourselves to ensure this broader good. I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3713

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTRICTIONS RELATING TO FOREIGN ENTITIES.

(a) IN GENERAL.—Section 207(f) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking ''1 year'' and inserting ''5 years''; and

(2) by striking paragraph (3) and inserting the following:

''(3) DEFINITION.—In this subsection, the term 'foreign entity' means—

''(A) the government of a foreign country, as defined in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e));

''(B) a foreign political party, as defined in section 1(f) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(f)); and

''(C) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 141(b)(3) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) is amended by striking ''(as defined by section 207(f)(3) of title 18, United States Code)'' and inserting ''described in subparagraph (A) or (B) of section 207(f)(3) of title 18, United States Code,''.

(c) EFFECTIVE DATE AND APPLICABILITY.—The amendments made by subsection (a) shall—

(1) take effect on the date of enactment of this Act; and

(2) apply to any individual who leaves a position, office, or employment to which the amendments apply on or after the date of enactment of this Act.

By Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. CORNYN, and Mr. KAUFMAN):

S. 3717. A bill to amend the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to provide for certain disclosures under section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I am pleased to introduce an important bipartisan bill to ensure that the Freedom of Information Act, FOIA, remains an effective tool to provide public access to critical information about the stability of our financial markets. My bill would amend the Securities and Exchange Act, the Investment Company Act and the Investment Advisers Act to eliminate several broad FOIA exemptions for Security and Exchange Commission records that were recently enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I thank Senators CORNYN, KAUFMAN and GRASSLEY for cosponsoring this important open government bill.

I am a proud supporter of the historic Wall Street reform bill that has now become law, because this legislation makes significant strides toward enhancing transparency and accountability in our financial system. But, I am concerned that the FOIA exemptions in Section 929I of that bill, which was originally drafted in the House of Representatives and included in the final law, could be interpreted and implemented by the SEC in a way that undermines this very important goal.

The Freedom of Information Act has long been the people's window into their Government, showing where the Government is doing things right, but also where Government can do better. The FOIA has also long recognized the need to balance the Government's legitimate interest in protecting confidential business records, trade secrets and other sensitive information from public disclosure and the public's right to know. To accomplish this, care must always be taken to ensure that exemptions to FOIA's disclosure requirements are narrowly and properly applied.

When Congress enacted these exemptions, we were seeking to ensure that the SEC had access to the information that the Commission needs to carry-out its new enforcement powers and to protect American investors—not shielding information from the public.

I have been troubled by the Commission's attempts in recent weeks to retroactively apply these exemptions to pending FOIA matters. I am also troubled by the sweeping interpretation that the Commission has expressed, to date, that these exemptions would shield all information provided to the Commission in connection with its broad examination and surveillance activities.

This week, I called on the Commission to promptly issue guidelines that interpret the FOIA exemptions in Section 929I in a manner that is both consistent with congressional intent and with the President's January 21, 2009, Executive Memorandum on the Freedom of Information Act. I look forward to the public release of those guidelines. Given the overwhelming public interest in restoring stability and accountability to our financial system, Congress must also take steps to address concerns about the exemptions in Section 929I.

I thank the many open government organizations, including OpenTheGovernment.org, the Project on Government Oversight, the American Library Association and the Sunlight Foundation for their support of this bill.

I have said many times that open government is neither a Democratic issue, nor a Republican issue—it is truly an American value and virtue that we all must uphold. It is in this bipartisan spirit that Senators from both sides of the aisle have joined me in supporting this bill. I look forward to working with them and others in Congress to ensure that the American public has access to important information about the SEC's oversight of our financial markets.

Mr. President, I ask unanimous consent that the text of the bill and a letter of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3717

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICATION OF THE FREEDOM OF INFORMATION ACT TO CERTAIN STATUTES.

(a) AMENDMENTS TO THE SECURITIES AND EXCHANGE ACT.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x), as amended by section 929I(a) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), is amended by striking subsection (e) and inserting the following:

''(e) FREEDOM OF INFORMATION ACT.—For purposes of section 552(b)(8) of title 5, United States Code, (commonly referred to as the Freedom of Information Act)—

''(1) the Commission is an agency responsible for the regulation or supervision of financial institutions; and

''(2) any entity for which the Commission is responsible for regulating, supervising, or examining under this title is a financial institution.''.

(b) AMENDMENTS TO THE INVESTMENT COMPANY ACT.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30), as amended by section 929I(b) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) AMENDMENTS TO THE INVESTMENT ADVISERS ACT.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10), as amended by section 929I(c) of the Dodd-Frank Consumer Financial Protection and Wall Street Reform Act (Public Law 111–203), is amended by striking subsection (d).

AUGUST 3, 2010.

SENATOR CHRISTOPHER DODD,
Chairman, Senate Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

REPRESENTATIVE BARNEY FRANK,
Chairman, House Committee on Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMEN DODD AND FRANK: We, the undersigned organizations concerned with government accountability and transparency, are writing to express our concerns about Section 929I of the recently passed Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). If interpreted broadly, this provision has the potential to severely hinder the public's ability to access critical information related to the oversight activities of the Securities and Exchange Commission (SEC), thereby undermining the bill's overarching goals of more transparency and accountability.

As you know, Section 929I states that the SEC cannot be compelled to disclose records or other information obtained from its registered entities—including entities such as hedge funds, private equity funds, and venture capital funds that will now be regulated by the SEC—if this information is used for ''surveillance, risk assessments, or other regulatory and oversight activities'' outlined in the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

SEC Chairman Mary Schapiro wrote to you last week defending this provision. She argued that registered entities need to be able to provide the SEC with access to sensitive or proprietary information ''without concern that the information will later be made public.'' She further explained that, prior to the passage of the Dodd-Frank Act, ''regulated entities not infrequently refused to provide Commission examiners with sensitive information due to their fears that it ultimately would be disclosed publicly.'' She also claimed that investment advisers routinely refuse to turn over personal trading records of investment management personnel, ''instead requiring staff to review hard copies of the records on the adviser's premises,'' which ''materially impacts the staff's ability to detect insider trading activity.''

These arguments do not adequately describe the SEC's existing regulatory authority, and they fail to acknowledge that the Freedom of Information Act (FOIA) already provides sufficient exemptions to protect against the release of sensitive and proprietary information. Furthermore, the SEC has a troubling history of being overly aggressive in withholding records from the public. For these reasons, we strongly urge you to repeal Section 929I, or to at least curtail the SEC's broad authority to withhold critical information from the public.

First, we are not convinced by Chairman Schapiro's claim that ''existing FOIA exemptions were insufficient to allay concerns [about public disclosure] due in part to limitations in FOIA.'' For instance, Exemption 8 protects matters that are ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' Chairman Schapiro argues that this

exemption may not apply to all registrants, but it's worth noting that the courts have broadly construed the term ''financial institutions,'' holding that it is not limited to depository institutions and can also include investment advisers. In addition, Exemption 4 protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' The Department of Justice's (DOJ) FOIA guide states that this exemption ''encourages submitters to voluntarily furnish useful commercial or financial information to the government and it correspondingly provides the government with an assurance that such information will be reliable,'' calling into question Chairman Schapiro's claim that additional exemptions are needed in order for the SEC to collect information from its registered entities.

Second, the SEC's track record with FOIA raises additional concerns about giving the agency even more authority to withhold information from the public. Last year, an audit conducted by the SEC Office of Inspector General (OIG) uncovered a wide range of problems related to the SEC's FOIA operations. We were particularly troubled by the OIG's finding that the SEC Chief FOIA Officer was not operating in compliance with Executive Order 13392 or the OPEN Government Act; that few FOIA liaisons have written policies and procedures for processing FOIA requests, increasing the risk that the agency is unnecessarily withholding information from the public; and that there is an insufficient separation between the initial FOIA determination and the appeal process.

The OIG concluded that the SEC's FOIA release rate was ''significantly lower when compared to all other federal agencies.''

The OIG put forth a number of recommendations for correcting the glaring deficiencies in the SEC's FOIA operations, such as ensuring that accurate searches are made for responsive information, providing guidelines or written policies for all FOIA-related staff that address the concerns raised by the OIG, and ensuring that all FOIA-related staff has access to sufficient legal expertise to process requests in compliance with FOIA. But according to the OIG's most recent semiannual report to Congress, the SEC has not completed final action on any of these recommendations. Rather than giving the SEC any more leeway to improperly withhold information from the public, we urge you to hold Chairman Schapiro accountable for the excessive delays in implementing the OIG's recommendations.

Third, we notice that Chairman Schapiro is ''asking the Commission to issue and publish on our website guidance to our staff that ensures [Section 929I] is used only as it was intended.'' The solution for addressing the uncertainty surrounding this provision is not additional guidance. The solution is clarification in the law that public access is vital to accountability and that the existing FOIA exemptions can adequately protect confidential business information provided by regulated entities.

Fourth, Chairman Schapiro neglected to mention that the SEC already has the authority to compel registered entities to provide information and records. Under the Securities Exchange Act of 1934, the SEC has the authority to subpoena witnesses and require the production of any records from its registered entities. If these entities fail to comply, the SEC has the authority to suspend these entities, impose significant monetary penalties, and refer cases to DOJ for possible criminal proceedings. But instead of using these existing authorities, Chairman Schapiro seems to think that Congress needs to provide blanket FOIA exemptions in order to convince the SEC's registered entities to cooperate. We think such a blanket exemption fosters an environment that defers to the entities it regulates and is unadvisable.

Finally, it is unclear what Chairman Schapiro's plans are for implementing other blanket FOIA exemptions in the Dodd-Frank Act, such as Section 404, which exempts the SEC from FOIA with respect to any ''report, document, record, or information'' received from investment advisers to private funds.

In the aftermath of the recent financial crisis, the need for greater transparency in our financial system is all too apparent. The SEC's ongoing effort to withhold vital records from the public undermines the spirit of the transparency reforms in the Dodd-Frank Act, and flies in the face of President Obama's guidance instructing agencies to adopt a ''presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.''

We call on you to repeal the unnecessary FOIA exemption in Section 929I, examine the SEC's current record on withholding information, and take whatever steps are necessary to ensure that the SEC isn't given any additional authority to keep its records under a veil of secrecy. We welcome an opportunity to discuss this issue with you further. To reach our groups, you or your staff may contact Angela Canterbury at the Project On Government Oversight.

Sincerely,

American Library Association; American Association of Law Libraries; Citizens for Ethics and Responsibility in Washington (CREW); Essential Information; Government Accountability Project (GAP); Liberty Coalition; OMB Watch; OpenTheGovernment.org; Project On Government Oversight (POGO); Public Citizen; Sunlight Foundation.

By Mr. CARDIN:

S. 3718. A bill to amend title 38, United States Code, to ensure that beneficiaries of Servicemembers' Group Life Insurance receive financial counseling and disclosure information regarding life insurance payments, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CARDIN. Mr. President, I rise today to introduce the ''Securing America's Veterans Insurance Needs and Goals Act of 2010 or the SAVINGS Act of 2010. This is similar to a bill introduced in the House of Representatives by Congresswoman DEBORAH HALVORSON and House Committee on Veterans' Affairs Chair BOB FILNER.

This bill ensures that beneficiaries of the Servicemembers' Group Life Insurance, SGLI, program receive financial counseling and full disclosure information regarding life insurance payments. Active duty members of the Armed Forces will be given more information as they decide on disbursement options for their beneficiaries. The SAVINGS Act offers specific protections and alternatives to life insurance policy beneficiaries. This bill requires an explanation of how the retained-asset accounts differ from traditional checking accounts and leaves flexibility for the Secretary of the Department of Veterans Affairs to add more disclosure guidelines as he sees fit.

I present this bill to improve the process for our servicemembers and their families. My concern is that what has become a common industry practice, may not be an appropriate solution for every family. The SAVINGS Act addresses this challenge by requiring a greater level of disclosure and financial counseling to beneficiaries. This bill helps families make sound financial decisions during a most difficult time.

It will assist Marylanders and other Americans in difficult times. Last week National Public Radio profiled my constituent Cindy Lohman, of Great Mills, MD. Ms. Lohman lost her son Ryan when he was killed in a bombing in Afghanistan in August 2008. She had no idea that the package sent to her from the life insurance company would lead to more difficulty, during an already unbearable time.

While a mother grieved, Prudential the company that administers the SGLI policies on behalf of the Veterans Affairs Secretary began to process her survivor's benefits. Understandably too distraught to take immediate action, Ms. Lohman put away the package for 6 months. After looking over the many pages of printed forms and seeing what appeared to be a checkbook, Ms. Lohman assumed the money was in a checking account.

There were many details in that packet from the insurance company disclaimers and other specifics about the account. It turns out that this was not a standard, FDIC-insured account, but a retained-asset account managed by the insurance company.

As we send soldiers to fight overseas, our support for our servicemembers and their families must remain steadfast and strong. I am proud to serve in this Congress that has worked to honor our commitment to our nation's veterans and to the families of our fallen heroes. This is a good bill because it shows our commitment to do what is in the best interest of the families of the noble men and women who serve in uniform.

By Mr. WYDEN (for himself, Ms. SNOWE, and Mr. SCHUMER):

S. 3725. A bill to prevent the importation of merchandise into the United States in a manner that evades anti-dumping and countervailing duty orders, and for other purposes; to the Committee on Finance.

Mr. WYDEN. Mr. President, I rise today to introduce the Enforcing Orders and Reducing Circumvention and Evasion Act—or the ENFORCE Act—of 2010.

We all know what a tax cheat is; well let me tell you about a trade cheat.

You see, under U.S. trade laws, when a certain import is found to be unfairly traded, that is, it benefits from government subsidies or is sold below market prices, the U.S. Department of Commerce imposes additional duties on these imports. These duties, we call them anti-dumping and countervailing duties, or AD/CVD, ensure that American producers are only asked to compete on a playing field that is level.

But we have these trade cheats out there. They cheat American taxpayers out of the revenue that is supposed to be collected on imports, and which is needed to reduce the budget deficit, and they cheat American producers out of business that may otherwise be theirs. In short, the trade cheats steal American jobs and America's treasure.

The U.S.' AD/CVD laws form its industries' protective backbone against injury from illegally dumped or subsidized imports. However, these trade remedy laws are only effective to the extent that they are enforced. We have an enforcement problem.

The trade cheats are increasingly—and brazenly—employing a variety of schemes to evade AD/CVD orders. Sometimes, they hustle their merchandise through foreign ports to claim that it originates from somewhere it doesn't. Other times, the trade cheats will provide fraudulent information to government authorities at American ports of entry, or engage in schemes to mislabel and misrepresent imports.

U.S. industry sources estimate that approximately $91 million in AD/CV duties that were supposed to be applied to just four steel products went uncollected as a result of evasion in 2009. This is an amount equal to 30 percent of all AD/CV duties CBP collected that year. With 300 current AD/CVD orders in place on countless products from over 40 countries, the potential for AD/CV duty evasion is vast, and hundreds of millions of AD/CV duties may be unaccounted for. Every penny counts and we have an obligation to the American businesses, and the workers they rely on, to do a better job.

The U.S. Customs and Border Protection, or CBP, is the nation's frontline defense against unfair trade and is responsible for enforcing U.S. trade remedy laws and collecting AD/CV duties. Yet if you listen to the concerns of domestic producers, as I and many of my colleagues do, timely and effective enforcement of AD/CVD orders remains problematic and AD/CV duty evasion continues, seemingly unabated.

I have enormous respect for the men and women of CBP who manage U.S. borders, and believe its new commissioner is committed to improving the trade enforcement and trade facilitation functions of CBP. When U.S. producers spend the time and resources to submit to CBP evidence of AD/CVD evasion, CBP should be held accountable to acting on that evidence and communicating its actions to U.S. industry in a timely manner. It is not held accountable now to the degree it should be. I grow concerned that U.S. producers are spending too much time and resources trying to indentify unfair trade and help government agencies enforce the trade laws. American industry needs to be free to do what it does best, which is to innovate and produce goods that are competitive in free and fair markets.

The bill I am introducing today, with my friend and colleague, Senator SNOWE from Maine, will go a long way toward empowering the Federal Government to do a better job to combat the trade cheats and enforce U.S. trade laws. I'd like to highlight just a few of the main provisions.

First, the ENFORCE Act will expand the U.S. Department of Commerce's authority to investigate circumvention to include misrepresented merchandise that might evade AD/CVD orders. As the agency tasked with investigating allegations of dumping and harmful government subsidization, Commerce has the industry and product expertise to investigate this type of AD/CVD circumvention. This bill will not diminish CBP's role; rather, it will bolster greater cooperation and information sharing between the two agencies to combat the unfair trade practices that hurt U.S. industry and its ability to create jobs.

Second, the bill will create a process by which U.S. industry can submit to CBP a formal petition containing allegations of AD/CVD evasion, and CBP must reach a conclusive determination within a set time period. If it cannot, then the petition is transferred to the Department of Commerce for separate circumvention proceedings. The ENFORCE Act will require a greater level of responsiveness and accountability to U.S. producers while providing for increased collaboration between these two government agencies to improve enforcement of U.S. trade laws.

Third, the bill will enhance information among the federal agencies once an importer is suspected of evading an AD/CVD order. Many of the same schemes importers employ to evade an AD/CVD order, like mislabeling, often shirk other regimes put in place to ensure that products are safe for consumption by American families. Enhanced information sharing will provide greater protection against imports that may cause harm to U.S. consumers.

This bill presents a commonsense strategy to combat trade cheating and the evasion of antidumping and countervailing duty collection. Enforcing U.S. trade laws and combating unfair trade practices must be a central pillar of an economic and trade policy that is designed to promote economic growth and job expansion. I look forward to working with my colleagues in the Senate and with my friends in the House of Representatives to build support for this initiative and to take action on behalf of American producers.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3725

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Enforcing Orders and Reducing Circumvention and Evasion Act of 2010''.

SEC. 2. PROCEDURES FOR PREVENTION OF CIRCUMVENTION AND EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) is amended by inserting after section 781 the following:

''SEC. 781A. PROCEDURES FOR PREVENTION OF CIRCUMVENTION AND EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

''(a) DEFINITIONS.—In this section:

''(1) COMMISSIONER.—The term 'Commissioner' means the Commissioner responsible for U.S. Customs and Border Protection.

''(2) COVERED MERCHANDISE.—

''(A) IN GENERAL.—The term 'covered merchandise' means merchandise that—

''(i) is subject to—

''(I) an antidumping duty order issued under section 736;

''(II) a finding issued under the Antidumping Act, 1921; or

''(III) a countervailing duty order issued under section 706; and

''(ii) is represented in any manner, including by mislabeling, misidentification, or misreporting of the merchandise, as merchandise that—

''(I) is not subject to such an order or finding; or

''(II) is subject to a lower rate of duty than the rate of duty applicable to the merchandise under such an order or finding.

''(B) APPLICABILITY TO DETERMINATIONS OF THE ADMINISTERING AUTHORITY.—For purposes of investigations and determinations of the administering authority under subsection (b), the administering authority shall determine if merchandise is covered merchandise without regard to the intent of the importer.

''(b) PREVENTION BY ADMINISTERING AUTHORITY.—

''(1) PROCEDURES FOR INITIATING INVESTIGATIONS.—

''(A) INITIATION BY ADMINISTERING AUTHORITY.—An investigation under this subsection shall be initiated with respect to merchandise imported into the United States whenever the administering authority determines, from information available to the administering authority, that an investigation is warranted with respect to whether the merchandise is covered merchandise.

''(B) INITIATION BY PETITION OR REFERRAL.—

''(i) IN GENERAL.—The administering authority shall determine whether to initiate an investigation under this subparagraph not later than 30 days after the date on which the administering authority receives a petition described in clause (ii) or a referral described in clause (iii).

''(ii) PETITION DESCRIBED.—A petition described in this clause is a petition that—

''(I) is filed with the administering authority by an interested party specified in subparagraph (A), (C), (D), (E), (F), or (G) of section 771(9);

''(II) alleges that merchandise imported into the United States is covered merchandise; and

''(III) is accompanied by information reasonably available to the petitioner supporting those allegations.

''(iii) REFERRAL DESCRIBED.—A referral described in this clause is a referral made by the Commissioner pursuant to subsection (c)(2)(B).

''(2) TIME LIMITS FOR DETERMINATIONS.—

''(A) PRELIMINARY DETERMINATION.—

''(i) IN GENERAL.—Not later than 30 days after the administering authority initiates an investigation under paragraph (1) with respect to merchandise, the administering authority shall issue a preliminary determination, based on information available to the administering authority at the time of the determination, with respect to whether there

is a reasonable basis to believe or suspect that the merchandise is covered merchandise.

''(ii) EXPEDITED PROCEDURES.—If the administering authority determines that expedited action is warranted with respect to an investigation initiated under paragraph (1), the administering authority may publish the notice of initiation of the investigation and the notice of the preliminary determination in the Federal Register at the same time.

''(B) FINAL DETERMINATION BY THE ADMINISTERING AUTHORITY.—The administering authority shall, to the maximum extent practicable, issue a final determination with respect to whether merchandise is covered merchandise not later than 180 days after the date on which the administering authority initiates an investigation under paragraph (1) with respect to the merchandise.

''(3) ACCESS TO INFORMATION.—

''(A) ENTRY DOCUMENTS AND RECORDS.—Upon receiving a request from the administering authority, and not later than the date on which the administering authority initiates an investigation under paragraph (1) with respect to merchandise, the Commissioner shall transmit to the administering authority copies of the documentation and information required by section 484(a)(1) with respect to the entry of the merchandise.

''(B) ACCESS OF INTERESTED PARTIES.—Not later than 10 business days after the date on which the administering authority initiates an investigation under paragraph (1) with respect to merchandise, the administering authority shall provide to the authorized representative of each interested party that filed a petition under paragraph (1) or otherwise participates in a proceeding, pursuant to a protective order, the copies of the entry documentation and information received by the administering authority under subparagraph (A).

''(4) EFFECT OF AFFIRMATIVE PRELIMINARY DETERMINATION.—If the administering authority makes a preliminary determination under paragraph (2)(A) that merchandise is covered merchandise, the administering authority shall instruct U.S. Customs and Border Protection—

''(A) to suspend liquidation of each entry of the merchandise that—

''(i) enters on or after the date of the preliminary determination; or

''(ii) enters before that date, if the liquidation of the entry is not final on that date; and

''(B) to require the posting of a cash deposit for each entry of the merchandise in an amount determined pursuant to the order or finding described in subsection (a)(2)(A)(i), or administrative review conducted under section 751, that applies to the merchandise.

''(5) EFFECT OF AFFIRMATIVE FINAL DETERMINATION.—

''(A) IN GENERAL.—If the administering authority makes a final determination under paragraph (2)(B) that merchandise is covered merchandise, the administering authority shall instruct U.S. Customs and Border Protection—

''(i) to assess duties on the merchandise in an amount determined pursuant to the order or finding described in subsection (a)(2)(A)(i), or administrative review conducted under section 751, that applies to the merchandise;

''(ii) notwithstanding section 501, to reliquidate, in accordance with such order, finding, or administrative review, each entry of the merchandise that was liquidated—

''(I) on or after the date that is one year before the date on which the investigation was initiated under paragraph (1) with respect to the merchandise; and

''(II) before the date of the final determination; and

''(iii) to review and reassess the amount of bond or other security the importer is required to post for such merchandise entered on or after the date of the final determination to ensure the protection of revenue and compliance with the law.

''(B) ADDITIONAL AUTHORITY.—If the administering authority makes a final determination under paragraph (2)(B) that merchandise is covered merchandise, the administering authority may instruct U.S. Customs and Border Protection to require the importer of the merchandise to post a cash deposit or bond on such merchandise entered on or after the date of the final determination in an amount the administering authority determines in the final determination to be owed with respect to the merchandise.

''(6) EFFECT OF NEGATIVE FINAL DETERMINATION.—If the administering authority makes a final determination under paragraph (2)(B) that merchandise is not covered merchandise, the administering authority shall terminate the suspension of liquidation and refund any cash deposit imposed pursuant to paragraph (4) with respect to the merchandise.

''(7) SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.—If the administering authority is unable to determine the actual producer or exporter of the merchandise with respect to which the administering authority initiated an investigation under paragraph (1), the administering authority shall, in requiring the posting of a cash deposit under paragraph (4) or assessing duties pursuant to paragraph (5)(A), impose the cash deposit or duties (as the case may be) in the highest amount applicable to any producer or exporter of the merchandise pursuant to any order or finding described in subsection (a)(2)(A)(i), or any administrative review conducted under section 751.

''(8) PUBLICATION OF DETERMINATIONS.—The administering authority shall publish each preliminary determination made under paragraph (2)(A) and each final determination made under paragraph (2)(B) in the Federal Register.

''(9) REFERRALS TO OTHER AGENCIES.—

''(A) AFTER PRELIMINARY DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the administering authority makes an affirmative preliminary determination under paragraph (2)(A), the administering authority shall—

''(i) transmit the administrative record to the Commissioner for such additional action as the Commissioner determines appropriate, including proceedings under section 592; and

''(ii) at the request of the head of another agency, transmit the administrative record to the head of that agency.

''(B) AFTER FINAL DETERMINATION.—Notwithstanding section 777 and subject to subparagraph (C), when the administering authority makes an affirmative final determination under paragraph (2)(B), the administering authority shall—

''(i) transmit the complete administrative record to the Commissioner; and

''(ii) at the request of the head of another agency, transmit the complete administrative record to the head of that agency.

''(C) PROTECTIVE ORDERS.—Before transmitting the administrative record with respect to a proceeding to the Commissioner or the head of another agency under subparagraph (A) or (B), the administering authority shall verify that U.S. Customs and Border Protection or such other agency (as the case may be) has in effect with respect to the administrative record a protective order that provides the same or a similar level of protection for the information in the administrative record as the protective order in effect with respect to such information under this subsection.

''(c) PREVENTION BY U.S. CUSTOMS AND BORDER PROTECTION.—

''(1) INVESTIGATIONS.—Not later than 180 days after the date of the enactment of the Enforcing Orders and Reducing Circumvention and Evasion Act of 2010, the Commissioner, in consultation with the Under Secretary for International Trade of the Department of Commerce and subject to the requirements of this subsection, shall establish procedures—

''(A) to permit an interested party specified in subparagraph (A), (C), (D), (E), (F), or (G) of section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)) to submit to U.S. Customs and Border Protection a petition alleging that an importer is importing covered merchandise into the United States;

''(B) to investigate the allegations in a petition submitted under subparagraph (A) and make determinations or referrals under paragraph (2) with respect to those allegations; and

''(C) to notify the interested party that submitted the petition of the determination or referral (as the case may be) and the outcome of the investigation.

''(2) DETERMINATIONS; REFERRALS.—Not later than 60 days after a petition is submitted under paragraph (1)(B), the Commissioner shall—

''(A) make a determination with respect to whether an importer is importing covered merchandise into the United States based on whether the Commissioner has a reasonable basis to believe or suspect that the importer is importing such merchandise; or

''(B) if the Commissioner is unable to make such a determination—

''(i) refer the matter to the administering authority for additional proceedings under subsection (b); and

''(ii) transmit to the administering authority—

''(I) the petition submitted under paragraph (1)(A);

''(II) copies of the entry documents and information required by section 484(a)(1) relating to the merchandise; and

''(III) to the extent otherwise permitted by law, any additional records or information that the Commissioner considers appropriate.

''(3) SUSPENSION OF LIQUIDATION AND DEPOSIT REQUIREMENT.—

''(A) IN GENERAL.—If the Commissioner makes a determination under paragraph (2) that an importer is importing covered merchandise into the United States, the Commissioner shall—

''(i) suspend liquidation of each entry of the merchandise that—

''(I) enters on or after the date of the determination; or

''(II) enters before that date, if the liquidation of the entry is not final on that date; and

''(ii) with respect to each entry of the merchandise referred to in clause (i), require the posting of a cash deposit, assess any duties, and impose any other requirements that are applicable to the merchandise under an order or finding described in subsection (a)(2)(A)(i) or pursuant to an administrative review conducted under section 751.

''(B) SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.—If the Commissioner is unable to determine the actual producer or exporter of merchandise with respect to which the Commissioner initiated an investigation under paragraph (1)(B), the Commissioner shall, in requiring the posting of a cash deposit or assessing duties under subparagraph (A)(ii), impose the cash deposit or duties (as the case may be) in

the highest amount applicable to any producer or exporter of the merchandise pursuant to an order or finding described in subsection (a)(2)(A)(i) or an administrative review conducted under section 751.

''(d) COOPERATION BETWEEN U.S. CUSTOMS AND BORDER PROTECTION AND THE DEPARTMENT OF COMMERCE.—

''(1) NOTIFICATION OF INVESTIGATIONS.—

''(A) INVESTIGATIONS BY ADMINISTERING AUTHORITY.—Upon receiving a petition and upon initiating an investigation under subsection (b), the administering authority shall notify the Commissioner.

''(B) INVESTIGATIONS BY U.S. CUSTOMS AND BORDER PROTECTION.—Upon initiating an investigation under subsection (c), the Commissioner shall notify the administering authority.

''(2) PROCEDURES FOR COOPERATION.—Not later than 180 days after the date of the enactment of the Enforcing Orders and Reducing Circumvention and Evasion Act of 2010, the Commissioner and the administering authority shall establish procedures to ensure maximum cooperation and communication between U.S. Customs and Border Protection and the administering authority in order to quickly, efficiently, and accurately investigate allegations of circumvention or evasion of antidumping and countervailing duty orders.

''(e) ANNUAL REPORT ON PREVENTING CIRCUMVENTION AND EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.—

''(1) IN GENERAL.—Not later than February 28 of each year beginning in 2012, the Under Secretary for International Trade of the Department of Commerce and the Commissioner shall jointly submit to the Committee on Finance and the Committee on Appropriations of the Senate and the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives a report on the efforts being taken under subsections (b) and (c) to prevent circumvention and evasion of antidumping and countervailing duty orders.

''(2) CONTENTS.—Each report required by paragraph (1) shall include, for the year preceding the submission of the report—

''(A)(i) the number of investigations initiated pursuant to subsection (b); and

''(ii) a description of such investigations, including—

''(I) the results of such investigations; and

''(II) the amount of antidumping and countervailing duties collected as a result of such investigations;

''(B)(i) the number of petitions submitted pursuant to subsection (c)(1); and

''(ii) a description of the investigations initiated by U.S. Customs and Border Protection pursuant to subsection (c) and any enforcement actions related to the investigations, including—

''(I) the results of the investigations; and

''(II) the amount of antidumping and countervailing duties collected as a result of the investigations;

''(C)(i) the number of inquiries initiated pursuant to section 781; and

''(ii) a description of such inquiries, including—

''(I) the results of such inquiries; and

''(II) the amount of antidumping and countervailing duties collected as a result of such inquiries; and

''(D) a description of investigations initiated by other Federal agencies as a result of referrals under subsection (b)(10).''.

(b) TECHNICAL AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 781 the following:

''Sec. 781A. Procedures for prevention of circumvention and evasion of antidumping and countervailing duty orders.''.

(c) JUDICIAL REVIEW.—Section 516A(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(2)) is amended—

(1) in subparagraph (A)(i)(I), by striking ''or (viii)'' and inserting ''(viii), or (ix)''; and

(2) in subparagraph (B), by inserting at the end the following:

''(ix) A determination by the administering authority or the Commissioner responsible for U.S. Customs and Border Protection under section 781A.''.

(d) TIME LIMITS FOR DETERMINATIONS OF CIRCUMVENTION.—Section 781(f) of the Tariff Act of 1930 (19 U.S.C. 1677(f)) is amended by striking '', to the maximum extent practicable,''.

(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act—

(1) the Secretary of Commerce shall prescribe such regulations as may be necessary to carry out subsection (b) of section 781A of the Tariff Act of 1930 (as added by subsection (a) of this section); and

(2) the Commissioner responsible for U.S. Customs and Border Protection shall prescribe such regulations as may be necessary to carry out subsection (c) of such section 781A.

(f) EFFECTIVE DATE.—The amendments made by this section shall—

(1) take effect on the date that is 180 days after the date of the enactment of this Act; and

(2) apply with respect to merchandise entered on or after such date of enactment.

SEC. 3. MODIFICATIONS TO PROTECTIVE ORDERS.

Section 777(c)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1677f(c)(1)(B)) is amended to read as follows:

''(B) PROTECTIVE ORDER.—

''(i) IN GENERAL.—Except as specifically provided in this subparagraph, the protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

''(ii) CONCURRENT PROCEEDINGS.—In the case of concurrent proceedings covering the same subject merchandise conducted pursuant to subtitles A and B of this title, a single protective order shall be issued for both proceedings.

''(iii) APPLICABILITY TO PROCEEDINGS BEFORE U.S. CUSTOMS AND BORDER PROTECTION.—A protective order issued pursuant to this paragraph shall authorize the use of business proprietary information made available pursuant to a protective order in proceedings before U.S. Customs and Border Protection.''.

SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Finance and the Committee on Appropriations of the Senate and the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives a report assessing the effectiveness of—

(1) the provisions of, and amendments made by, this Act; and

(2) the actions taken and procedures developed by the Secretary of Commerce and the Commissioner responsible for U.S. Customs and Border Protection pursuant to such provisions and amendments to prevent circumvention and evasion of antidumping and countervailing duty orders under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

SEC. 5. ALLOCATION OF U.S. CUSTOMS AND BORDER PROTECTION PERSONNEL.

The Commissioner responsible for U.S. Customs and Border Protection shall, to the maximum extent practicable, ensure that U.S. Customs and Border Protection—

(1) employs sufficient personnel who have expertise and responsibility for preventing the importation of merchandise in a manner that evades antidumping and countervailing duty orders issued under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.); and

(2) assigns sufficient personnel with primary responsibility for preventing the importation of merchandise in a manner that evades antidumping and countervailing duty orders to the ports of entry in the United States at which the Commissioner determines the largest quantity of merchandise imported in such a manner entered the United States during the most recent 2-year period for which data are available.

SEC. 6. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act, the amendments made by this Act shall apply with respect to goods from Canada and Mexico.

By Mr. SCHUMER (for himself, Mr. HATCH, Mr. GRAHAM, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Ms. SNOWE, Mrs. BOXER, Mrs. FEINSTEIN, Mr. CARDIN, Mr. KOHL, and Mrs. HUTCHISON):

S. 3728. A bill to amend title 17, United States Code, to extend protection to fashion design, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I wish to express my support for the Innovative Design Protection and Piracy Prevention Act. For years I have been supportive of moving this legislation forward. It not only underscores the importance of the fashion design industry to our economy but will ensure that new and innovative fashion designs are afforded proper copyright protection.

Throughout my service in the Senate, I have worked on a whole host of intellectual property-related initiatives. There is no doubt that legislating in this area is difficult. It is necessary, however, to maintain our position at the forefront of the world's economy and to continue our country's leadership in global innovation.

Make no mistake about it: piracy and counterfeiting are the new face of economic crime around the world, far exceeding traditional property crimes. These crimes are the very antitheses of creativity—crippling growth and stifling innovation in their wake.

Last Congress I worked closely with my Senate Judiciary Committee colleagues and others in passing the PRO–IP Act, which was signed into law by President George W. Bush on October 13, 2008. There is no doubt the PRO–IP bill will ensure that resources are available to enforce intellectual property laws and coordinate the government's intellectual property policies.

Yet there are no laws prohibiting design piracy.

Currently, original designs are copied and the apparel is manufactured in countries with cheap labor, typically in mainland China, Hong Kong, Pakistan, and Singapore. The garments are then shipped into the U.S. to directly compete with the garments of the original designer, sometimes before the originals have even hit the market. As a result, the U.S. apparel industry continues to lose billions of dollars to counterfeiting each year.

We must ensure that all property rights, including fashion designs, are protected both here and abroad. Counterfeiting and piracy sap our country's economic strength. Plain and simple, when a company loses revenues to piracy or counterfeited goods, it does not have those resources to reinvest into making more of its goods. And that means lost jobs. This domino effect ensnares all within its reach.

These crimes not only affect the individual company, but they also adversely affect the companies that would have contributed to or benefitted from the unmade goods. Suppliers of raw materials and components as well as shippers, distributors, and retailers, all take the hit.

In my home State of Utah, I am mindful of the designers who make a meaningful contribution to the fashion industry. Utah designers like Nappi, Modurrn, and CherellaUSA are committed to quality and original clothing lines. These designers, and many more across the Nation, must know that after spending their time and money in developing new and unique fashion designs, their works are protected from infringers. They should be able to secure and enforce adequate copyright protections for their hard work.

The Innovative Design Protection and Piracy Prevention Act represents a true compromise. The proposed legislation is the product of an intensive year of negotiations with interested stakeholders. Among other things, the compromise language provides protection to truly unique fashion designs. In order to be considered an infringing design, a plaintiff must demonstrate that a design copy is ''substantially identical.''

I am pleased with the progress that has already been made on the bill and look forward to working with my colleagues on further refinements as it moves through the legislative process.

By Mrs. SHAHEEN (for herself, Mr. REID, Mr. DORGAN, Mr. KAUFMAN, Mr. BEGICH, Mr. BINGAMAN, and Mr. KERRY):

S. 3732. A bill to establish within the Department of Education the Innovation Inspiration school grant program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. SHAHEEN. Mr. President, today I introduce a bill, the Innovation Inspiration school grant program. This legislation will give high school students in New Hampshire and across the country access to non-traditional science, technology, engineering, and mathematics programs as well as the opportunity to be mentored by professionals in those fields.

I am proud to be joined in introducing this bill today with Senators REID, DORGAN, KAUFMAN, BEGICH, BINGAMAN and KERRY and thank them for their support.

We hear so often about the importance of STEM fields and our future economy. These fields—commonly defined as the science, technology, engineering, and mathematics—are central to U.S. economic competitiveness and growth. In fact, projections by the U.S. Labor Department show that STEM-related fields are expected to be the fastest growing occupations of the next decade.

What is worrisome, though, is that too few students in the United States are pursuing education in these STEM fields to keep up with the increased demand in the workforce. For those students that do embark in STEM education, too often they are being outperformed by international competitors.

Simply put, I believe that in today's global economy American students must have access to better STEM training, have the opportunity to be mentored by professionals in the field and be engaged in the study of these critical fields at deeper, more meaningful levels.

This legislation, the Innovation Inspiration School Grant Program, does that. It will bolster our student's access to quality non-traditional STEM programs. It will grow the STEM pipeline and broaden access to careers in science, technology, engineering and math.

We all recognize that community partnerships and especially mentors for our young people are essential to their success. The Innovation Inspiration School Grant Program will provide states and schools critical resources to engage community members and professional mentors who are working in the STEM fields. I believe that by connecting students with well-trained teachers and community mentors, we can foster innovation at the high school level and inspire young people to graduate high school, enter the workforce, or go onto college to major in science and engineering and pursue careers in these fields.

Students in New Hampshire have been participating in non-traditional STEM opportunities, such as those provided by FIRST Robotics, for over 20 years. And for these students, the experience has been life-changing.

Take, for example, Aletha Evangelou, from Nashua, NH. As a result of her experience in the Nashua High School FIRST Robotics team, a love of engineering grew. She went on to major in mechanical engineering at the University of New Hampshire and is now employed at a defense and aerospace company in our state. She says ''I have been a full time mechanical engineer at BAE Systems for two and a half years now, and I can honestly say that I would not be here if I hadn't joined the FIRST Robotics program. It completely changed my life.''

Aletha is just one example of many students who have benefitted from the type of programs that are supported by this legislation. Every student in every school across the country should have the opportunity to have these sorts of experiences. This legislation does that.

I urge my colleagues to join me to ensure that high school graduates have the skills and knowledge in the STEM fields necessary to succeed in postsecondary education and develop the workforce of the 21st century.

By Mrs. LINCOLN (for herself and Mr. CHAMBLISS:

S. 3735. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to improve the use of certain registered pesticides; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. LINCOLN. Mr. President, our farmers, foresters, and ranchers provide our Nation and the world with a safe, secure, and affordable source of food and fiber. I have vigorously supported rural America through my work as Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry. We must do all we can to support these communities, which are the backbone of our great Nation.

Unfortunately, because of aggressive litigation and federal courts misinterpreting Congressional intent, our farmers, foresters, and ranchers are facing new restrictions on their operations. Too often, this results in obligations that are time-consuming, expensive, and plainly unnecessary.

A prime example of this is the Environmental Protection Agency's, EPA, effort to regulate the use of crop protection products under the Clean Water Act. EPA, at the direction of the Federal courts, is requiring Clean Water Act permits for pesticide applications even if an application does not occur directly into the water. Congress never intended for agricultural chemicals to be regulated under the Clean Water Act.

Farm and forest chemical applications are already subject to another federal statute that protects human health and the environment, the Federal Insecticide, Fungicide and Rodenticide Act, FIFRA. Farm and forest protection products regulated under FIFRA are subject to rigorous scientific testing before they can be sold and used. In addition, farmers and foresters must adhere to use instructions contained on pesticide labels.

Subjecting farmers to an additional layer of bureaucracy under the Clean Water Act is duplicative and unnecessary since human health and the environment is already protected by FIFRA.

Clean Water Act permits for farm and forest chemical use will also be expensive for pesticide applicators and for state regulatory agencies. EPA has said that these new requirements will nearly double the number of permittees under the National Pollution Discharge Elimination System, NPDES. This will result in tens of thousands of dollars in new costs and burdens for producers and state regulatory agencies who are already suffering from lack of resources.

Today I am introducing legislation to clarify Congress' intent. Farmers, foresters, and ranchers already comply with FIFRA and further unnecessary regulation should not be required. I am pleased to be joined by Agriculture Committee Ranking Member SAXBY CHAMBLISS. The bill is very simple: as long as a farmer is complying with FIFRA, then no Clean Water Act permit will be required. During the more than 35 years since the enactment of the Clean Water Act, the EPA has never required a NPDES permit for the application of FIFRA-registered crop protection products. My bill would extend this common sense approach and avoid duplicative, unnecessary burdens on our farmers, foresters, and ranchers.

I urge my Senate colleagues to join us in taking action on this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF REGISTERED PESTICIDES.

Section 3(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(f)) is amended by adding at the end the following:

''(5) USE OF REGISTERED PESTICIDES.—Notwithstanding any other law, no permit shall be required for—

''(A) the use of a pesticide that is registered or otherwise authorized for use under this Act, if that use is in accordance with this Act; or

''(B)(i) the use of a biological control organism (as defined in section 403 of the Plant Protection Act (7 U.S.C. 7702)) for the prevention, control, or eradication of a plant pest or noxious weed, if that use is in accordance with that Act (7 U.S.C. 7701 et seq.); or

''(ii) the conduct of any other plant pest, noxious weed, or pest control activity under that Act, if that activity is conducted in accordance with that Act.''.

By. Mr. INHOFE:

S. 3736. A bill to amend the Clean Air Act to allow States to opt out of the corn ethanol portions of the renewable fuel standard; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, with the passage of the 2007 energy bill (EISA), Congress doubled the corn-based ethanol mandate despite mounting questions surrounding ethanol's compatibility with existing engines, its transportation and infrastructure needs, its economic sustainability, and numerous other issues. Then, as now, I argued it was just too early to significantly increase the mandate and that the fuels industry and engine manufacturers needed more time to adapt and catch up with the many developing challenges facing corn-based ethanol. From everything we have witnessed over the past 2½ years, I was right. These mandates allow no room for error in a fuels industry already constrained by tight credit, dwindling capacity, environmental regulation, and volatile market conditions.

The corn ethanol mandate has also led to consumer backlash in parts of the country. In my home state of Oklahoma, one convenience store chain experienced a 30 percent drop in fuel sales once they began selling fuel blended at E–10 levels. The consumers didn't want it. In 2008, the New York Times reported this growing consumer discontent from Oklahoma City:

> Why Do You Put Alcohol in Your Tank? demands a large sign outside one gas station here, which reassures drivers that it sells only ''100% Gas.''
>
> ''No Corn in Our Gas,'' advertises another station nearby. Along the highways of this sprawling prairie city, and in other pockets of the country, a mutiny is growing against energy policies that heavily support and subsidize the blending of ethyl alcohol, or ethanol, into gasoline.
>
> Many consumers complain that ethanol, which constitutes as much as 10 percent of the fuel they buy in most states, hurts gas mileage and chokes the engines of their boats and motorcycles.

Despite this consumer backlash, corn advocates are today pushing Washington to require higher consumptions of ethanol. The most pressing issue facing corn ethanol is the so-called ''blend wall'' of 10 percent. EISA mandated 15 billion gallons of corn-based ethanol by 2015. But here is the problem: Federal regulations require that a gallon of gasoline should contain no more than 10 percent ethanol. So there will soon be more corn ethanol production than the amount of ethanol allowed in gasoline.

So what is the solution? Corn ethanol advocates have the wrong approach. Rather than rethink EISA's corn mandates, they are lobbying for higher, mid-level ethanol blends in gasoline—higher than E10. Sounds like a simple solution, except its consequences would be dire, with potential damage to agriculture, the environment, and engine equipment manufacturers.

Many on-road and non-road engines, vehicles, and equipment are not specifically designed to run on ethanol blends of E10, let alone blends as high as E15. The available evidence indicates that lawnmowers, chainsaws, snowmobiles, recreational boats, motorcycles, and non-flex-fuel cars and trucks produce higher evaporative and engine exhaust emissions using mid-level ethanol blends. Also, mid-level ethanol blends are more corrosive on certain metals and plastics used in many fuel systems, and cause many gasoline-powered engines to run hotter and at higher RPM levels. In turn, this results in adverse impacts on starting, durability, operation, performance, and operator safety, due to the degradation of critical components and safety devices.

The American Lung Association has noted that degradation of catalyst efficiency, caused by increasing the ethanol content in gasoline, ''can have a major impact on emissions.'' These higher blends of ethanol can also cause NO_X emissions to increase up to 25 percent. In short, we need to be careful that the rapid ramp-up in ethanol use doesn't result in the degradation of our country's air quality.

And many consumers complain about decreased fuel efficiency. Corn Ethanol is 67 percent of the BTU content of gasoline. According to EPA, vehicles ''operating on E85 usually experience a 20–30 percent drop in miles per gallon due to ethanol's lower energy content.'' These results were seconded by a Consumer Reports study that found E85 resulted in a 27 percent drop in fuel efficiency.

In my home state of Oklahoma, ethanol's blendwall has eliminated consumer choice. Where consumers could once choose to purchase clear gas, the blendwall is now forcing motorists to buy E10. The fuel blenders and gas station owners have no option but to sell ethanol blended gasoline despite strong consumer demand for clear gas.

Today I am introducing a simple three-page bill that responds to the increasing call for more consumer choice in the ability to purchase ethanol-free gasoline. Simply put, my bill allows a State to opt out of the corn ethanol portions of the renewable fuel standard. To do so, a State must pass a bill, signed by the governor, stating its election to exercise this option. The opt-out would be recognized by the administrator of the EPA, who would then reduce the amount of the national corn ethanol mandate by the percentage amount of the State which chooses to opt out. The bill also provides for the generation of credits to hold harmless the refiners who would produce clear gasoline sold in an opt-out State.

This legislation would allow a State to opt out of only the corn ethanol mandate. It would not affect other portions of the renewable fuel standard such as the cellulosic or advanced biofuels volumetric requirements.

I believe Congress blundered in pushing too much corn ethanol too fast. This bill will merely allow for fuel producers to respond to market demands when and where consumers prefer clear gas. Right now they can't do that.

By Mr. KERRY:

S. 3738. A bill to amend the Internal Revenue Code of 1986 to provide incentives for clean energy manufacturing to reduce emissions, to produce renewable energy, to promote conservation, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, today I am introducing the Clean Energy Technology Leadership Act. This legislation would provide tax incentives for clean energy manufacturing, renewable energy, and conservation. This is a critical package of incentives to drive the development and deployment of clean energy technology in the United States. It also will expand our manufacturing base to ensure that these advanced energy technologies are made here in America.

This bill is not intended to serve as a substitute for comprehensive energy and climate legislation. However, it does provide a near-term opportunity to support the development and deployment of clean energy technologies.

Congress must continue working on legislation that will put us on a course to substantially reduce greenhouse gas emissions, but the events of the last several weeks have made it clear that there is no bipartisan support for a strong energy and climate bill. In the interim, we should act on areas where there is potential agreement. The Clean Energy Technology Leadership Act is broad energy tax legislation that focuses on tax incentives to encourage renewable energy and conservation. This legislation would extend and improve existing provisions in the tax code and provides some targeted new incentives.

The legislation would promote clean energy manufacturing by providing additional funding for the advanced energy manufacturing credit and uncapping the credit for solar energy property, fuel cell power generation, and advanced energy storage systems, including batteries for advanced vehicles. In addition, the legislation would extend the credit for domestic manufacturers of energy appliances.

To encourage the production of renewable energy, the Clean Energy Technology Leadership Act would extend for 2 years and codify the grant in lieu of tax credit program created by the American Recovery and Reinvestment Act of 2009. It modifies the program to clarify that real estate investment trusts and public power would be eligible for the program. The legislation provides an additional $3.5 billion for clean renewable energy bonds, with 60 percent allocated to public power and the remaining 40 percent to cooperative electric rural companies. The Clean Energy Technology Leadership Act extends the research and development tax credit retroactively through 2012. For 2011 and 2012, it would increase the R&D credit by ten percent for research expenditures related to the fields of fuel cells and battery technology, renewable energy, energy conservation technology, efficient transmission and distribution of electricity, and carbon capture and sequestration.

To encourage conservation, the Clean Energy Technology Leadership Act would extend and modify tax incentives for new energy efficient homes, nonbusiness energy property improvements, and energy efficient commercial buildings. The bill also would provide incentives for clean transportation by providing incentives for natural gas use in heavy vehicles.

These provisions will encourage investments in developing and deploying renewable energy and conservation solutions, which will result in lower greenhouse gas emissions. The Clean Energy Technology Leadership Act is not a comprehensive energy and climate solution, but I believe it is an important starting point. I am hopeful that we can secure bipartisan support for these and other important tax provisions and pass them this year.

By Mr. CASEY (for himself, Mrs. MURRAY, Mr. BURRIS, Ms. CANTWELL, Ms. KLOBUCHAR, Mr. BROWN, of Ohio, Mr. FEINGOLD, Mr. MERKLEY, Mrs. GILLIBRAND, Mr. SANDERS, and Mr. WYDEN):

S. 3739. A bill to amend the Safe and Drug-Free Schools and Communities Act to include bullying and harassment prevention programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. CASEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Safe Schools Improvement Act of 2010''.

SEC. 2. BULLYING AND HARASSMENT PREVENTION POLICIES, PROGRAMS, AND STATISTICS.

(a) STATE REPORTING REQUIREMENTS.—Section 4112(c)(3)(B)(iv) of the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7112(c)(3)(B)(iv)) is amended by inserting '', including bullying and harassment,'' after ''violence''.

(b) STATE APPLICATION.—Section 4113(a) of such Act (20 U.S.C. 7113(a)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (C), by striking ''and'' at the end; and

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) (as amended by subparagraph (A)) the following:

''(D) the incidence and prevalence of reported incidents of bullying and harassment;

''(E) the perception of students regarding their school environment, including with respect to the prevalence and seriousness of incidents of bullying and harassment and the responsiveness of the school to those incidents; and'';

(2) in paragraph (18), by striking ''and'' at the end;

(3) by redesignating paragraph (19) as paragraph (20); and

(4) by inserting after paragraph (18) (as amended by paragraph (2)) the following:

''(19) provides an assurance that the State educational agency will provide assistance to school districts and schools in their efforts to prevent and appropriately respond to incidents of bullying and harassment and describes how the State educational agency will meet the requirements of this paragraph; and''.

(c) LOCAL EDUCATIONAL AGENCY PROGRAM APPLICATION.—Section 4114(d) of such Act (20 U.S.C. 7114(d)) is amended—

(1) in paragraph (2)(B)(i)—

(A) in subclause (I), by striking ''and'' at the end; and

(B) by adding at the end the following:

''(III) performance indicators for bullying and harassment prevention programs and activities; and''; and

(2) in paragraph (7)—

(A) in subparagraph (A), by inserting '', including bullying and harassment'' after ''disorderly conduct'';

(B) in subparagraph (D), by striking ''and'' at the end; and

(C) by adding at the end the following:

''(F) annual notice to parents and students describing the full range of prohibited conduct contained in the discipline policies described in subparagraph (A); and

''(G) grievance procedures for students or parents that seek to register complaints regarding the prohibited conduct contained in the discipline policies described in subparagraph (A), including—

''(i) the name of the school district officials who are designated as responsible for receiving such complaints; and

''(ii) timelines that the school district will follow in the resolution of such complaints;''.

(d) AUTHORIZED ACTIVITIES.—Section 4115(b)(2) of such Act (20 U.S.C. 7115(b)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (vi), by striking ''and'' at the end;

(B) in clause (vii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(viii) teach students about the consequences of bullying and harassment.''; and

(2) in subparagraph (E), by adding at the end the following:

''(xxiii) Programs that address the causes of bullying and harassment and that train teachers, administrators, specialized instructional support personnel, and other school personnel regarding strategies to prevent bullying and harassment and to effectively intervene when incidents of bullying and harassment occur.''.

(e) REPORTING.—Section 4116(a)(2)(B) of such Act (20 U.S.C. 7116(a)(2)(B)) is amended by inserting '', including bullying and harassment,'' after ''drug use and violence''.

(f) IMPACT EVALUATION.—Section 4122 of such Act (20 U.S.C. 7132) is amended—

(1) in subsection (a)(2), by striking ''and school violence'' and inserting ''school violence, including bullying and harassment,''; and

(2) in the first sentence of subsection (b), by inserting '', including bullying and harassment,'' after ''drug use and violence''.

(g) DEFINITIONS.—

(1) DRUG AND VIOLENCE PREVENTION.—Paragraph (3)(B) of section 4151 of such Act (20 U.S.C. 7161) is amended by inserting '', bullying, and other harassment'' after ''sexual harassment and abuse''.

(2) PROTECTIVE FACTOR, BUFFER, OR ASSET.—Paragraph (6) of such section is amended by inserting '', including bullying and harassment'' after ''violent behavior''.

(3) RISK FACTOR.—Paragraph (7) of such section is amended by inserting '', including bullying and harassment'' after ''violent behavior''.

(4) BULLYING AND HARASSMENT.—Such section is further amended—

(A) by redesignating paragraphs (4) through (11) (as amended by paragraphs (2) and (3)), as paragraphs (6) through (13), respectively;

(B) by redesignating paragraphs (1) through (3) (as amended by paragraph (1)), as paragraphs (2) through (4), respectively;

(C) by inserting before paragraph (2) (as redesignated by subparagraph (B)) the following:

''(1) BULLYING.—The term 'bullying'—

''(A) means conduct that adversely affects the ability of one or more students to participate in or benefit from the school's educational programs or activities by placing the student (or students) in reasonable fear of physical harm; and

''(B) includes conduct that is based on—

''(i) a student's actual or perceived—

''(I) race;

''(II) color;

''(III) national origin;

''(IV) sex;

''(V) disability;

''(VI) sexual orientation;

''(VII) gender identity; or

''(VIII) religion;

''(ii) any other distinguishing characteristics that may be defined by a State or local educational agency; or

''(iii) association with a person or group with one or more of the actual or perceived characteristics listed in clause (i) or (ii).''; and

(D) by inserting after paragraph (4) (as redesignated by subparagraph (B)) the following:

''(5) HARASSMENT.—The term 'harassment'—

''(A) means conduct that adversely affects the ability of one or more students to participate in or benefit from the school's educational programs or activities because the conduct, as reasonably perceived by the student (or students), is so severe, persistent, or pervasive; and

''(B) includes conduct that is based on—

''(i) a student's actual or perceived—

''(I) race;

''(II) color;

''(III) national origin;

''(IV) sex;

''(V) disability;

''(VI) sexual orientation;

''(VII) gender identity; or

''(VIII) religion;

''(ii) any other distinguishing characteristics that may be defined by a State or local educational agency; or

''(iii) association with a person or group with one or more of the actual or perceived characteristics listed in clause (i) or (ii).''.

(h) EFFECT ON OTHER LAWS.—

(1) AMENDMENT.—The Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.) is amended by adding at the end the following:

''SEC. 4156. EFFECT ON OTHER LAWS.

''(a) FEDERAL AND STATE NONDISCRIMINATION LAWS.—Nothing in this part shall be construed to invalidate or limit rights, remedies, procedures, or legal standards available to victims of discrimination under any other Federal law or law of a State or political subdivision of a State, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794, 794a), or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The obligations imposed by this part are in addition to those imposed by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(b) FREE SPEECH AND EXPRESSION LAWS.—Nothing in this part shall be construed to alter legal standards regarding, or affect the rights (including remedies and procedures) available to individuals under, other Federal laws that establish protections for freedom of speech or expression.''.

(2) CLERICAL AMENDMENT.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended by adding after the item relating to section 4155 the following:

''Sec. 4156. Effect on other laws.''.

Mrs. GILLIBRAND. Mr. President, today, I am pleased to join Senator ROBERT CASEY and eight of my colleagues in introducing the Safe Schools Improvement Act. This important legislation will help to address a crisis going on in our schools—the bullying and harassment of our children. We know that no child can achieve the high academic standards set for them if they are living in fear of bullying or harassment. This legislation will help change the culture in our classrooms and provide schools with the tools they need to promote a safe learning environment.

Findings from the 2007 National School Climate Survey demonstrated that a significant number of students experienced harassment in our schools, often because of their sexual orientation or gender identity. This study also revealed that 96 percent of lesbian, gay, bisexual and transgender students in New York often heard words such as ''gay'' used in a negative connotation. Furthermore, 93 percent of students regularly heard homophobic remarks. The National School Climate Survey also found that 20 percent of students in New York were physically assaulted in their school because of their sexual orientation, while another 13 percent were assaulted because of their gender expression.

This environment of harassment and bullying in our schools lowers the academic performance of our students. In fact, 35 percent of LGBT students reported to have skipped classes at least once in the past month because they felt unsafe in their own school. I find this to be unacceptable.

The Safe Schools Improvement Act will require schools and districts receiving designated Federal funds to adopt codes of conduct specifically prohibiting bullying and harassment, including conduct based on a student's actual or perceived race, color, national origin, sex, sexual orientation, gender identity or religion. The act would ensure that schools and school districts focus on effective prevention programs in order to better prevent and respond to incidences of bullying and harassment, and would require that States report data on incidences of bullying and harassment to the Department of Education.

This bill has received support from a broad coalition of nearly 70 education, civil rights, disability, religious, and youth service organizations, such as the American Association of School Administrators, American Federation of Teachers, American School Health Association, National Association of School Psychologists, National Education Association, National Parent Teacher Association, American Association of University Women, Asian American Justice Center, the Gay, Lesbian and Straight Education Network, Human Rights Campaign and the National Council of La Raza. Additionally the National Safe Schools Partnership, strongly endorses the Safe Schools Improvement Act.

I urge my colleagues to join me in cosponsoring the Safe Schools Improvement Act. I believe that we must support this legislation to ensure that all our children can learn in a safe and productive environment.

By Mr. BEGICH:

S. 3740. A bill to supplement State jurisdiction in Alaska Native villages with Federal and tribal resources to improve the quality of life in rural Alaska while reducing domestic violence against Native women and children and to reduce alcohol and drug abuse and for other purposes; to the Committee on Indian Affairs.

Mr. BEGICH. Mr. President, today I introduce legislation to address issues of great concern to me and to all who care about public safety in Alaska Native villages. Last week President Obama signed the Tribal Law and Order bill into law. That legislation passed because Congress recognized the great need to provide more support for the criminal justice system and communities in Indian Country. While this law has some important provisions that will benefit Alaska Native communities, I believe the remoteness and other unique conditions of many Native villages in my State compel us to do more. That is why I am introducing the Alaska Safe Families and Villages Act of 2010.

My bill will establish a demonstration project for Alaska Native tribes to allow tribes in Alaska to set up tribal courts, establish tribal ordinances, and to impose sanctions on those people who violate the ordinances. It would enhance current tribal authority, while maintaining the State's primary role and responsibility in criminal matters. Additionally, those communities selected to be part of the demonstration project would be eligible for an Alaska Village Peace Officer grant to serve those communities in a holistic manner.

Unfortunately, because of the vastness of Alaska, too many of our Alaska Native villages lack any law enforcement. Too often, minor cases involving alcohol and domestic abuse go unreported because the nearest State Trooper resides in a hub community, located a long and expensive airplane ride away. Frequently, harsh weather prevents the Troopers from flying into a community even when the most heinous acts have occurred. Approximately 71 villages have a sole unarmed Village Patrol Safety officer, VPSO, who must be on duty 24 hours a day and 7 days a week. These hard-working

VPSOs are underpaid, and while communities try to provide some housing and heating assistance, in places where fuel oil can cost as much as $8 a gallon, it can be difficult to sustain the funding for these public servants.

As one who believes strongly in community involvement, I strongly believe tribes in Alaska should have a role in their law enforcement needs. This local control not only provides security for the communities, but also encourages local acceptance of the judicial system as a whole. With the changes in place that my bill would require, residents of Alaska Native villages will see a system that does more than just fly in after a tragedy has occurred.

Just recently communities in the Yukon-Kuskokwim Delta have experienced an alarming suicide cluster. Unfortunately Alaska Native communities have grown accustomed to alarming suicide rates, but in the past two months there have been at least nine self-inflicted deaths in these villages. Nick Tucker, an elder in Emmonak, recently wrote a letter to the State of Alaska's rural affairs director to try to bring attention to the issue. Part of his letter begged for the Governor to call the legislature in session and said it is no longer acceptable for them to wait for the Troopers because ''in the villages, they take forever.'' Part of this continuing suicide cycle is the presence of drugs and alcohol. Predators do not fear police action when they bootleg alcohol or sell drugs in villages, because there is no police presence. One can walk into a village, speak with an elder and that person will tell you who is bootlegging alcohol.

These communities are full of rich heritage and culture, however many have high unemployment due to the remoteness and lack of opportunity in the village. Most economic development in Alaska happens in either the metropolitan areas, or in very remote areas for resource extraction. Many of the villages have unemployment rates above 20 percent. Alaska Natives survival is highly dependent on the land. They subsist on game, berries, and fish. However, as hunting and fishing stocks dwindle many people are feeling disconnected from their heritage and have turned to drugs and alcohol. Too many people in the villages feel isolated and lack a connection, both figuratively and literally. Though educational attainment in the last 40 years has increased dramatically, the dropout rate in Alaska still hovers at 40 percent. Too many of our young men and women have lost hope and are losing a sense of community.

We must give our communities the tools necessary to protect themselves. Too often, we pour resources into urban areas, but become stuck when we try to work toward solutions for our most remote communities. We should no longer allow the answer from anyone to be ''we don't have the resources.'' Alaska Native villages are vibrant, strong communities and we should do everything in our power to work with these communities and answer their calls for help.

I encourage my colleagues to join me on this legislation, and ask for the full Senate to consider and pass it to provide help to some of the places in our country most in need.

By Mrs. BOXER:

S. 3744. A bill to establish Pinnacles National Park in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am pleased to introduce the Pinnacles National Park Act.

This legislation would elevate the Pinnacles National Monument to a National Park. The legislation would also rename the current Pinnacles Wilderness as the Hain Wilderness after Schuyler Hain, an early conservationist whose efforts led to the establishment of the Monument in 1908.

The Pinnacles National Monument ascends out of the beautiful Gabilan Mountains, east of central California's Salinas Valley. Established by President Theodore Roosevelt, the monument protects the spectacular remains of the Neenach Volcano. Colossal monoliths, sheer-walled canyons and talus caves exhibit millions of years of volcanic evolution and tectonic plate movement.

Originally 2500 acres, the monument has grown to encompass 26,000 acres of diverse California wildlands. These parklands represent one of only 5 regions, or less than 2 percent of the world's surface area, supporting a Mediterranean habitat. Less than five percent of the world's Mediterranean habitat remains protected, so it is essential that we preserve this special resource.

Mediterranean habitats provide a rare combination of cool wet winters, hot dry summer days, and evening fog—supporting many plants and animals found nowhere else in the world. One of the animals that calls the Pinnacles home is the critically endangered California condor. Recently, a condor hatched in the wild just outside the monument's boundary—the first to do so in this country in at least 70 years.

The Pinnacles area, famously rendered by John Steinbach in ''Of Mice and Men'' and ''East of Eden,'' is also an important part of California's cultural heritage. The area has held significance for several Native American tribes, early Spanish settlers, and Western homesteaders. Today, the Pinnacles are a global destination for naturalists and outdoor enthusiasts of all kinds, who are attracted by the park's scenic trails, natural resources, and some of the most unique rock-climbing in the world. The Pinnacles National Monument is an important driver of the local tourist economy and jobs, and elevating this site to a National Park will draw even more attention to this incredible destination.

I have worked with Congressman SAM FARR to craft legislation that will further protect this recreational treasure. It has strong support from the surrounding communities and the California Wild Heritage Campaign, a coalition of over 500 businesses and organizations.

I hope my colleagues will join me in recognizing this diverse natural and cultural resource by creating Pinnacles National Park.

By Mrs. LINCOLN:

S. 3745. A bill to amend the Consolidated Farm and Rural Development Act to require the Secretary of Agriculture in the case of low-income States to use 95 percent of the national average nonmetropolitan median income for purposes of determining the eligibility of communities in the States for certain rural development funding; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. LINCOLN. Mr. President, I rise today to offer the Rural Infrastructure Improvement Act of 2010. This legislation will help rural communities have better access to the funding available through the Rural Development programs administered by the U.S. Department of Agriculture, specifically the Rural Water and Wastewater Program and Community Facility Program.

As Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I am strongly concerned that communities in low-income states such as my state of Arkansas have limited ability to qualify for grant funding through certain Rural Development programs due to current non-metropolitan median household income requirements. The structure we have today creates barriers for many of our poorest rural communities that are most in need. Some of these rural communities have median household incomes well below the national average, yet they are ineligible for any grant funding because USDA applies the State's non-metropolitan median household income to funding formulas instead of the national median household income.

This structure creates disparities for many low-income rural States. For example, in Arkansas, a rural community with a median household income greater than the State's non-metropolitan median household income of $31,845 is ineligible for grant funding through the Rural Water and Community Facility programs. Rural communities in Arkansas who meet all of the other eligibility requirements for funding through these programs are ineligible for grant funding simply because of their low median income level. In fact, 45 States have a higher non-metropolitan median household income level. The legislation I am introducing today is designed to even the playing field for low-income rural communities in Arkansas and several other States.

Forty-eight percent of my home State's population lives in a rural community. The programs offered through USDA Rural Development are vital to our efforts to meet basic needs and foster economic development. Without the types of key infrastructure improvements that can be made through these rural development programs, it will be difficult for many of these communities to reach their full potential and prosper.

Mr. President, I ask unanimous consent that the text of the bill he printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rural Infrastructure Improvement Act of 2010''.

SEC. 2. MEDIAN INCOME REQUIREMENT ADJUSTMENT.

Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) is amended by inserting after subsection (b) the following:

''(c) MEDIAN INCOME REQUIREMENT ADJUSTMENT.—

''(1) IN GENERAL.—If the Secretary applies a median income requirement to communities for purposes of determining eligibility for the community facilities programs and water, waste disposal, and wastewater programs authorized under this section and sections 306A, 306C, 306D, and 306E, in the case of a State for which the State nonmetropolitan median income is equal to or less than 90 percent of the national average nonmetropolitan median income, the Secretary shall use an amount equal to 95 percent of the national average nonmetropolitan median income in applying the median income requirement for any community in the State.

''(2) TERMINATION OF AUTHORITY.—The authority provided by paragraph (1) terminates on September 30, 2012''.

By Mr. BINGAMAN (for himself, Mrs. SHAHEEN, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 3746. A bill to amend the Energy Policy Act of 2005 to improve the loan guarantee program of the Department of Energy under title XVII of that Act; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am introducing two bills, S. 3746 and S. 3759, making improvements to the operation of the Department of Energy's loan guarantee program. The first makes a number of changes that will ease the administration of the program and allow for quicker processing of applications within the Department. In addition, the bill will add a fourth category to the subsidized loan guarantee program created and funded in the American Reinvestment and Recovery Act that would allow energy efficiency projects to gain access to the program. This bill is substantially similar to a provision that the House of Representatives passed last year as a portion of H.R. 2847 but which did not receive consideration in the Senate.

The second bill institutes a time limit on consideration by the Office of Management and Budget of loan guarantee applications submitted by the Secretary. If the Secretary submits a term sheet for conditional commitment to OMB for review and comment, then OMB has 30 days to submit such comments. After 30 days the Secretary may issue a conditional commitment on the guarantee, taking into account any comments received from OMB, without further authorization from OMB. This provision would not affect the currently used OMB-approved subsidy cost model for loan guarantees or its application.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3746

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCENTIVES FOR INNOVATIVE TECHNOLOGIES LOAN GUARANTEE PROGRAM.

(a) SPECIFIC APPROPRIATION OR CONTRIBUTION.—Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—

''(1) IN GENERAL.—No guarantee shall be made unless—

''(A) an appropriation for the cost of the guarantee has been made;

''(B) the Secretary has received from the borrower a payment in full for the cost of the guarantee and deposited the payment into the Treasury; or

''(C) a combination of appropriations under subparagraph (A) or payments from the borrower under subparagraph (B) has been made that is sufficient to cover the cost of the guarantee.

''(2) LIMITATION.—The source of payments received from a borrower under subparagraph (B) or (C) of paragraph (1) shall not be a loan or other debt obligation that is made or guaranteed by the Federal Government.''; and

(2) by adding at the end the following:

''(l) CREDIT REPORT.—If, in the opinion of the Secretary, a third-party credit rating of the applicant or project is not relevant to the determination of the credit risk of a project, if the project costs are not projected to exceed $100,000,000, and the applicant agrees to accept the credit rating assigned to the applicant by the Secretary, the Secretary may waive any otherwise applicable requirement (including any requirement described in part 609 of title 10, Code of Federal Regulations) to provide a third-party credit report.

''(m) DIRECT HIRE AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding sections 3304 and sections 3309 through 3318 of title 5, United States Code, the head of the loan guarantee program under this title (referred to in this subsection as the 'Executive Director') may, on a determination that there is a severe shortage of candidates or a severe hiring need for particular positions to carry out the functions of this title, recruit and directly appoint highly qualified critical personnel with specialized knowledge important to the function of the programs under this title into the competitive service.

''(2) EXCEPTION.—The authority granted under paragraph (1) shall not apply to positions in the excepted service or the Senior Executive Service.

''(3) REQUIREMENTS.—In exercising the authority granted under paragraph (1), the Executive Director shall ensure that any action taken by the Executive Director—

''(A) is consistent with the merit principles of section 2301 of title 5, United States Code; and

''(B) complies with the public notice requirements of section 3327 of title 5, United States Code.

''(4) SUNSET.—The authority provided under paragraph (1) shall terminate on September 30, 2011.

''(n) PROFESSIONAL ADVISORS.—The Secretary may—

''(1) retain agents and legal and other professional advisors in connection with guarantees and related activities authorized under this title;

''(2) require applicants for and recipients of loan guarantees to pay all fees and expenses of the agents and advisors; and

''(3) notwithstanding any other provision of law, select such advisors in such manner and using such procedures as the Secretary determines to be appropriate to protect the interests of the United States and achieve the purposes of this title.

''(o) MULTIPLE SITES.—Notwithstanding any contrary requirement (including any provision under part 609.12 of title 10, Code of Federal Regulations) an eligible project may be located on 2 or more non-contiguous sites in the United States.''.

(b) APPLICATIONS FOR MULTIPLE ELIGIBLE PROJECTS.—Section 1705 of the Energy Policy Act of 2005 (42 U.S.C. 16516) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) MULTIPLE APPLICATIONS.—Notwithstanding any contrary requirement (including any provision under part 609.3(a) of title 10, Code of Federal Regulations), a project applicant or sponsor of an eligible project may submit an application for more than 1 eligible project under this section.''.

(c) ENERGY EFFICIENCY LOAN GUARANTEES.—Section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C. 16516(a)) is amended by adding at the end the following:

''(4) Energy efficiency projects, including projects to retrofit residential, commercial, and industrial buildings, facilities, and equipment.''.

(d) FEES; PROFESSIONAL ADVISORS.—Section 136 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013) is amended—

(1) by striking subsection (f) and inserting the following:

''(f) FEES.—Except as otherwise permitted under subsection (i), administrative costs shall be not more than $100,000 or 10 basis points of the loan.'';

(2) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(3) by inserting after subsection (h) the end the following:

''(i) PROFESSIONAL ADVISORS.—The Secretary may—

''(1) retain agents and legal and other professional advisors in connection with guarantees and related activities authorized under this section;

''(2) require applicants for and recipients of loan guarantees to pay directly, or through the payment of fees to the Secretary, all fees and expenses of the agents and advisors; and

''(3) notwithstanding any other provision of law, select such advisors in such manner and using such procedures as the Secretary determines to be appropriate to protect the

interests of the United States and achieve the purposes of this section.''.

By Mr. HATCH:

S. 3747. A bill to provide for a reduction and limitation on the total number of Federal employees, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. HATCH. Mr. President, I rise today to introduce the Reduce and Cap the Federal Workforce Act. This is a simple straightforward bill that would reduce the number of civilian federal employees—excluding those serving in the Departments of Defense and Homeland Security—to the pre-2009 numbers in each government agency through attrition. Once this reduced number is reached, then each agency would cap the number of employees at that level. Each hire would then have to be offset by another employee leaving that agency.

It is not hard to locate illustrations where the Federal Government is growing at an exceptionally fast pace. Looking at the number of Government employees as a percentage of America's population, one easily sees how we have increased the size of the government.

In 1815, the total population in America was 8.3 million people, yet there were only 4,837 Federal Government employees. That represents nearly 1/20 of 1 percent of Americans who were Federal employees. From 1981 through 2008, the civilian work force remained at about 1.1 million to 1.2 million.

The Obama administration says the Government will grow to 2.15 million employees this year serving roughly 310 million Americans. That is nearly 1 percent of the population, or put another way, is 20 times the number of government employees than there were in 1815 and almost a 50 percent increase since 2008. The actual numbers are likely to be much higher.

Some have estimated the newly enacted health care bill could add many thousands of Federal employees—as many as 16,000 new Internal Revenue Service employees alone. It has been reported that the recently enacted financial regulatory bill will result in the hiring of at least one thousand new federal government employees. It has been reported the SEC will need to hire an additional 800 employees alone.

I am introducing this legislation in order to ensure that the size of our federal government is reduced to the pre-2009 size and does not expand thereafter. This legislation is supported by Americans for Tax Reform, the American Conservative Union, and Americans for Limited Government.

I believe we need a limited federal government and this legislation is one way we can limit the size of the Government while decreasing Government spending. Our Nation, children, and grandchildren cannot be buried in debt created by an agenda to exponentially grow the size of the Government. Enough is enough.

By Mr. HATCH (for himself, Mr. DODD, Mr. BURR, Mr. REED, Mr. ENSIGN, and Mr. FRANKEN):

S. 3751. A bill to amend the Stem Cell Therapeutic and Research Act of 2005; to the Committee on Health, Education, Labor, and Pensions.

Mr. HATCH. Mr. President, I am pleased today to introduce the Stem Cell Therapeutic and Research Reauthorization Act of 2010 which reauthorizes the Stem Cell Therapeutic and Research Act of 2005, P.L. 109–129, through the end of 2015. I am also grateful that Senators DODD, BURR, REED, ENSIGN and FRANKEN have joined me as sponsors of this bipartisan bill.

Over the past few months, we have worked with the National Marrow Donor Program, NMDP, and cord blood transplantation experts, specifically Dr. Linda Kelley of the University of Utah and Dr. Joanne Kurtzberg of Duke University. It is my strong hope that our bill is considered by the Senate Committee on Health, Education, Labor and Pensions when the Congress returns in mid-September and is signed into law before the end of the year.

Our legislation makes several small but important additions to the existing program.

First, the bill reauthorizes both the C.W. Bill Young Cell Transplantation Program, which is commonly referred to as the Program and the National Cord Blood Inventory program, which is often called the NCBI, for an additional 5 years through 2015.

The total authorization levels for both programs combined would be $53 million in each of the 5 years, thus staying consistent with the authorization level established in the original statute. Specifically, the authorization level for the program would be $30 million in fiscal years 2011 through 2014 and $33 million in fiscal year 2015. The authorization levels for NCBI would be $23 million for fiscal years 2011 through 2014 and $20 million in fiscal year 2015.

Second, the original statute intended for cord blood banks to become self-sufficient in the future. Five years ago, it was our intent that cord blood banks would eventually be able to function and operate without federal funding. In fact, the HELP Committee's August 31, 2005 report states the following on this important issue: ''The committee anticipated that the funding authorized for establishing and strengthening the cord blood unit inventory will be devoted primarily to defraying the start-up expenses, including developing the expanded inventory in an optimal fashion. While we feel that such activities clearly have the potential to be self-supporting in time, we also recognize that sufficient funding over an adequate period of time will be necessary for these activities to realize their full potential. It is the committee's expectation that the Secretary will closely scrutinize all costs related to this legislation, so that tax dollars are spent judiciously to achieve the maximum effect.''

Almost 5 years have passed since the original statute was signed into law and cord blood banks are still dependent on Federal funding due to the many obstacles surrounding cord blood collection and cord blood storage. Therefore, our bill includes language to the contracting section requiring qualified cord blood banks to develop an annual plan and demonstrate ongoing measurable progress toward achieving self-sufficiency. While I recognize and understand that cord blood donation and collection is a new, challenging field of research, this modification was extremely important to me to ensure that taxpayers' precious dollars are spent prudently and that public cord blood banks are actually doing what the drafters of the original law intended.

The contracting provisions of our bill also require cord blood banks to provide a plan on how to increase cord blood collection, assist with the establishment of new collection sites or contract with new collection sites. Both the self-sufficiency requirements and the cord blood collection requirements would apply to both new cord blood bank applicants and existing cord blood banks extending their contracts.

Third, our bill also calls for the collection and maintenance of at least 150,000 new units of high-quality cord blood to be made available for transplantation through the C.W. Bill Young Cell Transplantation Program. The original statute called for the collection of 150,000 new units, and we believed that there needed to be some flexibility on the total number of units collected.

Fourth, in order to ensure that the appropriate science is reflected in this bill, the legislation modifies the definition of a first degree relative as the sibling of an individual in need of a transplant. According to scientists and researchers who specialize in cord blood transplantation, the only immediate family members able to donate cord blood are the siblings of a person in need of a transplant. The original statute defined first degree relatives as parents and siblings.

Fifth, the Program would support studies and demonstration projects that would study increasing cord blood donation and collection from a genetically diverse population, including exploring novel approaches or incentives to expand the number of cord blood collection sites partnering with federal cord blood banks.

Sixth, our bill extends the privacy protections included in the original statute for cord blood transplant patients and donors to bone marrow transplant patients and donors.

Finally, the legislation includes a study on cord blood donation and collection by the General Accountability Office. The final report would be submitted to the appropriate House and Senate Committees one year after enactment of our bill.

I am proud of this legislation because it proves that bipartisanship still exists in the United States Senate. This subject is near and dear to my heart. When this legislation was signed into law in 2005, it offered us a rare opportunity to make a difference in the lives of those suffering from a serious illness or those who have family members with illnesses requiring cord blood or bone marrow transplants. Back then, our goal was to increase the number of bone marrow and cord blood donors. Today, our goal continues to be increasing the number of bone marrow and cord blood donations and passage of this legislation will make it easier to do just that.

I will continue to do everything possible to provide transplant patients with the best possible options by ensuring a strong future for bone marrow and cord blood transplantation in this country. Patients in need of a transplant deserve nothing less and passing this legislation is the pathway to being successful in that endeavor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3751

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stem Cell Therapeutic and Research Reauthorization Act of 2010''.

SEC. 2. AMENDMENTS TO THE STEM CELL THERAPEUTIC AND RESEARCH ACT OF 2005.

(a) CORD BLOOD INVENTORY.—Section 2 of the Stem Cell Therapeutic and Research Act of 2005 (42 U.S.C. 274k note) is amended—

(1) in subsection (a), by inserting ''at least'' before ''150,000'';

(2) in subsection (c)(3), by inserting ''at least'' before ''150,000'';

(3) in subsection (d)—

(A) in paragraph (2), by striking ''; and'' and inserting ''.'';

(B) by redesignating paragraph (3) as paragraph (5); and

(C) by inserting after paragraph (2) the following:

''(3) will provide a plan to increase cord blood unit collections at collection sites that exist at the time of application, assist with the establishment of new collection sites, or contract with new collection sites;

''(4) will annually provide to the Secretary a plan for, and demonstrate, ongoing measurable progress toward achieving self-sufficiency of cord blood unit collection and banking operations; and'';

(4) in subsection (e)—

(A) in paragraph (1)—

(i) by striking ''10 years'' and inserting ''a period of at least 10 years beginning on the last date on which the recipient of a contract under this section receives Federal funds under this section''; and

(ii) by striking the second sentence and inserting ''The Secretary shall ensure that no Federal funds shall be obligated under any such contract after the date that is 5 years after the date on which the contract is entered into, except as provided in paragraphs (2) and (3).'';

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A)—

(I) by striking ''Subject to paragraph (1)(B), the'' and inserting ''The''; and

(II) by striking ''3'' and inserting ''5'';

(ii) in subparagraph (A)—

(I) by inserting ''at least'' before ''150,000''; and

(II) by striking ''; and'' and inserting ''.'';

(iii) in subparagraph (B)—

(I) by inserting ''meeting the requirements under subsection (d)'' after ''receive an application for a contract under this section''; and

(II) by striking ''or the Secretary'' and all that follows through the period at the end and inserting ''; or''; and

(iv) by adding at the end the following:

''(C) the Secretary determines that the outstanding inventory need cannot be met by the qualified cord blood banks under contract under this section.''; and

(C) by striking paragraph (3) and inserting the following:

''(3) EXTENSION ELIGIBILITY.—A qualified cord blood bank shall be eligible for a 5-year extension of a contract awarded under this section, as described in paragraph (2), provided that the qualified cord blood bank—

''(A) demonstrates a superior ability to satisfy the requirements described in subsection (b) and achieves the overall goals for which the contract was awarded;

''(B) provides a plan for how the qualified cord blood bank will increase cord blood unit collections at collection sites that exist at the time of consideration for such extension of a contract, assist with the establishment of new collection sites, or contract with new collection sites; and

''(C) annually provides to the Secretary a plan for, and demonstrates, ongoing measurable progress toward achieving self-sufficiency of cord blood unit collection and banking operations.'';

(5) in subsection (g)(4), by striking ''or parent''; and

(6) in subsection (h)—

(A) by striking paragraph (2) and inserting the following:

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the program under this section $23,000,000 for each of fiscal years 2011 through 2014 and $20,000,000 for fiscal year 2015. Such funds so appropriated shall remain available until expended.''; and

(B) in paragraph (3), by striking ''in each of fiscal years 2007 through 2009'' and inserting ''for fiscal years 2011 through 2015''.

(b) NATIONAL PROGRAM.—Section 379 of the Public Health Service Act (42 U.S.C. 274k) is amended—

(1) by striking subsection (a)(6) and inserting the following:

''(6) The Secretary, acting through the Advisory Council, shall submit to Congress an annual report on the activities carried out under this section.'';

(2) by striking subsection (d)(2)(D) and inserting the following:

''(D) support studies and demonstration and outreach projects for the purpose of increasing cord blood unit donation and collection from a genetically diverse population, including exploring novel approaches or incentives, such as remote or other innovative technological advances that could be used to collect cord blood units, to expand the number of cord blood unit collection sites partnering with cord blood banks that receive a contract under the National Cord Blood Bank Inventory program under section 2 of the Stem Cell Therapeutic and Research Act of 2005;''; and

(3) by striking subsection (f)(5)(A) and inserting the following:

''(A) require the establishment of a system of strict confidentiality to protect the identity and privacy of patients and donors in accordance with Federal and State law; and''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 379B of the Public Health Service Act (42 U.S.C. 274m) is amended by striking ''$34,000,000'' and all that follows through the period at the end, and inserting ''$30,000,000 for each of fiscal years 2011 through 2014 and $33,000,000 for fiscal year 2015. Such funds so appropriated shall remain available until expended.''.

(d) REPORT ON CORD BLOOD UNIT DONATION AND COLLECTION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, and the Secretary of Health and Human Services a report reviewing studies, demonstration programs, and outreach efforts for the purpose of increasing cord blood unit donation and collection for the National Cord Blood Inventory to ensure a high-quality and genetically diverse inventory of cord blood units.

(2) CONTENTS.—The report described in paragraph (1) shall include a review of such studies, demonstration programs, and outreach efforts under section 2 of the Stem Cell Therapeutic and Research Act of 2005 (42 U.S.C. 274k note) (as amended by this Act) and section 379 of the Public Health Service Act (42 U.S.C. 274k) (as amended by this Act), including—

(A) a description of the challenges and barriers to expanding the number of cord blood unit collection sites, including cost, the impact of regulatory and administrative requirements, and the capacity of cord blood banks to maintain high-quality units;

(B) remote or other innovative technological advances that could be used to collect cord blood units;

(C) appropriate methods for improving provider education about collecting cord blood units for the national inventory and participation in such collection activities;

(D) estimates of the number of cord blood unit collection sites necessary to meet the outstanding national inventory need and the characteristics of such collection sites that would help increase the genetic diversity and enhance the quality of cord blood units collected;

(E) best practices for establishing and sustaining partnerships for cord blood unit collection at medical facilities with a high number of minority births;

(F) potential and proven incentives to encourage hospitals to become cord blood unit collection sites and partner with cord blood banks participating in the National Cord Blood Inventory under section 2 of the Stem Cell Therapeutic and Research Act of 2005 and to assist cord blood banks in expanding the number of cord blood unit collection sites with which such cord blood banks partner; and

(G) recommendations about methods cord blood banks and collection sites could use to lower costs and improve efficiency of cord blood unit collection without decreasing the quality of the cord blood units collected.

Mr. DODD. Mr. President, I am pleased to join Senator HATCH, Senator REED, Senator BURR, Senator ENSIGN and Senator FRANKEN in introducing the Stem Cell Therapeutic and Research Reauthorization Act of 2010, a bill that will benefit some of the most gravely ill patients—those in need of a

blood stem cell transplant. The bill we are introducing today reauthorizes the vital work being done for patients as a result of the Stem Cell Therapeutic and Research Act of 2005.

I first joined Senator HATCH more than seven years ago on legislation to create a national network of cord blood banks and a cord blood registry. Five years ago, when the Health, Education, Labor and Pensions Committee took up cord blood legislation, Senator HATCH and I, working with many of our colleagues on and off the committee, expanded the scope of our legislation to include a reauthorization of the national bone marrow program and updated the cord blood provisions to be consistent with the recommendations made by the Institute of Medicine's report, ''Cord Blood: Establishing a National Hematopoietic Stem Cell Bank Program.'' In the end, that legislation, the Stem Cell Therapeutic and Research Act of 2005, passed the senate unanimously.

Since then we have learned a lot of about adult stem cell transplantation. There are currently twelve public cord blood banks across the U.S. and cord blood cells account for 22 percent of all transplants as of 2009. Among minorities, transplants using cord blood as the cell source are even higher. As of 2005, survival rates for transplants involving an unrelated donor are almost identical to those of a related donor which represents a near doubling of the survival rates for unrelated donor recipients over the past 15 years.

The bill we are introducing today builds on the success of the National Cord Blood Inventory and the national bone marrow transplantation program, making minor improvements to both. Among the most critical changes to the law is the prioritization of the creation of new cord blood collection sites so that we can increase the National Cord Blood Inventory. The 2005 law set a goal of collecting and maintaining 150,000 new units of high-quality cord blood. Unfortunately, the inventory is well below that goal and the transplantation needs of patients. In part, that is because the funding has not kept pace with what was authorized by the 2005 law. While I applaud President Obama for including additional funding for the National Cord Blood Inventory and the national bone marrow transplantation program in his fiscal year 2011 budget, I find it regrettable that President Bush did not provide full funding for these programs in any of his budgets, despite his vocal support for these programs and adult stem cells generally.

In my own state of Connecticut, there are more than 128,000 donors participating in the National Marrow Donor Program. There is some very exciting work going on at Yale University and Yale New Haven Hospital involving marrow or cord blood transplantation. In fact, last May, I had the privilege of meeting Ms. Teena Conquest, a bone marrow donor from Middletown, Connecticut, and the recipient of her bone marrow, Rebecca Christy, from Iowa. It was truly inspiring to hear their story and how one woman's generosity saved another woman's life.

I am deeply disappointed that there are currently no cord blood collection sites in the state of Connecticut through the National Cord Blood Inventory program. Currently, more than 160 hospitals in the U.S. have an agreement with a public cord blood bank through the National Cord Blood Inventory program to perform collections for banks within the National Marrow Donor Program network. While none of those hospitals are in Connecticut, it is my strong hope that with this reauthorization, we will be prioritizing the establishment of new cord blood collection sites for the public program. I strongly encourage hospitals in Connecticut who meet the criteria to become a cord blood collection site and help increase the inventory of cord blood so that patients in need can find a match.

As was the case for Ms. Conquest and Ms. Christy, the therapeutic benefits of bone marrow are tremendous and well established. Bone marrow transplants have been used for nearly half a century to treat patients suffering from diseases such as leukemia, Hodgkin's Disease, sickle cell anemia, and others. The National Marrow Donor Program, NMDP, provides a single point of access, the National Registry, to nearly 8 million volunteer bone marrow donors and 160,000 cord blood units, including more than 28,000 federally funded units in the National Cord Blood Inventory. The NMDP has helped countless patients and families understand their disease and treatment options with educational resources and one-on-one case management support.

I urge my colleagues on both sides of the aisle to join me and my colleagues in support of this important legislation. It is my strong hope that we can move quickly to mark up this legislation in September and shortly thereafter pass this bill in the Senate.

By Mr. REED (for himself, Mrs. SHAHEEN, and Mr. WHITEHOUSE):

S. 3753. A bill to provide for the treatment and temporary financing of short-time compensation programs, to the Committee on Finance.

Mr. REED. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3753

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Preventing Unemployment Act of 2010''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Treatment of short-time compensation programs.
Sec. 3. Temporary financing of certain short-time compensation payments.
Sec. 4. Temporary Federal short-time compensation.
Sec. 5. Grants for implementation of State short-time compensation programs.
Sec. 6. Assistance and guidance in implementing programs.
Sec. 7. Reports.

SEC. 2. TREATMENT OF SHORT-TIME COMPENSATION PROGRAMS.

(a) DEFINITION.—

(1) IN GENERAL.—Section 3306 of the Internal Revenue Code of 1986 (26 U.S.C. 3306) is amended by adding at the end the following new subsection:

''(v) SHORT-TIME COMPENSATION PROGRAM.—For purposes of this chapter, the term 'short-time compensation program' means a program under which—

''(1) the participation of an employer is voluntary;

''(2) an employer reduces the number of hours worked by employees in lieu of temporary layoffs;

''(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate, are eligible for unemployment compensation;

''(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would be payable to the employee if such employee were totally unemployed;

''(5) such employees are not expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but are required to be available for their normal workweek;

''(6) eligible employees may participate, as appropriate, in an employer-sponsored training program to enhance job skills if such program has been approved by the State agency;

''(7) the State agency shall require an employer to certify that the employer will continue to provide health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) and contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program under the same terms and conditions as though the workweek of such employee had not been reduced;

''(8) the State agency shall require an employer (or an employer's association which is party to a collective bargaining agreement) to submit a written plan describing the manner in which the requirements of this subsection will be implemented and containing such other information as the Secretary of Labor determines is appropriate;

''(9) in the case of employees represented by a union, the appropriate official of the union has agreed to the terms of the employer's written plan and implementation is consistent with employer obligations under the National Labor Relations Act; and

''(10) only such other provisions are included in the State law as the Secretary of Labor determines appropriate for purposes of a short-term compensation program.''.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(B) DELAY PERMITTED.—In the case of a State that is administering a short-time compensation program as of the date of the

enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of—

(i) the date the State changes its State law in order to be consistent with such amendment; or

(ii) the date that is 2 years after the date of the enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) INTERNAL REVENUE CODE OF 1986.—

(A) Subparagraph (E) of section 3304(a)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

''(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));''.

(B) Subsection (f) of section 3306 of the Internal Revenue Code of 1986 is amended—

(i) by striking paragraph (5) (relating to short-term compensation) and inserting the following new paragraph:

''(5) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined in subsection (v)); and'', and

(ii) by redesignating paragraph (5) (relating to self-employment assistance program) as paragraph (6).

(2) SOCIAL SECURITY ACT.—Section 303(a)(5) of the Social Security Act is amended by striking ''the payment of short-time compensation under a plan approved by the Secretary of Labor'' and inserting ''the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986)''.

(3) UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992.—Subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments of 1992 (26 U.S.C. 3304 note) are repealed.

SEC. 3. TEMPORARY FINANCING OF CERTAIN SHORT-TIME COMPENSATION PAYMENTS.

(a) PAYMENTS TO STATES.—

(1) IN GENERAL.—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)) under the provisions of the State law. Notwithstanding section 2(a)(2), a State administering a short-term compensation program as of the date of the enactment of this Act shall not be eligible to receive payments under this section until the program administered by such State meets the requirements of section 3306(v) of the Internal Revenue Code of 1986 (as so added). Payments shall also be made for additional State administrative expenses incurred (as determined by the Secretary).

(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) LIMITATIONS ON PAYMENTS.—

(A) GENERAL PAYMENT LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State in excess of 26 weeks of benefits.

(B) EMPLOYER LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by an employer—

(i) whose workforce during the 3 months preceding the date of the submission of the employer's short-time compensation plan has been reduced by temporary layoffs of more than 20 percent; or

(ii) on a seasonal, temporary, or intermittent basis.

(b) APPLICABILITY.—Payments to a State under subsection (a) shall be available for weeks of unemployment—

(1) beginning on or after the date of the enactment of this Act; and

(2) ending on or before the date that is 3 years after the date of the enactment of this Act.

(c) FUNDING AND CERTIFICATIONS.—

(1) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(d) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(2) STATE; STATE AGENCY; STATE LAW.—The terms ''State'', ''State agency'', and ''State law'' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

SEC. 4. TEMPORARY FEDERAL SHORT-TIME COMPENSATION.

(a) FEDERAL-STATE AGREEMENTS.—

(1) IN GENERAL.—Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State's law does not provide for the payment of short-time compensation under—

(A) a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)); or

(B) subsections (b) through (d) of section 401 of the Unemployment Compensation Amendments Act of 1992, as in effect on the day before the date of the enactment of this Act.

(2) ABILITY TO TERMINATE.—Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

(1) IN GENERAL.—Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a).

(2) LIMITATIONS ON PLANS.—

(A) GENERAL PAYMENT LIMITATIONS.—A short-time compensation plan approved by a State shall not permit the payment of short-time compensation in excess of 26 weeks.

(B) EMPLOYER LIMITATIONS.—A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by an employer—

(i) whose workforce during the 3 months preceding the date of the submission of the employer's short-time compensation plan has been reduced by temporary layoffs of more than 20 percent; or

(ii) on a seasonal, temporary, or intermittent basis.

(3) EMPLOYER PAYMENT OF COSTS.—Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

(c) PAYMENTS TO STATES.—

(1) IN GENERAL.—There shall be paid to each State with an agreement under this section an amount equal to—

(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(4) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

(d) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment—

(1) beginning on or after the date on which such agreement is entered into; and

(2) ending on or before the date that is 2 years after the date of the enactment of this Act.

(e) TRANSITION RULE.—If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)), the State shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law.

(f) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(2) STATE; STATE AGENCY; STATE LAW.—The terms ''State'', ''State agency'', and ''State law'' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

SEC. 5. GRANTS FOR IMPLEMENTATION OF STATE SHORT-TIME COMPENSATION PROGRAMS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary shall award start-up grants to State agencies—

(A) in States that enact short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)) on or after May 1,

2010, for the purpose of creating such programs; and

(B) that apply for such grants not later than September 30, 2012.

(2) AMOUNT.—The amount of a grant awarded under paragraph (1) shall be an amount determined by the Secretary based on the costs of implementing a short-time compensation program.

(3) ONLY 1 GRANT PER STATE.—A State agency is only eligible to receive 1 grant under this section.

(b) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(c) REPORTING.—The Secretary may establish reporting requirements for State agencies receiving a grant under this section in order to provide oversight of grant funds used by States for the creation of the short-time compensation programs.

(d) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(2) STATE; STATE AGENCY.—The terms ''State'' and ''State agency'' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

SEC. 6. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.

In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)), the Secretary of Labor shall—

(1) develop model legislative language which may be used by States in developing and enacting such programs and periodically review and revise such model legislative language;

(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

(3) establish reporting requirements for States, including reporting on—

(A) the number of averted layoffs;

(B) the number of participating companies and workers; and

(C) such other items as the Secretary of Labor determines are appropriate.

SEC. 7. REPORTS.

(a) INITIAL REPORT.—Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress and to the President a report or reports on the implementation of the provisions of this Act, including an analysis of the significant impediments to State enactment and implementation of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2(a)).

(b) SUBSEQUENT REPORTS.—After the submission of the report under subsection (a), the Secretary of Labor may submit such additional reports on the implementation of short-time compensation programs as the Secretary deems appropriate.

(c) FUNDING.—There are appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Secretary of Labor, $1,500,000 to carry out this section, to remain available without fiscal year limitation.

By Mr. ROCKEFELLER:

S. 3756. A bill to amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Public Safety Spectrum and Wireless Innovation Act.

Radio spectrum is a very valuable resource. It can grow our economy and put new and innovative wireless services in the hands of consumers and businesses. It can enhance our public safety by fostering communications between first responders when the unthinkable occurs. But it is also scarce. That is why we need a forward-thinking spectrum policy that promotes smart use of our airwaves—and provides public safety officials with the wireless resources they need to keep us safe.

The Public Safety Spectrum and Wireless Innovation Act will do just that.

First, this legislation will provide the Federal Communications Commission with the authority to hold incentive auctions. This will help put valuable spectrum resources into the hands of companies that can create innovative new services for American consumers and businesses. This proposal will not require the return of spectrum from existing commercial users, but will instead provide them with a voluntary opportunity to realize a portion of auction revenues if they wish to facilitate putting spectrum to new and productive uses.

Second, this legislation will provide public safety officials with an additional 10 megahertz of spectrum known as the ''D-block.'' This spectrum will support a national, interoperable wireless broadband network that will help first responders protect us and keep us from harm. I believe this is the right thing to do, because we owe those courageous individuals who wear the shield the resources they need to do their job. But more than that, by providing authority for incentive auctions, this legislation will offer a revenue stream to assist public safety with construction and maintenance of their network.

The American people deserve to have the best and most innovative uses of wireless networks anywhere. They deserve to know our first responders have access to the airwaves they need when tragedy strikes. So I urge my colleagues to join me and support this important legislation.

By Mr. BINGAMAN (for himself, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 3759. A bill to amend the Energy Policy Act of 2005 to authorize the Secretary of Energy to issue conditional commitments for loan guarantees under certain circumstances; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONDITIONAL COMMITMENTS FOR LOAN GUARANTEES.

Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended by adding at the end the following:

''(l) DEADLINE FOR OMB REVIEW.—If the Secretary submits to the Director of the Office of Management and Budget a loan guarantee for review and comment, the Secretary may, taking into consideration comments made by the Director, issue a conditional commitment to enter into the loan guarantee at least 30 days subsequent to the submittal, without further approval from the Director.''.

By Mr. BINGAMAN (for himself and Mr. KERRY):

S. 3760. A bill to amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce the Automatic IRA Act of 2010. When fully phased in, this bill will give nearly 42 million Americans nationwide an easy, effective way to take responsibility for their financial futures and plan for a secure retirement. The act incorporates the President's call, in his proposed fiscal year 2010 and fiscal year 2011 budgets, for Congress to enact automatic IRA legislation.

Currently, about half of American workers have no opportunity to save for retirement at work. In my home State of New Mexico, that share is nearly 60 percent. Among those lacking coverage at work, only 1 in 10 contributes annually to an individual retirement account, IRA; the rest generally make no dedicated savings for retirement. The result? An alarming number of American workers are woefully unprepared for a financially secure retirement. According to Boston College's Center for Retirement Research, ''in 2009 half of today's households will not have enough retirement income to maintain their pre-retirement standard of living, even if they work to age 65, which is above the current average retirement age.'' Especially in this period of economic uncertainty, it is imperative that Congress focus on this retirement savings crisis. My bill takes a commonsense approach to doing so.

Under this bill, most private sector employees working in establishments of 10 or more employees who are not currently covered by a workplace retirement plan would be given the opportunity to save through regular payroll deposits that continue automatically, unless they elect out. The savings will be deposited into the worker's

own IRA, which will be subject to the laws already in place governing IRA accounts. Employers' administrative functions will be minimal. And the arrangement is market oriented; other than the smallest of accounts, automatic IRAs will be provided by the same banks, mutual funds, insurance carriers, and other institutions that currently provide them.

The automatic IRA approach is intended to help these households overcome the barrier of inertia. It builds on the successful use—encouraged by reforms I strongly supported the Pension Protection Act of 2006—of automatic features in 401(k) plans that encourage employees toward sensible decisions (while allowing them to make alternative choices). We have already seen evidence that automatic 401(k) enrollment can dramatically boost employee participation rates, from seven in ten eligible workers to nine in ten. And in the 401(k) context, the gains are even more striking for population groups least likely to save, including women, Latino, and low-income workers.

Of the 75 million American workers who now are not covered by employment-based retirement plans, an estimated 42 million would be eligible to save and enroll under automatic IRA legislation. This includes more than 250,000 in my home State of New Mexico. Many of these individuals are familiar with IRAs. But when asked why they have not used the existing program, about half point to issues relating to setup and decisionmaking as the key barriers. The automatic IRA would eliminate these barriers, and the Retirement Security Project estimates that automatic IRA legislation could increase net national saving by nearly $15 billion annually.

This is the third consecutive Congress in which I have introduced automatic IRA legislation. The concept was initially developed by scholars at the Brookings Institution and Heritage Foundation. Indeed, the automatic IRA concept has long enjoyed broad support across the political spectrum. For instance, Martin Feldstein, chief economic advisor to President Reagan, has described himself as ''a great enthusiast of automatic enrollment IRAs'' who thinks ''as a policy, it's a no-brainer'' and ''can't imagine why there would be any significant opposition from political players on either side of the aisle.''

Finally, this bill seeks to send a strong signal of preference for employers to offer qualified retirement plans, like 401(k)s. Among other features, it doubles the credit for employers that newly establish qualified plans and it directs the Secretaries of the Treasury and Labor to implement final regulations and establish a model plan for Multiple Employer Plans.

I am grateful that my colleague on the Senate Finance Committee, Senator KERRY, is joining me in introducing this bill. I am also pleased to note the broad range of stakeholders supporting the automatic IRA concept, including AARP; the American Society of Pension Professionals & Actuaries; Aspen Institute's Initiative on Financial Security; the Business and Professional Women's Foundation; CFED; Consumers Union; FINRA; the Minority Business Roundtable; New Economics for Women; the United States Black Chamber; the United States Women's Chamber of Commerce; Women Impacting Public Policy; and the Women's Institute for a Secure Retirement.

Ensuring easy access to a retirement account and the ability to have part of their wages go directly from their paycheck into this account are proven strategies to encourage retirement savings. I call on the Senate to take up this bill in the fall and to include it in legislation extending the 2001 and 2003 tax cuts.

By Mr. REID (for himself and Mr. ENSIGN):

S. 3762. A bill to reinstate funds to the Federal Land Disposal Account; read the first time.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3762

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FEDERAL LAND DISPOSAL ACCOUNT.

Notwithstanding section 206(f) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(f)), any balance remaining in the Federal Land Disposal Account on July 24, 2010, shall be reinstated and available for expenditure in accordance with section 206(b) of that Act (43 U.S.C. 2305(b)), to remain available until expended.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 607—RECOGNIZING THE MONTH OF OCTOBER 2010 AS ''NATIONAL PRINCIPALS MONTH''

Mr. DORGAN (for himself, Mr. LUGAR, Mr. FRANKEN, Mr. AKAKA, Mr. BAUCUS, Mrs. MURRAY, Mr. CONRAD, Mrs. FEINSTEIN, Mr. CARDIN, Mr. TESTER, Mr. BEGICH, Mrs. LINCOLN, Mr. GOODWIN, Mr. MENENDEZ, and Mr. CASEY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 607

Whereas the National Association of Elementary School Principals and the National Association of Secondary School Principals have declared the month of October 2010 as ''National Principals Month'';

Whereas school leaders are expected to be educational visionaries, instructional leaders, assessment experts, disciplinarians, community builders, public relations experts, budget analysts, facility managers, special programs administrators, and guardians of various legal, contractual, and policy mandates and initiatives, as well as being entrusted with our young people, our most valuable resource;

Whereas principals set the academic tone for their schools and work collaboratively with teachers to develop and maintain high curriculum standards, develop mission statements, and set performance goals and objectives;

Whereas the vision, dedication, and determination of a principal provides the mobilizing force behind any school reform effort; and

Whereas the celebration of ''National Principals Month'' would honor elementary, middle level, and high school principals and recognize the importance of school leadership in ensuring that every child has access to a high-quality education: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the month of October 2010 as ''National Principals Month''; and

(2) honors the contribution of school principals in the elementary and secondary schools of our Nation by supporting the goals and ideals of ''National Principals Month''.

SENATE RESOLUTION 608—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF THE INTERIOR SHOULD TAKE IMMEDIATE ACTION TO EXPEDITE THE REVIEW AND APPROPRIATE APPROVAL OF APPLICATIONS FOR SHALLOW WATER DRILLING PERMITS IN THE GULF OF MEXICO, THE BEAUFORT SEA, AND THE CHUKCHI SEA

Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. WICKER, Mr. COCHRAN, Mr. VITTER, Mr. CORNYN, Mr. SESSIONS, Mr. BEGICH, Ms. MURKOWSKI, and Mr. SHELBY) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 608

Whereas on May 6, 2010, in response to the oil spill from the mobile offshore drilling unit Deepwater Horizon, and without prior public review or notice, the Secretary of the Interior announced an immediate moratorium on the approval of all offshore oil and gas drilling permits until an offshore safety review was completed;

Whereas on May 28, 2010, following a Department of the Interior safety review, and with the support of many members of the Senate, the President lifted the offshore moratorium for shallow water drilling operations for those drilling rigs or platforms equipped with blowout prevention equipment located above the water surface;

Whereas on June 2, 2010, the Secretary of the Interior confirmed in a press release that the shallow water drilling moratorium was lifted, but that such drilling operations must ''satisfy new safety and environmental requirements'';

Whereas on June 3, 2010, the President publicly stated that ''the [offshore drilling] moratorium has not extended to the shallow waters'';

Whereas on June 8 and June 18, 2010, the Secretary of the Interior issued documents entitled ''Notice to Lessees 05 and 06'' (referred to in this preamble as ''NTL–05'' and ''NTL–06'', respectively) imposing new safety and environmental requirements applicable to the filings for new drilling permits, exploration plans, or development plans;

Whereas as of July 14, 2010, the Secretary of the Interior has not provided adequate guidance and information for the shallow

water drilling industry to comply with new drilling application requirements imposed by NTL–06;

Whereas approximately 35 percent of the available shallow water drilling rigs in the Gulf of Mexico are now without work and idle, putting thousands of jobs at risk and affecting the orderly production of domestic natural gas resources in the Gulf Coast;

Whereas more than 25,000 jobs are at risk if the Secretary of the Interior does not continue to issue any new shallow water permits and existing permits expire;

Whereas every Gulf of Mexico shallow water operation provides approximately 500 direct and indirect jobs;

Whereas the failure to approve the final Application for Permit to Drill for 3 exploration wells in the Beaufort and Chukchi Seas in 2010 represents a loss of 600 jobs and harms oil and natural gas exploration critical to the national energy infrastructure; and

Whereas the lack of guidance from the Secretary of the Interior regarding new safety regulations has resulted in only 1 new shallow water permit being granted since May 6, 2010: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) national energy security and the regional Gulf Coast economy depend upon the full and immediate restoration of shallow water drilling operations in the Gulf of Mexico;

(2) the long term economic health of the State of Alaska depends upon the responsible development of the oil and natural gas reserves of the Beaufort and Chukchi Seas; and

(3) the Secretary of the Interior should—

(A) provide written guidance and clarification to applicants regarding new safety requirements; and

(B) take immediate and effective action to expedite the review and appropriate approval of applications for shallow water drilling permits in the outer Continental Shelf.

SENATE RESOLUTION 609—CONGRATULATING THE NATIONAL URBAN LEAGUE ON ITS 100TH YEAR OF SERVICE TO THE UNITED STATES

Mr. CARDIN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 609

Whereas the National Urban League (referred to in this preamble as the ''League'') is a historic civil rights organization dedicated to promoting economic empowerment to improve the standard of living in historically underdeveloped urban communities;

Whereas, by promoting education, civic engagement, economic development, and civil justice, the League has been a consistent advocate for improving the quality of life for struggling communities;

Whereas, on July 28, 2010, the League will open its Centennial Conference in Washington, D.C.;

Whereas, on the centennial anniversary of the National Urban League, the country can look back with great pride on the extraordinary accomplishments of the League;

Whereas, since its inception in 1910, the League has made tremendous gains in equality and empowerment in the African-American community throughout the United States;

Whereas the National Urban League has remarkable predecessors, including the National League for the Protection of Colored Women (established in 1906), the Committee for Improving the Industrial Condition of Negroes in New York (established in 1906), and the Committee on Urban Conditions Among Negroes (established in 1910);

Whereas the League began as a multiracial, diverse grassroots campaign by Mrs. Ruth Standish Baldwin and Dr. George Edmund Haynes;

Whereas, between 1910 and 2010, the League expanded to 25 national programs, with more than 100 local affiliates in 36 states and the District of Columbia;

Whereas, during the civil rights movement, the League worked closely with A. Phillip Randolph, Dr. Martin Luther King Jr., and many other exceptional leaders;

Whereas, throughout the 1970s, the partnership between the League and the Federal Government experienced tremendous growth, with the 2 entities delivering aid to urban areas and making improvements in housing, education, health, and minority-owned small businesses;

Whereas the partnership between the League and the Federal Government revolutionized how the United States viewed race relations, challenging the deep discrimination within the social structure of the United States and cementing the League as a premier social justice organization;

Whereas the League employs a 5-point approach to increase the quality of life of people in the United States, particularly African-Americans;

Whereas the League carries out the 5-point approach through programs such as ''Education and Youth Empowerment'', ''Economic Empowerment'', ''Health and Quality of Life Empowerment'', ''Civic Engagement and Leadership Empowerment'', and ''Civil Rights and Racial Justice Empowerment'';

Whereas, through the Housing and Community Development division of the League, programs such as ''Foreclosure Prevention'', ''Homeownership Preparation'', and ''Financial Literacy'' aided more than 50,000 people in 2009;

Whereas, with assistance provided by the ''Foreclosure Prevention'' program of the League, 3,000 people were able to avoid filing foreclosure in 2009;

Whereas, through the Education and Youth Development division of the League, programs such as ''Project Ready'' prepare students to transition from high school to college or to the workforce;

Whereas the League publishes the ''State of Black America'', an annual report analyzing social and economic conditions affecting African-Americans;

Whereas the ''State of Black America'' report includes the Equality Index, a statistical measure of the disparities between Black and White people across 5 categories: economics, education, health, civic engagement, and social justice;

Whereas the programs of the League not only emphasize the importance of leadership and community in local areas, but also enhance the quality of life by studying and addressing specific problems within the communities;

Whereas, throughout 100 years of service, the League has assisted millions of people in the United States, especially African-Americans, in combating poverty, inequality, and social injustice;

Whereas the League has outlined 4 aspirational goals as part of the ''I AM EMPOWERED'' campaign, which marks the centennial anniversary of the League;

Whereas the ''I AM EMPOWERED'' campaign will galvanize millions of people to take a pledge to help achieve the 4 aspirational goals of education, jobs, housing, and health care by 2025, namely, by ensuring that—

(1) every child in the United States is ready for college, work, and life;

(2) every person in the United States has access to jobs with a living wage and good benefits;

(3) every person in the United States lives in safe, decent, affordable, and energy-efficient housing on fair terms; and

(4) every person in the United States has access to quality and affordable health care solutions;

Whereas the work of the League has been pivotal in improving the lives of millions of African-Americans through community-oriented programs, civil rights, and leadership opportunities, at times when these changes have been needed most; and

Whereas the National Urban League remains an essential organization: Now, therefore, be it

Resolved, That the Senate—

(1) welcomes the National Urban League to the capital of the United States to commemorate the National Urban League's 100th year of service to the Nation;

(2) expresses deep gratitude for the hard-working and dedicated men and women of the National Urban League who, during the last 100 years, have struggled to improve the society of the United States and the lives of all people in the United States; and

(3) commends the ongoing and tireless efforts of the National Urban League to address areas of inequality and fight for the right of all people of the United States to live with freedom, dignity, and prosperity.

SENATE RESOLUTION 610—RECOGNIZING THE 40TH ANNIVERSARY OF THE CUMBRES AND TOLTEC SCENIC RAILROAD

Mr. UDALL of New Mexico (for himself, Mr. BINGAMAN, Mr. BENNET, and Mr. UDALL of Colorado) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 610

Whereas the Cumbres and Toltec Scenic Railroad (C&TSRR) was initially constructed in 1880 as part of the narrow gauge Denver and Rio Grande Railroad's San Juan Extension;

Whereas the San Juan Extension provided a critical freight and passenger transportation link in the Southwest until the line was abandoned in 1969;

Whereas, in 1970, the States of New Mexico and Colorado jointly purchased the track between Chama, New Mexico, and Antonito, Colorado, along with locomotives, cars and facilities and renamed it the Cumbres and Toltec Scenic Railroad in an effort to preserve the history of the railroad and maintain access along the scenic corridor;

Whereas the C&TSRR is recognized as both a national historic site and a historic civil engineering landmark;

Whereas the C&TSRR traverses the highest railroad pass in the country at 10,015 feet and is the highest and longest surviving narrow gauge railroad in the United States;

Whereas the C&TSRR uses steam locomotives dating back to the 1920s, including the ''Mudhen'', once owned by Gene Autry;

Whereas preservation of railroads like the C&TSRR is critical to preserving the history of the American interest in expanding our Nation's railroad system;

Whereas the C&TSRR continues to serve a critical role for the region through attracting tourists and industry including serving as a backdrop for over 10 movies including Indiana Jones and the Last Crusade;

Whereas the C&TSRR Commission will be celebrating 40 years of railroad co-ownership

by New Mexico and Colorado this year: Now, therefore, be it

Resolved, That the Senate

(1) recognizes the Cumbres & Toltec Scenic Railroad days;

(2) acknowledges the critical role of freight and passenger rail in our nation's intermodal transportation system; and

(3) commends the efforts of the State governments of Colorado and New Mexico, the Cumbres and Toltec Scenic Railroad Commission, the Cumbres and Toltec Scenic Railroad Management Company, and Friends of the C&TSRR for their ongoing efforts to maintain this historic and scenic railroad.

Mr. UDALL of New Mexico. Mr. President, today, I join Senators BINGAMAN, BENNET of Colorado, and UDALL, in submitting a resolution to recognize the Cumbres and Toltec Scenic Railroad on its 40th anniversary this August. Representative LUJÁN, a member of the New Mexico delegation, is introducing a companion resolution in the house.

The Cumbres and Toltec Scenic Railroad has been an integral part of the Northern New Mexico and Southern Colorado economies since its construction in 1880 as part of the Denver and Rio Grande Railroad's San Juan Extension.

From its construction until it was abandoned in 1969, the railroad provided a critical passenger and freight link serving communities throughout New Mexico and Colorado.

In 1970, recognizing the economic impact abandonment of the line would have on communities served by the railroad and appreciating the railroad's historic significance, New Mexico and Colorado came together to purchase the facilities, locomotives, cars and line between Chama, NM and Antonito, CO. To acknowledge the sheer beauty of the route, they renamed it the Cumbres and Toltec Scenic Railroad.

Since that time the Cumbres and Toltec Scenic Railroad has been recognized as a national historic site and, by the American Society of Civil Engineers, as a civil engineering landmark acknowledging the challenging terrain the railroad crosses.

Today, the Cumbres and Toltec Scenic railroad continues to be critical to the local communities. The railroad offers tourists trips daily between May and October and serves to showcase the history and beauty of this region of the country.

These trips offer a glimpse into railroad travel of the past and provide the visionary tourist a taste of what could be with future expansion of passenger rail in the West.

In August, the Cumbres and Toltec Scenic Railroad will celebrate 40 years of co-ownership and this resolution honors its efforts in preserving the history of and building a future for railroad in America.

I ask all my Senate colleagues to join Senators BINGAMAN, BENNET, of Colorado, UDALL of Colorado and me in recognizing the Cumbres and Toltec Scenic Railroad days by agreeing to this resolution.

SENATE RESOLUTION 611—CONGRATULATING THE CUMBERLAND VALLEY ATHLETIC CLUB ON THE 48TH ANNIVERSARY OF THE RUNNING OF THE JFK 50-MILE ULTRA-MARATHON

Mr. CARDIN. (for himself, Ms. MIKULSKI, and Mr. BAUCUS) submitted the following resolution, which was referred to the Committee on the Judiciary.

S. RES. 611

Whereas President John F. Kennedy set as a national goal the improvement of the health of the members of the United States Armed Forces;

Whereas President Kennedy, in 1963, issued an Executive order challenging United States Marine officers to finish a 50-mile race in 20 hours, matching a similar challenge issued in 1908 by President Theodore Roosevelt;

Whereas, since that Executive order, thousands of Americans, not just servicemen and women, have taken up the challenge of the JFK 50-Mile Ultra-Marathon;

Whereas, since the inception of the JFK 50-Mile Ultra-Marathon, all members of the Armed Services have been invited to meet the challenge set by Presidents Kennedy and Roosevelt over an historic race course;

Whereas between 30 and 40 percent of participants in the JFK 50-Mile Ultra-Marathon each year are active duty military or veterans;

Whereas each of the branches of the United States Armed Forces fields at least 1 team each year in the JFK 50-Mile Ultra-Marathon, and the Navy typically fields several teams;

Whereas much of the course of the JFK 50-Mile Ultra-Marathon is located on Federal land, including the historic C&O Canal, the Appalachian Trail, and Antietam Battlefield;

Whereas the JFK 50-Mile Ultra-Marathon includes the War Correspondents Memorial Arch, a national monument located in Gathland State Park in the State of Maryland; and

Whereas following the assassination of President Kennedy, the first JFK 50-Mile Ultra-Marathon was organized as a way to honor President Kennedy, and has been held annually, rain or shine, ever since: Now, therefore, be it

Resolved, That the Senate—

(1) commends and congratulates the past, present, and future participants and organizers of the JFK 50-Mile Ultra-Marathon; and

(2) requests the Secretary of the Senate to transmit an enrolled copy of this resolution to the Cumberland Valley Athletic Club as an expression of the best wishes of the Senate for a glorious year of celebration.

SENATE RESOLUTION 612—DESIGNATING SEPTEMBER 9, 2010, AS "NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY"

Ms. MURKOWSKI (for herself, Mr. JOHNSON, Mr. BENNETT, Mr. SPECTER, Mr. DORGAN, Mr. BAYH, Mr. HATCH, and Mrs. MURRAY) submitted the following resolution; which was considered and agreed to:

S. RES. 612

Whereas the term "fetal alcohol spectrum disorders" includes a broader range of conditions than the term "fetal alcohol syndrome" and therefore has replaced the term "fetal alcohol syndrome" as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was $6,000,000,000 in 2007, and it is estimated that each individual with fetal alcohol syndrome will cost taxpayers of the United States between $860,000 and $4,000,000 during the lifetime of each such individual;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked "What if ... a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol ... would the rest of the world listen?"; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2010, as "National Fetal Alcohol Spectrum Disorders Awareness Day"; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize further effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection on the ninth hour of September 9, 2010, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

SENATE RESOLUTION 613—RECOGNIZING THE 63RD ANNIVERSARY OF INDIA'S INDEPENDENCE, EXPRESSING APPRECIATION TO AMERICANS OF INDIAN DESCENT FOR THEIR CONTRIBUTIONS TO SOCIETY, AND EXPRESSING SUPPORT AND OPTIMISM FOR THE STRATEGIC PARTNERSHIP AND FRIENDSHIP BETWEEN THE UNITED STATES AND INDIA IN THE FUTURE

Mr. CORNYN (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 613

Whereas on August 15, 1947, India gained independence from Great Britain and became a sovereign nation;

Whereas August 15 is celebrated in India as Independence Day;

Whereas India is the largest democracy in the world;

Whereas India has one of the largest and most dynamic economies in the world;

Whereas, in recent years, the United States and India have pursued a strategic partnership based on common interests and shared commitments to freedom, democracy, pluralism, human rights, and the rule of law;

Whereas President Barack Obama referred to the relationship between the United States and India as ''one of the defining partnerships of the 21st century'' at the first State dinner hosted by President Obama, which was held in honor of Indian Prime Minister Manmohan Singh in November 2009;

Whereas the United States and India completed the inaugural round of the United States-India Strategic Dialogue in June 2010;

Whereas the United States and India have undertaken a cooperative effort in the area of civilian nuclear power, which Congress approved through the enactment of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110–369; 122 Stat. 4028);

Whereas the strong relationship between the United States and India, based on mutual trust and respect, enables close collaboration across a broad spectrum of strategic interests, including counterterrorism, democracy promotion, regional economic development, human rights, and scientific research;

Whereas the United States and India have balanced, growing, and mutually beneficial trade and investment ties that create jobs in both countries;

Whereas, since 2001, Indians have comprised the largest foreign student population on college campuses in the United States, accounting for approximately 15 percent of all foreign students in the United States;

Whereas there are more than 2,000,000 Americans of Indian descent in the United States;

Whereas Americans of Indian descent have made lasting contributions to the social and economic fabric of the United States; and

Whereas Americans of Indian descent continue to enrich all sectors of public life in the United States, including as government, military, and law enforcement officials working to uphold the Constitution of the United States and to protect all people in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 63rd anniversary of India's independence;

(2) celebrates the contributions of Americans of Indian descent to society in the United States; and

(3) remains committed to fostering and advancing the strategic partnership between the United States and India in the future.

SENATE RESOLUTION 614—COMMEMORATING THE 50TH ANNIVERSARY OF THE PUBLICATION OF ''TO KILL A MOCKINGBIRD''

Mr. SESSIONS (for himself and Mr. SHELBY) submitted the following resolution; which was considered and agreed to:

S. RES. 614

Whereas Nelle Harper Lee was born on April 28, 1926, to Amasa Coleman Lee and Frances Finch in Monroeville, Alabama;

Whereas Nelle Harper Lee wrote the novel ''To Kill a Mockingbird'' portraying life in the 1930s in the fictional small southern town of Maycomb, Alabama, which was modeled on Monroeville, Alabama, the hometown of Ms. Lee;

Whereas ''To Kill a Mockingbird'' addressed the issue of racial inequality in the United States by revealing the humanity of a community grappling with moral conflict;

Whereas ''To Kill a Mockingbird'' was first published in 1960 and was awarded the Pulitzer Prize in 1961;

Whereas ''To Kill a Mockingbird'' was the basis for the 1962 Academy Award-winning film of the same name starring Gregory Peck;

Whereas ''To Kill a Mockingbird'' is one of the great American novels of the 20th century, having been published in more than 40 languages and having sold more than 30,000,000 copies;

Whereas, in 2007, Nelle Harper Lee was inducted into the American Academy of Arts and Letters;

Whereas, in 2007, President George W. Bush awarded the Presidential Medal of Freedom to Nelle Harper Lee for her great contributions to literature and observed, '''To Kill a Mockingbird' has influenced the character of our country for the better'', and ''As a model of good writing and humane sensibility, this book will be read and studied forever''; and

Whereas ''To Kill a Mockingbird'' is celebrated each year in Monroeville, Alabama through public performances featuring local amateur actors: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historic milestone of the 50th anniversary of the publication of ''To Kill a Mockingbird''; and

(2) honors the outstanding achievement of Nelle Harper Lee in the field of American literature in authoring ''To Kill a Mockingbird''.

SENATE RESOLUTION 615—TO AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. REID (for himself and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 615

Whereas, the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs conducted an investigation in 1999 into private banking and money laundering;

Whereas, the Subcommittee has received a request from a federal law enforcement agency for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate; and

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, acting jointly, are authorized to provide to law enforcement officials, regulatory agencies, and other entities or individuals duly authorized by federal, state, or foreign governments, records of the Subcommittee's investigation in 1999 into private banking and money laundering.

SENATE RESOLUTION 616—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES CIVIL-MILITARY PARTNERSHIP IN IRAQ, UNDER THE CURRENT LEADERSHIP OF GENERAL RAYMOND ODIERNO AND AMBASSADOR CHRISTOPHER HILL, HAS REFINED AND SUSTAINED AN EFFECTIVE COUNTERINSURGENCY AND COUNTERTERRORISM STRATEGY THAT HAS ENABLED SIGNIFICANT IMPROVEMENTS IN THE SECURITY, GOVERNANCE, AND RULE OF LAW THROUGHOUT IRAQ, AND THAT THESE LEADERS SHOULD BE COMMENDED FOR THEIR INTEGRITY, RESOURCEFULNESS, COMMITMENT, AND SACRIFICE

Mr. BURR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 616

Whereas members of the United States Armed Forces will end their combat mission in Iraq on August 31, 2010, and retain a transitional force of up to 50,000 troops to train and advise the Iraqi Security Forces, conduct partnered and targeted counterterrorism operations, and protect ongoing United States civilian and military efforts;

Whereas, on August 31, 2010, Operation Iraqi Freedom will end and a transitional mission called Operation New Dawn will begin, and the nature of the United States commitment in Iraq will shift from one led by the military to one that is civilian-led, with the military in a supporting and reinforcing role;

Whereas the transitional force will retain sufficient combat power and continue to support Iraqi Security Forces, and the civilian force will strengthen the partnership between the Governments of the United States and Iraq in fields such as education, the rule of law, trade, and technology;

Whereas the United States is fully committed and will remain committed to the security and stability of Iraq and the Middle East region;

Whereas the ongoing reduction of United States combat and combat support units from Iraq and the conclusion of United States-led, direct support and combat operations provides an opportunity to recognize

and honor the important contributions of the United States Armed Forces and the critical civilian agency support that have enabled the Iraqi Security Forces to take the lead in conducting security and stability operations across the 18 provinces of Iraq;

Whereas the surge of United States military units into Iraq in 2007 and 2008 was instrumental in seizing the initiative from insurgent and terrorist elements and providing the space and time for the development of the Iraqi Security Forces and the establishment of governmental, political, and economic capacity at the local level;

Whereas the meticulous and persistent contributions of the United States military and civilian leadership under General David Petraeus and Ambassador Ryan Crocker contributed greatly to the successful build up of the Iraqi Security Forces and the development of stable governance in Iraq;

Whereas, in June 2006, the Iraqi Security Forces numbered approximately 152,000 and due to the subsequent deployment and employment of critical United States Military Transition Teams, Border Transition Teams, and Police Transition Teams and the extensive partnering of additional United States military units with Iraqi units, the total Iraqi Security Forces grew from approximately 559,000 in May 2008 to reach approximately 665,000 in August of 2010;

Whereas the ongoing security and stability provided by the partnership between the United States Armed Forces and Iraqi Security Forces has allowed United States Provincial Reconstruction Teams, embedded with United States military units and working alongside Iraqis at the local and provincial levels, to have facilitated thousands of reconstruction projects across Iraq that provide necessary access to capital and subject matter expertise for the repair of petroleum production facilities and desalination plants, expansion of electrical generation and telecommunications networks, building of schools, initiation of agricultural projects, spurring of Iraqi-owned businesses, and the attracting of foreign investment to improve the infrastructure of Iraq;

Whereas improved communication and coordination between the Government of Iraq in Baghdad, the Provincial Governors, and local political and tribal leaders has helped foster legitimate political alliances that, while still fragile, have exhibited the resiliency and potential for the resolution of conflicts through civil discourse, rather than violence;

Whereas the security situation in Iraq has improved markedly since 2007, and while it remains uneven and violent attacks by antigovernment elements persist, the frequency of these attacks and the resources available to the insurgents and terrorists have declined to such an extent that the Government of Iraq remains capable and secure; and

Whereas these positive developments and trends are evidence of the success of the United States civil-military strategy in Iraq and are essential to the ongoing reduction of United States military forces from the current troop levels of approximately 64,000 to approximately 50,000 combat and combat support troops by September 1, 2010, further signaling a robust and ongoing commitment to advise and assist Iraqi Security Forces, while retaining the ability to respond in direct support of Iraqi Security Forces when necessary and to conduct counterterrorism operations against insurgent and terrorist elements: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the counterinsurgency and counterterrorism strategies of the United States initiated in 2006 and sustained from 2007 until the present day have successfully enabled the Government of Iraq to reach major milestones in the critical areas of security, governance, and rule of law and have set the conditions for the responsible and gradual reduction of United States combat and combat support units from Iraq and the change of their mission to advising and assisting the Iraqi Security Forces;

(2) United States Forces-Iraq was instrumental in effecting the recruitment, training, retention, and employment of approximately 700,000 Iraqi Security Forces who have assumed and maintained the lead for security operations within the 18 provinces of Iraq; and

(3) United States commanders, their troops, their civilian partners in the Department of State, the United States Agency for International Development, the Department of the Treasury, the Department of Commerce, the Department of Justice, and the Department of Defense, Federal contractors, and the Provincial Reconstruction Teams should be commended for their ingenuity, resourcefulness, courage, commitment, and sacrifice and their continued dedication and service to the United States.

SENATE CONCURRENT RESOLUTION 70—SUPPORTING THE OBSERVANCE OF ''SPIRIT OF '45 DAY''

Ms. COLLINS (for herself, Mr. LAUTENBERG, Mr. BURR, Mr. LIEBERMAN, Mr. AKAKA, and Mr. INOUYE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 70

Whereas on August 14, 1945, the people of the United States received word of the end of World War II;

Whereas on that day, people in the United States and around the world greeted the news of the Allies' noble victory with joyous celebration, humility, and spiritual reflection;

Whereas the victory marked the culmination of an unprecedented national effort that defeated the forces of aggression, brought freedom to subjugated nations, and ended the horrors of the Holocaust;

Whereas these historic accomplishments were achieved through the collective service and personal sacrifice of the people of the United States, both those who served in uniform and those who supported them on the home front;

Whereas more than 400,000 Americans gave their lives in service to their country during World War II;

Whereas August 14, 1945, marked not only the end of the war, but also the beginning of an unprecedented era of rebuilding in which the United States led the effort to restore the shattered nations of the Allies and their enemies alike and to create institutions to work towards a more peaceful global community;

Whereas the men and women of the World War II generation created an array of organizations and institutions during the postwar era which helped to strengthen American democracy by promoting civic engagement, volunteerism, and service to community and country;

Whereas the courage, dedication, self-sacrifice, and compassion of the World War II generation have inspired subsequent generations in the United States Armed Forces, including the men and women currently in service in Iraq, Afghanistan, and around the world;

Whereas the entire World War II generation, military and civilian alike, has provided a model of unity and community that serves as a source of inspiration for current and future generations of Americans to come together to work for the continued betterment of the United States and the world; and

Whereas the second Sunday in August has been proposed as ''Spirit of '45 Day'' to commemorate the anniversary of the end of World War II on August 14, 1945: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress supports the observance of ''Spirit of '45 Day''.

SENATE CONCURRENT RESOLUTION 71—RECOGNIZING THE UNITED STATES NATIONAL INTEREST IN HELPING TO PREVENT AND MITIGATE ACTS OF GENOCIDE AND OTHER MASS ATROCITIES AGAINST CIVILIANS, AND SUPPORTING AND ENCOURAGING EFFORTS TO DEVELOP A WHOLE OF GOVERNMENT APPROACH TO PREVENT AND MITIGATE SUCH ACTS

Mr. FEINGOLD (for himself and Ms. COLLINS) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 71

Whereas, in the aftermath of the Holocaust, the international community vowed ''never again'' to allow systematic killings on the basis of nationality, ethnicity, race, or religion;

Whereas a number of other genocides and mass atrocities have occurred, both prior to and since that time;

Whereas the United States Government has undertaken many initiatives to ensure that victims of genocide and mass atrocities are not forgotten, and as a leader in the international community, the United States has committed to work with international partners to prevent genocide and mass atrocities and to help protect civilian populations at risk of such;

Whereas the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, which declares genocide, whether committed in a time of peace or in a time of war, a crime under international law, and declares that the parties to the Convention will undertake to prevent and to punish that crime;

Whereas the United States was the first nation to sign the Convention on the Prevention and Punishment of the Crime of Genocide, and the Senate voted to ratify the Convention on the Prevention and Punishment of the Crime of Genocide on February 11, 1986;

Whereas the Act entitled, ''An Act to establish the United States Holocaust Memorial Council'', approved October 7, 1980 (Public Law 96–388) established the United States Holocaust Memorial Council to commemorate the Holocaust, establish a memorial museum to the victims, and develop a committee to stimulate worldwide action to prevent or stop future genocides;

Whereas the passage of the Genocide Convention Implementation Act of 1987 (Public Law 100–606), also known as the Proxmire Act, made genocide a crime under United States law;

Whereas, in response to lessons learned from Rwanda and Bosnia, President William J. Clinton established a genocide and mass atrocities early warning system by establishing an Atrocities Prevention Interagency

Working Group, chaired by an Ambassador-at-Large for War Crimes Issues from 1998 to 2000;

Whereas, in 2005, the United States and all other members of the United Nations agreed that the international community has ''a responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the United Nations Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,'' and to take direct action if national authorities are unwilling or unable to protect their populations;

Whereas the 2006 National Security Strategy of the United States stated, ''The world needs to start honoring a principle that many believe has lost its force in parts of the international community in recent years: genocide must not be tolerated. It is a moral imperative that states take action to prevent and punish genocide. . . . We must refine United States Government efforts—economic, diplomatic, and law-enforcement—so that they target those individuals responsible for genocide and not the innocent citizens they rule.'';

Whereas the United States Holocaust Memorial Museum, the American Academy of Diplomacy, and the United States Institute of Peace convened a Genocide Prevention Task Force, co-chaired by former Secretary of State Madeleine Albright and former Secretary of Defense William Cohen, to explore how the United States Government could better respond to threats of genocide and mass atrocities;

Whereas the final report of the Genocide Prevention Task Force, released in December 2008, concluded that the lack of an overarching policy framework or a standing interagency process, as well as insufficient and uncoordinated institutional capacities, undermines the ability of the United States Government to help prevent genocide or mass killings and offered recommendations for creating a government wide strategy;

Whereas the former Director of National Intelligence, in his annual threat assessment to Congress in February 2010, highlighted countries at risk of genocide and mass atrocities and stated, ''Within the past 3 years, the Democratic Republic of Congo and Sudan all suffered mass killing episodes through violence starvation, or death in prison camps . . . Looking ahead over the next 5 years, a number of countries in Africa and Asia are at significant risk for a new outbreak of mass killing.'';

Whereas the Quadrennial Defense Review, released in February 2010, states that the Defense Department should be prepared to provide the President with options for ''preventing human suffering due to mass atrocities or large-scale natural disasters abroad'';

Whereas the 2010 National Security Strategy notes, ''The United States is committed to working with our allies, and to strengthening our own internal capabilities, in order to ensure that the United States and the international community are proactively engaged in a strategic effort to prevent mass atrocities and genocide. In the event that prevention fails, the United States will work both multilaterally and bilaterally to mobilize diplomatic, humanitarian, financial, and—in certain instances—military means to prevent and respond to genocide and mass atrocities.'';

Whereas genocide and mass atrocities often result from and contribute to instability and conflict, which can cross borders and exacerbate threats to international security and the national security of the United States;

Whereas the failure to prevent genocide and mass atrocities can lead to significant costs resulting from regional instability, refugee flows, peacekeeping, economic loss, and the challenges of post-conflict reconstruction and reconciliation; and

Whereas United States leadership and actions toward preventing and mitigating future genocides and mass atrocities can save human lives and help foster beneficial global partnerships: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Senate—

(1) recommits to honor the memory of the victims of the Holocaust as well as the victims of all past genocides and mass atrocities;

(2) affirms that it is in the national interest and aligned with the values of the United States to work vigorously with international partners to prevent and mitigate future genocides and mass atrocities;

(3) supports efforts made thus far by the President, the Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of Defense, and the Director of National Intelligence to improve the capacity of the United States Government to anticipate, prevent, and address genocide and mass atrocities, including the establishment of an interagency policy committee and a National Security Council position dedicated to the prevention of genocide and other mass atrocities;

(4) urges the President—

(A) to direct relevant departments and agencies of the United States Government to review and evaluate existing capacities for anticipating, preventing, and responding to genocide and other mass atrocities, and to determine specific steps to coordinate and enhance those capacities; and

(B) to develop and communicate a whole of government approach and policy to anticipate, prevent, and mitigate acts of genocide and other mass atrocities;

(5) urges the Secretary of State, working closely with the Administrator of the United States Agency for International Development—

(A) to ensure that all relevant officers of the Foreign Service and particularly those deploying to areas undergoing significant conflict or considered to be at risk of significant conflict, genocide, and other mass atrocities receive appropriate advanced training in early warning and conflict prevention, mitigation, and resolution;

(B) to determine appropriate leadership, structure, programs, and mechanisms within the Department of State and the United States Agency for International Development that can enhance efforts to prevent genocide and other mass atrocities; and

(C) to include relevant recommendations for enhancing civilian capacities to help prevent and mitigate genocide and mass atrocities in the upcoming Quadrennial Diplomacy and Development Review;

(6) urges the Secretary of the Treasury, working in consultation with the Secretary of State, to review how sanctions and other financial tools could be used against state and commercial actors found to be directly supporting or enabling genocides and mass atrocities;

(7) recognizes the importance of flexible contingency crisis funding to enable United States civilian agencies to respond quickly to help prevent and mitigate crises that could lead to significant armed conflict, genocide, and other mass atrocities;

(8) urges the Secretary of Defense to conduct an analysis of the doctrine, organization, training, material, leadership, personnel, and facilities required to prevent and respond to genocide and mass atrocities;

(9) encourages the Secretary of State and Secretary of Defense to work with the relevant congressional committees to ensure that a priority goal of all United States security assistance and training is to support legitimate, accountable security forces committed to upholding the sovereign responsibility to protect civilian populations from violence, especially genocide and other mass atrocities;

(10) supports efforts by the United States Government to provide logistical, communications, and intelligence support, as appropriate, to assist multilateral diplomatic efforts and peace operations in preventing mass atrocities and protecting civilians;

(11) calls on other members of the international community to increase their support for multilateral diplomatic efforts and peace operations to more effectively prevent mass atrocities and protect civilians;

(12) encourages the Secretary of State to work closely with regional and international organizations, the United Nations Special Adviser for the Prevention of Genocide, and civil society experts to develop and expand multilateral mechanisms for early warning, information sharing, and rapid response diplomacy for the prevention of genocide and other mass atrocities; and

(13) commits to calling attention to areas at risk of genocide and other mass atrocities and ensuring that the United States Government has the tools and resources to enable its efforts to prevent genocide and mass atrocities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4588. Mrs. FEINSTEIN (for herself and Mr. BOND) proposed an amendment to the bill S. 3611, to authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

SA 4589. Mrs. LINCOLN (for herself and Mr. CHAMBLISS) proposed an amendment to the bill S. 3307, to reauthorize child nutrition programs, and for other purposes.

SA 4590. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 4591. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, supra; which was ordered to lie on the table.

SA 4592. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, supra; which was ordered to lie on the table.

SA 4593. Mr. SCHUMER (for himself, Mr. REID, Mr. INOUYE, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. BINGAMAN, Mrs. MCCASKILL, Mr. CASEY, Mr. MERKLEY, Mr. UDALL, of Colorado, Mr. BEGICH, Mr. BURRIS, Mrs. LINCOLN, Mr. UDALL, of New Mexico, Mr. KYL, and Mr. MCCAIN) proposed an amendment to the bill H.R. 5875, supra.

SA 4594. Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) proposed an amendment to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

SA 4595. Mr. REID (for Mr. NELSON, of Florida) proposed an amendment to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra.

SA 4596. Mr. REID (for Mr. JOHANNS) proposed an amendment to amendment SA 4595 proposed by Mr. REID (for Mr. NELSON of Florida) to the amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra.

SA 4597. Mr. REID proposed an amendment to the bill H.R. 5297, supra.

SA 4598. Mr. REID proposed an amendment to amendment SA 4597 proposed by Mr. REID to the bill H.R. 5297, supra.

SA 4599. Mr. REID proposed an amendment to the bill H.R. 5297, supra.

SA 4600. Mr. REID proposed an amendment to amendment SA 4599 proposed by Mr. REID to the bill H.R. 5297, supra.

SA 4601. Mr. REID proposed an amendment to amendment SA 4600 proposed by Mr. REID to the amendment SA 4599 proposed by Mr. REID to the bill H.R. 5297, supra.

SA 4602. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill S. 3729, to authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes.

SA 4603. Mr. REID (for Mr. PRYOR (for himself, Mr. ENSIGN, Mr. KERRY, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 3304, to increase the access of persons with disabilities to modern communications, and for other purposes.

SA 4604. Mr. REID (for Mr. LEVIN (for himself and Mr. LUGAR)) proposed an amendment to the resolution S. Res. 322, expressing the sense of the Senate on religious minorities in Iraq.

SA 4605. Mr. REID (for Mr. LEVIN (for himself and Mr. LUGAR)) proposed an amendment to the resolution S. Res. 322, supra.

TEXT OF AMENDMENTS

SA 4588. Mrs. FEINSTEIN (for herself and Mr. BOND) proposed an amendment to the bill S. 3611, to authorize appropriations for fiscal year 2010 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 12, strike lines 3 through 9 and insert the following:

SEC. 106. BUDGETARY PROVISIONS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Beginning on page 88, strike line 20 and all that follows through page 89, lines 16 and insert the following:

(1) CONGRESSIONAL ARMED SERVICES COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Defense, the Director of National Intelligence, in consultation with the Secretary of Defense, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

(2) CONGRESSIONAL JUDICIARY COMMITTEES.—To the extent that the report required by subsection (a) addresses an element of the intelligence community within the Department of Justice, the Director of National Intelligence, in consultation with the Attorney General, shall submit that portion of the report, and any associated material that is necessary to make that portion understandable, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. The Director of National Intelligence may authorize redactions of the report and any associated materials submitted pursuant to this paragraph, if such redactions are consistent with the protection of sensitive intelligence sources and methods.

Beginning on page 89, strike line 17 and all that follows through page 91, line 6.

Beginning on page 91, strike line 10 and all that follows through page 92, line 15.

On page 214, line 16, strike ''committees'' and insert ''committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives''.

SA 4589. Mrs. LINCOLN (for herself and Mr. CHAMBLISS) proposed an amendment to the bill S. 3307, to reauthorize child nutrition programs, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Healthy, Hunger-Free Kids Act of 2010''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definition of Secretary.

TITLE I—A PATH TO END CHILDHOOD HUNGER

Subtitle A—National School Lunch Program

Sec. 101. Improving direct certification.
Sec. 102. Categorical eligibility of foster children.
Sec. 103. Direct certification for children receiving Medicaid benefits.
Sec. 104. Eliminating individual applications through community eligibility.
Sec. 105. Grants for expansion of school breakfast programs.

Subtitle B—Summer Food Service Program

Sec. 111. Alignment of eligibility rules for public and private sponsors.
Sec. 112. Outreach to eligible families.
Sec. 113. Summer food service support grants.

Subtitle C—Child and Adult Care Food Program

Sec. 121. Simplifying area eligibility determinations in the child and adult care food program.
Sec. 122. Expansion of afterschool meals for at-risk children.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

Sec. 131. Certification periods.

Subtitle E—Miscellaneous

Sec. 141. Childhood hunger research.
Sec. 142. State childhood hunger challenge grants.
Sec. 143. Review of local policies on meal charges and provision of alternate meals.

TITLE II—REDUCING CHILDHOOD OBESITY AND IMPROVING THE DIETS OF CHILDREN

Subtitle A—National School Lunch Program

Sec. 201. Performance-based reimbursement rate increases for new meal patterns.
Sec. 202. Nutrition requirements for fluid milk.
Sec. 203. Water.
Sec. 204. Local school wellness policy implementation.
Sec. 205. Equity in school lunch pricing.
Sec. 206. Revenue from nonprogram foods sold in schools.
Sec. 207. Reporting and notification of school performance.
Sec. 208. Nutrition standards for all foods sold in school.
Sec. 209. Information for the public on the school nutrition environment.
Sec. 210. Organic food pilot program.

Subtitle B—Child and Adult Care Food Program

Sec. 221. Nutrition and wellness goals for meals served through the child and adult care food program.
Sec. 222. Interagency coordination to promote health and wellness in child care licensing.
Sec. 223. Study on nutrition and wellness quality of child care settings.

Subtitle C—Special Supplemental Nutrition Program for Women, Infants, and Children

Sec. 231. Support for breastfeeding in the WIC Program.
Sec. 232. Review of available supplemental foods.

Subtitle D—Miscellaneous

Sec. 241. Nutrition education and obesity prevention grant program.
Sec. 242. Procurement and processing of food service products and commodities.
Sec. 243. Access to Local Foods: Farm to School Program.
Sec. 244. Research on strategies to promote the selection and consumption of healthy foods.

TITLE III—IMPROVING THE MANAGEMENT AND INTEGRITY OF CHILD NUTRITION PROGRAMS

Subtitle A—National School Lunch Program

Sec. 301. Privacy protection.
Sec. 302. Applicability of food safety program on entire school campus.
Sec. 303. Fines for violating program requirements.
Sec. 304. Independent review of applications.
Sec. 305. Program evaluation.
Sec. 306. Professional standards for school food service.
Sec. 307. Indirect costs.
Sec. 308. Ensuring safety of school meals.

Subtitle B—Summer Food Service Program

Sec. 321. Summer food service program permanent operating agreements.
Sec. 322. Summer food service program disqualification.

Subtitle C—Child and Adult Care Food Program

Sec. 331. Renewal of application materials and permanent operating agreements.
Sec. 332. State liability for payments to aggrieved child care institutions.
Sec. 333. Transmission of income information by sponsored family or group day care homes.
Sec. 334. Simplifying and enhancing administrative payments to sponsoring organizations.
Sec. 335. Child and adult care food program audit funding.

Sec. 336. Reducing paperwork and improving program administration.
Sec. 337. Study relating to the child and adult care food program.
Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children
Sec. 351. Sharing of materials with other programs.
Sec. 352. WIC program management.
Subtitle E—Miscellaneous
Sec. 361. Full use of Federal funds.
Sec. 362. Disqualified schools, institutions, and individuals.
TITLE IV—MISCELLANEOUS
Subtitle A—Reauthorization of Expiring Provisions
PART I—RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT
Sec. 401. Commodity support.
Sec. 402. Food safety audits and reports by States.
Sec. 403. Procurement training.
Sec. 404. Authorization of the summer food service program for children.
Sec. 405. Year-round services for eligible entities.
Sec. 406. Training, technical assistance, and food service management institute.
Sec. 407. Federal administrative support.
Sec. 408. Compliance and accountability.
Sec. 409. Information clearinghouse.
PART II—CHILD NUTRITION ACT OF 1966
Sec. 421. Technology infrastructure improvement.
Sec. 422. State administrative expenses.
Sec. 423. Special supplemental nutrition program for women, infants, and children.
Sec. 424. Farmers market nutrition program.
Subtitle B—Technical Amendments
Sec. 441. Technical amendments.
Sec. 442. Use of unspent future funds from the American Recovery and Reinvestment Act of 2009.
Sec. 443. Equipment assistance technical correction.
Sec. 444. Budgetary effects.
Sec. 445. Effective date.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term ''Secretary'' means the Secretary of Agriculture.

TITLE I—A PATH TO END CHILDHOOD HUNGER

Subtitle A—National School Lunch Program

SEC. 101. IMPROVING DIRECT CERTIFICATION.

(a) PERFORMANCE AWARDS.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) is amended—

(1) in the paragraph heading, by striking ''FOOD STAMP'' and inserting ''SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM''; and

(2) by adding at the end the following:

''(E) PERFORMANCE AWARDS.—

''(i) IN GENERAL.—Effective for each of the school years beginning July 1, 2011, July 1, 2012, and July 1, 2013, the Secretary shall offer performance awards to States to encourage the States to ensure that all children eligible for direct certification under this paragraph are certified in accordance with this paragraph.

''(ii) REQUIREMENTS.—For each school year described in clause (i), the Secretary shall—

''(I) consider State data from the prior school year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a); and

''(II) make performance awards to not more than 15 States that demonstrate, as determined by the Secretary—

''(aa) outstanding performance; and

''(bb) substantial improvement.

''(iii) USE OF FUNDS.—A State agency that receives a performance award under clause (i)—

''(I) shall treat the funds as program income; and

''(II) may transfer the funds to school food authorities for use in carrying out the program.

''(iv) FUNDING.—

''(I) IN GENERAL.—On October 1, 2011, and each subsequent October 1 through October 1, 2013, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

''(aa) $2,000,000 to carry out clause (ii)(II)(aa); and

''(bb) $2,000,000 to carry out clause (ii)(II)(bb).

''(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this clause the funds transferred under subclause (I), without further appropriation.

''(v) PAYMENTS NOT SUBJECT TO JUDICIAL REVIEW.—A determination by the Secretary whether, and in what amount, to make a performance award under this subparagraph shall not be subject to administrative or judicial review.''.

(b) CONTINUOUS IMPROVEMENT PLANS.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (a)) is amended by adding at the end the following:

''(F) CONTINUOUS IMPROVEMENT PLANS.—

''(i) DEFINITION OF REQUIRED PERCENTAGE.—In this subparagraph, the term 'required percentage' means—

''(I) for the school year beginning July 1, 2011, 80 percent;

''(II) for the school year beginning July 1, 2012, 90 percent; and

''(III) for the school year beginning July 1, 2013, and each school year thereafter, 95 percent.

''(ii) REQUIREMENTS.—Each school year, the Secretary shall—

''(I) identify, using data from the prior year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a), States that directly certify less than the required percentage of the total number of children in the State who are eligible for direct certification under this paragraph;

''(II) require the States identified under subclause (I) to implement a continuous improvement plan to fully meet the requirements of this paragraph, which shall include a plan to improve direct certification for the following school year; and

''(III) assist the States identified under subclause (I) to develop and implement a continuous improvement plan in accordance with subclause (II).

''(iii) FAILURE TO MEET PERFORMANCE STANDARD.—

''(I) IN GENERAL.—A State that is required to develop and implement a continuous improvement plan under clause (ii)(II) shall be required to submit the continuous improvement plan to the Secretary, for the approval of the Secretary.

''(II) REQUIREMENTS.—At a minimum, a continuous improvement plan under subclause (I) shall include—

''(aa) specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;

''(bb) a timeline for the State to implement those measures; and

''(cc) goals for the State to improve direct certification results.''.

(c) WITHOUT FURTHER APPLICATION.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (b)) is amended by adding at the end the following:

''(G) WITHOUT FURTHER APPLICATION.—

''(i) IN GENERAL.—In this paragraph, the term 'without further application' means that no action is required by the household of the child.

''(ii) CLARIFICATION.—A requirement that a household return a letter notifying the household of eligibility for direct certification or eligibility for free school meals does not meet the requirements of clause (i).''.

SEC. 102. CATEGORICAL ELIGIBILITY OF FOSTER CHILDREN.

(a) DISCRETIONARY CERTIFICATION.—Section 9(b)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(5)) is amended—

(1) in subparagraph (C), by striking ''or'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(E)(i) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

''(ii) a foster child who a court has placed with a caretaker household.''.

(b) CATEGORICAL ELIGIBILITY.—Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(12)(A)) is amended—

(1) in clause (iv), by adding '')'' before the semicolon at the end;

(2) in clause (v), by striking ''or'' at the end;

(3) in clause (vi), by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(vii)(I) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

''(II) a foster child who a court has placed with a caretaker household.''.

(c) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) is amended—

(1) in subparagraph (D), by striking ''or'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(F)(i) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

''(ii) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child who a court has placed with a caretaker household.''.

SEC. 103. DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end the following:

''(15) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) ELIGIBLE CHILD.—The term 'eligible child' means a child—

''(I)(aa) who is eligible for and receiving medical assistance under the Medicaid program; and

''(bb) who is a member of a family with an income as measured by the Medicaid program before the application of any expense, block, or other income disregard, that does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section)) applicable to a family of the size used for purposes of determining eligibility for the Medicaid program; or

''(II) who is a member of a household (as that term is defined in section 245.2 of title 7, Code of Federal Regulations (or successor regulations) with a child described in subclause (I).

''(ii) MEDICAID PROGRAM.—The term 'Medicaid program' means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

''(B) DEMONSTRATION PROJECT.—

''(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service and in cooperation with selected State agencies, shall conduct a demonstration project in selected local educational agencies to determine whether direct certification of eligible children is an effective method of certifying children for free lunches and breakfasts under section 9(b)(1)(A) of this Act and section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)).

''(ii) SCOPE OF PROJECT.—The Secretary shall carry out the demonstration project under this subparagraph—

''(I) for the school year beginning July 1, 2012, in selected local educational agencies that collectively serve 2.5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data;

''(II) for the school year beginning July 1, 2013, in selected local educational agencies that collectively serve 5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data; and

''(III) for the school year beginning July 1, 2014, and each subsequent school year, in selected local educational agencies that collectively serve 10 percent of students certified for free and reduced price meals nationwide, based on the most recent available data.

''(iii) PURPOSES OF THE PROJECT.—At a minimum, the purposes of the demonstration project shall be—

''(I) to determine the potential of direct certification with the Medicaid program to reach children who are eligible for free meals but not certified to receive the meals;

''(II) to determine the potential of direct certification with the Medicaid program to directly certify children who are enrolled for free meals based on a household application; and

''(III) to provide an estimate of the effect on Federal costs and on participation in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) of direct certification with the Medicaid program.

''(iv) COST ESTIMATE.—For each of 2 school years of the demonstration project, the Secretary shall estimate the cost of the direct certification of eligible children for free school meals through data derived from—

''(I) the school meal programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(II) the Medicaid program; and

''(III) interviews with a statistically representative sample of households.

''(C) AGREEMENT.—

''(i) IN GENERAL.—Not later than July 1 of the first school year during which a State agency will participate in the demonstration project, the State agency shall enter into an agreement with the 1 or more State agencies conducting eligibility determinations for the Medicaid program.

''(ii) WITHOUT FURTHER APPLICATION.—Subject to paragraph (6), the agreement described in subparagraph (D) shall establish procedures under which an eligible child shall be certified for free lunches under this Act and free breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), without further application (as defined in paragraph (4)(G)).

''(D) CERTIFICATION.—For the school year beginning on July 1, 2012, and each subsequent school year, subject to paragraph (6), the local educational agencies participating in the demonstration project shall certify an eligible child as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application (as defined in paragraph (4)(G)).

''(E) SITE SELECTION.—

''(i) IN GENERAL.—To be eligible to participate in the demonstration project under this subsection, a State agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(ii) CONSIDERATIONS.—In selecting States and local educational agencies for participation in the demonstration project, the Secretary may take into consideration such factors as the Secretary considers to be appropriate, which may include—

''(I) the rate of direct certification;

''(II) the share of individuals who are eligible for benefits under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) who participate in the program, as determined by the Secretary;

''(III) the income eligibility limit for the Medicaid program;

''(IV) the feasibility of matching data between local educational agencies and the Medicaid program;

''(V) the socioeconomic profile of the State or local educational agencies; and

''(VI) the willingness of the State and local educational agencies to comply with the requirements of the demonstration project.

''(F) ACCESS TO DATA.—For purposes of conducting the demonstration project under this paragraph, the Secretary shall have access to—

''(i) educational and other records of State and local educational and other agencies and institutions receiving funding or providing benefits for 1 or more programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

''(ii) income and program participation information from public agencies administering the Medicaid program.

''(G) REPORT TO CONGRESS.—

''(i) IN GENERAL.—Not later than October 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, an interim report that describes the results of the demonstration project required under this paragraph.

''(ii) FINAL REPORT.—Not later than October 1, 2015, the Secretary shall submit a final report to the committees described in clause (i).

''(H) FUNDING.—

''(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subparagraph (G) $5,000,000, to remain available until expended.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subparagraph (G) the funds transferred under clause (i), without further appropriation.''.

(b) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) (as amended by section 102(c)) is amended—

(1) in subparagraph (E), by striking ''or'' at the end;

(2) in subparagraph (F)(ii), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(G) documentation has been provided to the appropriate local educational agency showing the status of the child as an eligible child (as defined in subsection (b)(15)(A)).''.

(c) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION BY STATE MEDICAID AGENCIES.—

(1) IN GENERAL.—Section 1902(a)(7) of the Social Security Act (42 U.S.C. 1396a(a)(7)) is amended to read as follows:

''(7) provide—

''(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

''(i) the administration of the plan; and

''(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency; and

''(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act under which the State shall establish procedures to ensure that—

''(i) a child receiving medical assistance under the State plan under this title whose family income does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act, including any revision required by such section), as determined without regard to any expense, block, or other income disregard, applicable to a family of the size involved, may be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966 without further application; and

''(ii) the State agencies responsible for administering the State plan under this title, and for carrying out the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), cooperate in carrying out paragraphs (3)(F) and (15) of section 9(b) of that Act;''.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by

this section, the State plan shall not be regarded as failing to comply with the requirements of the amendments made by this section solely on the basis of its failure to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(d) CONFORMING AMENDMENTS.—Section 444(b)(1) of the General Education Provisions Act (20 U.S.C. 1232g(b)(1)) is amended—

(1) in subparagraph (I), by striking ''and'' at the end;

(2) in subparagraph (J)(ii), by striking the period at the end and inserting ''; and'';

(3) by adding at the end the following:

''(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that—

''(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and

''(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements.''.

SEC. 104. ELIMINATING INDIVIDUAL APPLICATIONS THROUGH COMMUNITY ELIGIBILITY.

(a) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

(1) ELIGIBILITY.—Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by adding at the end the following:

''(F) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

''(i) DEFINITION OF IDENTIFIED STUDENTS.—The term 'identified students' means students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations).

''(ii) ELECTION OF SPECIAL ASSISTANCE PAYMENTS.—

''(I) IN GENERAL.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if—

''(aa) during a period of 4 successive school years, the local educational agency elects to serve all children in the applicable schools free lunches and breakfasts under the school lunch program under this Act and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

''(bb) the local educational agency pays, from sources other than Federal funds, the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(cc) the local educational agency is not a residential child care institution (as that term is used in section 210.2 of title 7, Code of Federal Regulations (or successor regulations)); and

''(dd) during the school year prior to the first year of the period for which the local educational agency elects to receive special assistance payments under this subparagraph, the local educational agency or school had a percentage of enrolled students who were identified students that meets or exceeds the threshold described in clause (viii).

''(II) ELECTION TO STOP RECEIVING PAYMENTS.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

''(iii) FIRST YEAR OF OPTION.—

''(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the first school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

''(aa) the multiplier described in clause (vii); by

''(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

''(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

''(iv) SECOND, THIRD, OR FOURTH YEAR OF OPTION.—

''(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the second, third, or fourth school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

''(aa) the multiplier described in clause (vii); by

''(bb) the higher of the percentage of identified students at the school or local educational agency as of April 1 of the prior school year or the percentage of identified students at the school or local educational agency as of April 1 of the school year prior to the first year that the school or local educational agency elected to receive special assistance payments under this subparagraph, up to a maximum of 100 percent.

''(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

''(v) GRACE YEAR.—

''(I) IN GENERAL.—If, not later than April 1 of the fourth year of a 4-year period described in clause (ii)(I), a school or local educational agency has a percentage of enrolled students who are identified students that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii), the school or local educational agency may elect to receive special assistance payments under subclause (II) for an additional grace year.

''(II) SPECIAL ASSISTANCE PAYMENT.—For each month of a grace year, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

''(aa) the multiplier described in clause (vii); by

''(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

''(III) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (II) shall be reimbursed at the rate provided under section 4.

''(vi) APPLICATIONS.—A school or local educational agency that receives special assistance payments under this subparagraph may not be required to collect applications for free and reduced price lunches.

''(vii) MULTIPLIER.—

''(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the multiplier shall be 1.6.

''(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use, as determined by the Secretary—

''(aa) a multiplier between 1.3 and 1.6; and

''(bb) subject to item (aa), a different multiplier for different schools or local educational agencies.

''(viii) THRESHOLD.—

''(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the threshold shall be 40 percent.

''(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.

''(ix) PHASE-IN.—

''(I) IN GENERAL.—In selecting States for participation during the phase-in period, the Secretary shall select States with an adequate number and variety of schools and local educational agencies that could benefit from the option under this subparagraph, as determined by the Secretary.

''(II) LIMITATION.—The Secretary may not approve additional schools and local educational agencies to receive special assistance payments under this subparagraph after the Secretary has approved schools and local educational agencies in—

''(aa) for the school year beginning on July 1, 2011, 3 States; and

''(bb) for each of the school years beginning July 1, 2012 and July 1, 2013, an additional 4 States per school year.

''(x) ELECTION OF OPTION.—

''(I) IN GENERAL.—For each school year beginning on or after July 1, 2014, any local educational agency eligible to make the election described in clause (ii) for all schools in the district or on behalf of certain schools in the district may elect to receive special assistance payments under clause (iii) for the next school year if, not later than June 30 of the current school year, the local educational agency submits to the State agency the percentage of identified students at the school or local educational agency.

''(II) STATE AGENCY NOTIFICATION.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with schools or local educational agencies that may be eligible to elect to receive special assistance payments under this subparagraph shall notify—

''(aa) each local educational agency that meets or exceeds the threshold described in clause (viii) that the local educational agency is eligible to elect to receive special assistance payments under clause (iii) for the next 4 school years, of the blended reimbursement rate the local educational agency would receive under clause (iii), and of the

procedures for the local educational agency to make the election;

''(bb) each local educational agency that receives special assistance payments under clause (iii) of the blended reimbursement rate the local educational agency would receive under clause (iv);

''(cc) each local educational agency in the fourth year of electing to receive special assistance payments under this subparagraph that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that receives special assistance payments under clause (iv), that the local educational agency may continue to receive such payments for the next school year, of the blended reimbursement rate the local educational agency would receive under clause (v), and of the procedures for the local educational agency to make the election; and

''(dd) each local educational agency that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) that the local educational agency may be eligible to elect to receive special assistance payments under clause (iii) if the threshold described in clause (viii) is met by April 1 of the school year or if the threshold is met for a subsequent school year.

''(III) PUBLIC NOTIFICATION OF LOCAL EDUCATIONAL AGENCIES.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with 1 or more schools or local educational agencies eligible to elect to receive special assistance payments under clause (iii) shall submit to the Secretary, and the Secretary shall publish, lists of the local educational agencies receiving notices under subclause (II).

''(IV) PUBLIC NOTIFICATION OF SCHOOLS.—Not later than May 1 of each school year beginning on or after July 1, 2011, each local educational agency in a State with 1 or more schools eligible to elect to receive special assistance payments under clause (iii) shall submit to the State agency, and the State agency shall publish—

''(aa) a list of the schools that meet or exceed the threshold described in clause (viii);

''(bb) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that are in the fourth year of receiving special assistance payments under clause (iv); and

''(cc) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii).

''(xi) IMPLEMENTATION.—

''(I) GUIDANCE.—Not later than 90 days after the date of enactment of this subparagraph, the Secretary shall issue guidance to implement this subparagraph.

''(II) REGULATIONS.—Not later than December 31, 2013, the Secretary shall promulgate regulations that establish procedures for State agencies, local educational agencies, and schools to meet the requirements of this subparagraph, including exercising the option described in this subparagraph.

''(III) PUBLICATION.—If the Secretary uses the authority provided in clause (vii)(II)(bb) to use a different multiplier for different schools or local educational agencies, for each school year beginning on or after July 1, 2014, not later than April 1, 2014, the Secretary shall publish on the website of the Secretary a table that indicates—

''(aa) each local educational agency that may elect to receive special assistance payments under clause (ii);

''(bb) the blended reimbursement rate that each local educational agency would receive; and

''(cc) an explanation of the methodology used to calculate the multiplier or threshold for each school or local educational agency.

''(xii) REPORT.—Not later than December 31, 2013, the Secretary shall publish a report that describes—

''(I) an estimate of the number of schools and local educational agencies eligible to elect to receive special assistance payments under this subparagraph that do not elect to receive the payments;

''(II) for schools and local educational agencies described in subclause (I)—

''(aa) barriers to participation in the special assistance option under this subparagraph, as described by the nonparticipating schools and local educational agencies; and

''(bb) changes to the special assistance option under this subparagraph that would make eligible schools and local educational agencies more likely to elect to receive special assistance payments;

''(III) for schools and local educational agencies that elect to receive special assistance payments under this subparagraph—

''(aa) the number of schools and local educational agencies;

''(bb) an estimate of the percentage of identified students and the percentage of enrolled students who were certified to receive free or reduced price meals in the school year prior to the election to receive special assistance payments under this subparagraph, and a description of how the ratio between those percentages compares to 1.6;

''(cc) an estimate of the number and share of schools and local educational agencies in which more than 80 percent of students are certified for free or reduced price meals that elect to receive special assistance payments under that clause; and

''(dd) whether any of the schools or local educational agencies stopped electing to receive special assistance payments under this subparagraph;

''(IV) the impact of electing to receive special assistance payments under this subparagraph on—

''(aa) program integrity;

''(bb) whether a breakfast program is offered;

''(cc) the type of breakfast program offered;

''(dd) the nutritional quality of school meals; and

''(ee) program participation; and

''(V) the multiplier and threshold, as described in clauses (vii) and (viii) respectively, that the Secretary will use for each school year beginning on or after July 1, 2014 and the rationale for any change in the multiplier or threshold.

''(xiii) FUNDING.—

''(I) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out clause (xii) $5,000,000, to remain available until September 30, 2014.

''(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out clause (xii) the funds transferred under subclause (I), without further appropriation.''.

(2) CONFORMING AMENDMENTS.—Section 11(a)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(B)) is amended by striking ''or (E)'' and inserting ''(E), or (F)''.

(b) UNIVERSAL MEAL SERVICE THROUGH CENSUS DATA.—Section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a) is amended by adding at the end the following:

''(g) UNIVERSAL MEAL SERVICE THROUGH CENSUS DATA.—

''(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall identify alternatives to—

''(A) the daily counting by category of meals provided by school lunch programs under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

''(B) the use of annual applications as the basis for eligibility to receive free meals or reduced price meals under this Act.

''(2) RECOMMENDATIONS.—

''(A) CONSIDERATIONS.—

''(i) IN GENERAL.—In identifying alternatives under paragraph (1), the Secretary shall consider the recommendations of the Committee on National Statistics of the National Academy of Sciences relating to use of the American Community Survey of the Bureau of the Census and other data sources.

''(ii) SOCIOECONOMIC SURVEY.—The Secretary shall consider use of a periodic socioeconomic survey of households of children attending school in the school food authority in not more than 3 school food authorities participating in the school lunch program under this Act.

''(iii) SURVEY PARAMETERS.—The Secretary shall establish requirements for the use of a socioeconomic survey under clause (ii), which shall—

''(I) include criteria for survey design, sample frame validity, minimum level of statistical precision, minimum survey response rates, frequency of data collection, and other criteria as determined by the Secretary;

''(II) be consistent with the Standards and Guidelines for Statistical Surveys, as published by the Office of Management and Budget;

''(III) be consistent with standards and requirements that ensure proper use of Federal funds; and

''(IV) specify that the socioeconomic survey be conducted at least once every 4 years.

''(B) USE OF ALTERNATIVES.—Alternatives described in subparagraph (A) that provide accurate and effective means of providing meal reimbursement consistent with the eligibility status of students may be—

''(i) implemented for use in schools or by school food authorities that agree—

''(I) to serve all breakfasts and lunches to students at no cost in accordance with regulations issued by the Secretary; and

''(II) to pay, from sources other than Federal funds, the costs of serving any lunches and breakfasts that are in excess of the value of assistance received under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches and breakfasts served during the applicable period; or

''(ii) further tested through demonstration projects carried out by the Secretary in accordance with subparagraph (C).

''(C) DEMONSTRATION PROJECTS.—

''(i) IN GENERAL.—For the purpose of carrying out demonstration projects described in subparagraph (B), the Secretary may waive any requirement of this Act relating to—

''(I) counting of meals provided by school lunch or breakfast programs;

''(II) applications for eligibility for free or reduced priced meals; or

''(III) required direct certification under section 9(b)(4).

''(ii) NUMBER OF PROJECTS.—The Secretary shall carry out demonstration projects under this paragraph in not more than 5 local educational agencies for each alternative model that is being tested.

''(iii) LIMITATION.—A demonstration project carried out under this paragraph shall have a duration of not more than 3 years.

''(iv) EVALUATION.—The Secretary shall evaluate each demonstration project carried out under this paragraph in accordance with procedures established by the Secretary.

''(v) REQUIREMENT.—In carrying out evaluations under clause (iv), the Secretary shall evaluate, using comparisons with local educational agencies with similar demographic characteristics—

''(I) the accuracy of the 1 or more methodologies adopted as compared to the daily counting by category of meals provided by school meal programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the use of annual applications as the basis for eligibility to receive free or reduced price meals under those Acts;

''(II) the effect of the 1 or more methodologies adopted on participation in programs under those Acts;

''(III) the effect of the 1 or more methodologies adopted on administration of programs under those Acts; and

''(IV) such other matters as the Secretary determines to be appropriate.''.

SEC. 105. GRANTS FOR EXPANSION OF SCHOOL BREAKFAST PROGRAMS.

The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) is amended by adding at the end the following:

''SEC. 23. GRANTS FOR EXPANSION OF SCHOOL BREAKFAST PROGRAMS.

''(a) DEFINITION OF QUALIFYING SCHOOL.—In this section, the term 'qualifying school' means a school in severe need, as described in section 4(d)(1).

''(b) ESTABLISHMENT.—Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section, the Secretary shall establish a program under which the Secretary shall provide grants, on a competitive basis, to State educational agencies for the purpose of providing subgrants to local educational agencies for qualifying schools to establish, maintain, or expand the school breakfast program in accordance with this section.

''(c) GRANTS TO STATE EDUCATIONAL AGENCIES.—

''(1) APPLICATION.—To be eligible to receive a grant under this section, a State educational agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(2) ADMINISTRATION.—In carrying out this section, the Secretary shall—

''(A) develop an appropriate competitive application process; and

''(B) make information available to State educational agencies concerning the availability of funds under this section.

''(3) ALLOCATION.—The amount of grants provided by the Secretary to State educational agencies for a fiscal year under this section shall not exceed the lesser of—

''(A) the product obtained by multiplying—

''(i) the number of qualifying schools receiving subgrants or other benefits under subsection (d) for the fiscal year; and

''(ii) the maximum amount of a subgrant provided to a qualifying school under subsection (d)(4)(B); or

''(B) $2,000,000.

''(d) SUBGRANTS TO QUALIFYING SCHOOLS.—

''(1) IN GENERAL.—A State educational agency receiving a grant under this section shall use funds made available under the grant to award subgrants to local educational agencies for a qualifying school or groups of qualifying schools to carry out activities in accordance with this section.

''(2) PRIORITY.—In awarding subgrants under this subsection, a State educational agency shall give priority to local educational agencies with qualifying schools in which at least 75 percent of the students are eligible for free or reduced price school lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(3) STATE AND DISTRICT TRAINING AND TECHNICAL SUPPORT.—A local educational agency or State educational agency may allocate a portion of each subgrant to provide training and technical assistance to the staff of qualifying schools to carry out the purposes of this section.

''(4) AMOUNT; TERM.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, a subgrant provided by a State educational agency to a local educational agency or qualifying school under this section shall be in such amount, and shall be provided for such term, as the State educational agency determines appropriate.

''(B) MAXIMUM AMOUNT.—The amount of a subgrant provided by a State educational agency to a local educational agency for a qualifying school or a group of qualifying schools under this subsection shall not exceed $10,000 for each school year.

''(C) MAXIMUM GRANT TERM.—A local educational agency or State educational agency shall not provide subgrants to a qualifying school under this subsection for more than 2 fiscal years.

''(e) BEST PRACTICES.—

''(1) IN GENERAL.—Prior to awarding grants under this section, the Secretary shall make available to State educational agencies information regarding the most effective mechanisms by which to increase school breakfast participation among eligible children at qualifying schools.

''(2) PREFERENCE.—In awarding subgrants under this section, a State educational agency shall give preference to local educational agencies for qualifying schools or groups of qualifying schools that have adopted, or provide assurances that the subgrant funds will be used to adopt, the most effective mechanisms identified by the Secretary under paragraph (1).

''(f) USE OF FUNDS.—

''(1) IN GENERAL.—A qualifying school may use a grant provided under this section—

''(A) to establish, promote, or expand a school breakfast program of the qualifying school under this section, which shall include a nutritional education component;

''(B) to extend the period during which school breakfast is available at the qualifying school;

''(C) to provide school breakfast to students of the qualifying school during the school day; or

''(D) for other appropriate purposes, as determined by the Secretary.

''(2) REQUIREMENT.—Each activity of a qualifying school under this subsection shall be carried out in accordance with applicable nutritional guidelines and regulations issued by the Secretary.

''(g) MAINTENANCE OF EFFORT.—Grants made available under this section shall not diminish or otherwise affect the expenditure of funds from State and local sources for the maintenance of the school breakfast program.

''(h) REPORTS.—Not later than 18 months following the end of a school year during which subgrants are awarded under this section, the Secretary shall submit to Congress a report describing the activities of the qualifying schools awarded subgrants.

''(i) EVALUATION.—Not later than 180 days before the end of a grant term under this section, a local educational agency that receives a subgrant under this section shall—

''(1) evaluate whether electing to provide universal free breakfasts under the school breakfast program in accordance with Provision 2 as established under subsections (b) through (k) of section 245.9 of title 7, Code of Federal Regulations (or successor regulations), would be cost-effective for the qualified schools based on estimated administrative savings and economies of scale; and

''(2) submit the results of the evaluation to the State educational agency.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2010 through 2015.''.

Subtitle B—Summer Food Service Program

SEC. 111. ALIGNMENT OF ELIGIBILITY RULES FOR PUBLIC AND PRIVATE SPONSORS.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by striking paragraph (7) and inserting the following:

''(7) PRIVATE NONPROFIT ORGANIZATIONS.—

''(A) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—In this paragraph, the term 'private nonprofit organization' means an organization that—

''(i) exercises full control and authority over the operation of the program at all sites under the sponsorship of the organization;

''(ii) provides ongoing year-round activities for children or families;

''(iii) demonstrates that the organization has adequate management and the fiscal capacity to operate a program under this section;

''(iv) is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

''(v) meets applicable State and local health, safety, and sanitation standards.

''(B) ELIGIBILITY.—Private nonprofit organizations (other than organizations eligible under paragraph (1)) shall be eligible for the program under the same terms and conditions as other service institutions.''.

SEC. 112. OUTREACH TO ELIGIBLE FAMILIES.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by adding at the end the following:

''(11) OUTREACH TO ELIGIBLE FAMILIES.—

''(A) IN GENERAL.—The Secretary shall require each State agency that administers the national school lunch program under this Act to ensure that, to the maximum extent practicable, school food authorities participating in the school lunch program under this Act cooperate with participating service institutions to distribute materials to inform families of—

''(i) the availability and location of summer food service program meals; and

''(ii) the availability of reimbursable breakfasts served under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(B) INCLUSIONS.—Informational activities carried out under subparagraph (A) may include—

''(i) the development or dissemination of printed materials, to be distributed to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals;

''(ii) the development or dissemination of materials, to be distributed using electronic means to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals; and

''(iii) such other activities as are approved by the applicable State agency to promote the availability and location of summer food service program meals to school children and the families of school children.

''(C) MULTIPLE STATE AGENCIES.—If the State agency administering the program under this section is not the same State agency that administers the school lunch program under this Act, the 2 State agencies shall work cooperatively to implement this paragraph.''.

SEC. 113. SUMMER FOOD SERVICE SUPPORT GRANTS.

Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by section 112) is amended by adding at the end the following:

''(12) SUMMER FOOD SERVICE SUPPORT GRANTS.—

''(A) IN GENERAL.—The Secretary shall use funds made available to carry out this paragraph to award grants on a competitive basis to State agencies to provide to eligible service institutions—

''(i) technical assistance;

''(ii) assistance with site improvement costs; or

''(iii) other innovative activities that improve and encourage sponsor retention.

''(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a State agency shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

''(C) PRIORITY.—In making grants under this paragraph, the Secretary shall give priority to—

''(i) applications from States with significant low-income child populations; and

''(ii) State plans that demonstrate innovative approaches to retain and support summer food service programs after the expiration of the start-up funding grants.

''(D) USE OF FUNDS.—A State and eligible service institution may use funds made available under this paragraph to pay for such costs as the Secretary determines are necessary to establish and maintain summer food service programs.

''(E) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

''(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $20,000,000 for fiscal years 2011 through 2015.''.

Subtitle C—Child and Adult Care Food Program

SEC. 121. SIMPLIFYING AREA ELIGIBILITY DETERMINATIONS IN THE CHILD AND ADULT CARE FOOD PROGRAM.

Section 17(f)(3)(A)(ii)(I)(bb) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(A)(ii)(I)(bb)) is amended by striking ''elementary''.

SEC. 122. EXPANSION OF AFTERSCHOOL MEALS FOR AT-RISK CHILDREN.

Section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)) is amended by striking paragraph (5) and inserting the following:

''(5) LIMITATION.—An institution participating in the program under this subsection may not claim reimbursement for meals and snacks that are served under section 18(h) on the same day.

''(6) HANDBOOK.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall—

''(i) issue guidelines for afterschool meals for at-risk school children; and

''(ii) publish a handbook reflecting those guidelines.

''(B) REVIEW.—Each year after the issuance of guidelines under subparagraph (A), the Secretary shall—

''(i) review the guidelines; and

''(ii) issue a revised handbook reflecting changes made to the guidelines.''.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 131. CERTIFICATION PERIODS.

Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)) is amended by adding at the end the following:

''(iii) CHILDREN.—A State may elect to certify participant children for a period of up to 1 year, if the State electing the option provided under this clause ensures that participant children receive required health and nutrition assessments.''.

Subtitle E—Miscellaneous

SEC. 141. CHILDHOOD HUNGER RESEARCH.

The Richard B. Russell National School Lunch Act is amended by inserting after section 22 (42 U.S.C. 1769c) the following:

''SEC. 23. CHILDHOOD HUNGER RESEARCH.

''(a) RESEARCH ON CAUSES AND CONSEQUENCES OF CHILDHOOD HUNGER.—

''(1) IN GENERAL.—The Secretary shall conduct research on—

''(A) the causes of childhood hunger and food insecurity;

''(B) the characteristics of households with childhood hunger and food insecurity; and

''(C) the consequences of childhood hunger and food insecurity.

''(2) AUTHORITY.—In carrying out research under paragraph (1), the Secretary may—

''(A) enter into competitively awarded contracts or cooperative agreements; or

''(B) provide grants to States or public or private agencies or organizations, as determined by the Secretary.

''(3) APPLICATION.—To be eligible to enter into a contract or cooperative agreement or receive a grant under this subsection, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require.

''(4) AREAS OF INQUIRY.—The Secretary shall design the research program to advance knowledge and understanding of information on the issues described in paragraph (1), such as—

''(A) economic, health, social, cultural, demographic, and other factors that contribute to childhood hunger or food insecurity;

''(B) the geographic distribution of childhood hunger and food insecurity;

''(C) the extent to which—

''(i) existing Federal assistance programs, including the Internal Revenue Code of 1986, reduce childhood hunger and food insecurity; and

''(ii) childhood hunger and food insecurity persist due to—

''(I) gaps in program coverage;

''(II) the inability of potential participants to access programs; or

''(III) the insufficiency of program benefits or services;

''(D) the public health and medical costs of childhood hunger and food insecurity;

''(E) an estimate of the degree to which the Census Bureau measure of food insecurity underestimates childhood hunger and food insecurity because the Census Bureau excludes certain households, such as homeless, or other factors;

''(F) the effects of childhood hunger on child development, well-being, and educational attainment; and

''(G) such other critical outcomes as are determined by the Secretary.

''(5) FUNDING.—

''(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection $10,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(b) DEMONSTRATION PROJECTS TO END CHILDHOOD HUNGER.—

''(1) DEFINITIONS.—In this subsection:

''(A) CHILD.—The term 'child' means a person under the age of 18.

''(B) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term 'supplemental nutrition assistance program' means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

''(2) PURPOSE.—Under such terms and conditions as are established by the Secretary, the Secretary shall carry out demonstration projects that test innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger and food insecurity.

''(3) PROJECTS.—Demonstration projects carried out under this subsection may include projects that—

''(A) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

''(B) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

''(C) target Federal, State, or local assistance, including emergency housing or family preservation services, at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services.

''(4) GRANTS.—

''(A) DEMONSTRATION PROJECTS.—

''(i) IN GENERAL.—In carrying out this subsection, the Secretary may enter into competitively awarded contracts or cooperative agreements with, or provide grants to, public or private organizations or agencies (as determined by the Secretary), for use in accordance with demonstration projects that meet the purposes of this subsection.

''(ii) REQUIREMENT.—At least 1 demonstration project funded under this subsection shall be carried out on an Indian reservation in a rural area with a service population with a prevalence of diabetes that exceeds 15 percent, as determined by the Director of the Indian Health Service.

''(B) APPLICATION.—To be eligible to receive a contract, cooperative agreement, or grant under this subsection, an organization or agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(C) SELECTION CRITERIA.—Demonstration projects shall be selected based on publicly disseminated criteria that may include—

''(i) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

''(ii) a commitment to a demonstration project that allows for a rigorous outcome evaluation as described in paragraph (6);

''(iii) a focus on innovative strategies to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

''(iv) such other criteria as are determined by the Secretary.

''(5) CONSULTATION.—In determining the range of projects and defining selection criteria under this subsection, the Secretary shall consult with—

''(A) the Secretary of Health and Human Services;

''(B) the Secretary of Labor; and

''(C) the Secretary of Housing and Urban Development.

''(6) EVALUATION AND REPORTING.—

''(A) INDEPENDENT EVALUATION.—The Secretary shall provide for an independent evaluation of each demonstration project carried out under this subsection that—

''(i) measures the impact of each demonstration project on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

''(ii) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

''(B) REPORTING.—Not later than December 31, 2013 and each December 31 thereafter until the date on which the last evaluation under subparagraph (A) is completed, the Secretary shall—

''(i) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

''(I) the status of each demonstration project; and

''(II) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

''(ii) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

''(7) FUNDING.—

''(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection $40,000,000, to remain available until September 30, 2017.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(C) USE OF FUNDS.—

''(i) IN GENERAL.—Funds made available under subparagraph (A) may be used to carry out this subsection, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this subsection.

''(ii) INDIAN RESERVATIONS.—Of amounts made available under subparagraph (A), the Secretary shall use a portion of the amounts to carry out research relating to hunger, obesity and type 2 diabetes on Indian reservations, including research to determine the manner in which Federal nutrition programs can help to overcome those problems.

''(iii) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

''(I) describes the manner in which Federal nutrition programs can help to overcome child hunger nutrition problems on Indian reservations; and

''(II) contains proposed administrative and legislative recommendations to strengthen and streamline all relevant Department of Agriculture nutrition programs to reduce childhood hunger, obesity, and type 2 diabetes on Indian reservations.

''(D) LIMITATIONS.—

''(i) DURATION.—No project may be funded under this subsection for more than 5 years.

''(ii) PROJECT REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this subsection unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

''(iii) HUNGER-FREE COMMUNITIES.—No project may be funded under this subsection that receives funding under section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517).

''(iv) OTHER BENEFITS.—Funds made available under this subsection may not be used for any project in a manner that is inconsistent with—

''(I) this Act;

''(II) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(III) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

''(IV) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).''.

SEC. 142. STATE CHILDHOOD HUNGER CHALLENGE GRANTS.

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by inserting after section 23 (as added by section 141) the following:

''SEC. 24. STATE CHILDHOOD HUNGER CHALLENGE GRANTS.

''(a) DEFINITIONS.—In this section:

''(1) CHILD.—The term 'child' means a person under the age of 18.

''(2) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term 'supplemental nutrition assistance program' means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

''(b) PURPOSE.—Under such terms and conditions as are established by the Secretary, funds made available under this section may be used to competitively award grants to or enter into cooperative agreements with Governors to carry out comprehensive and innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger by 2015.

''(c) PROJECTS.—State demonstration projects carried out under this section may include projects that—

''(1) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

''(2) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(3) target Federal, State, or local assistance, including emergency housing, family preservation services, child care, or temporary assistance at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services;

''(4) enhance outreach to increase access and participation in Federal nutrition assistance programs; and

''(5) improve the coordination of Federal, State, and community resources and services aimed at preventing food insecurity and hunger, including through the establishment and expansion of State food policy councils.

''(d) GRANTS.—

''(1) IN GENERAL.—In carrying out this section, the Secretary may competitively award grants or enter into competitively awarded cooperative agreements with Governors for use in accordance with demonstration projects that meet the purposes of this section.

''(2) APPLICATION.—To be eligible to receive a grant or cooperative agreement under this section, a Governor shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(3) SELECTION CRITERIA.—The Secretary shall evaluate proposals based on publicly disseminated criteria that may include—

''(A) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

''(B) a commitment to approaches that allow for a rigorous outcome evaluation as described in subsection (f);

''(C) a comprehensive and innovative strategy to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

''(D) such other criteria as are determined by the Secretary.

''(4) REQUIREMENTS.—Any project funded under this section shall provide for—

''(A) a baseline assessment, and subsequent annual assessments, of the prevalence and severity of very low food security among children in the State, based on a methodology prescribed by the Secretary;

''(B) a collaborative planning process including key stakeholders in the State that results in a comprehensive agenda to eliminate childhood hunger that is—

''(i) described in a detailed project plan; and

''(ii) provided to the Secretary for approval;

''(C) an annual budget;

''(D) specific performance goals, including the goal to sharply reduce or eliminate food insecurity among children in the State by 2015, as determined through a methodology prescribed by the Secretary and carried out by the Governor; and

''(E) an independent outcome evaluation of not less than 1 major strategy of the project that measures—

''(i) the specific impact of the strategy on food insecurity among children in the State; and

''(ii) if applicable, the nutrition assistance participation rate among children in the State.

''(e) CONSULTATION.—In determining the range of projects and defining selection criteria under this section, the Secretary shall consult with—

''(1) the Secretary of Health and Human Services;

''(2) the Secretary of Labor;

''(3) the Secretary of Education; and

''(4) the Secretary of Housing and Urban Development.

''(f) EVALUATION AND REPORTING.—

''(1) GENERAL PERFORMANCE ASSESSMENT.—Each project authorized under this section shall require an independent assessment that—

''(A) measures the impact of any activities carried out under the project on the level of food insecurity in the State that—

''(i) focuses particularly on the level of food insecurity among children in the State; and

''(ii) includes a preimplementation baseline and annual measurements taken during the project of the level of food insecurity in the State; and

''(B) is carried out using a methodology prescribed by the Secretary.

''(2) INDEPENDENT EVALUATION.—Each project authorized under this section shall provide for an independent evaluation of not less than 1 major strategy that—

''(A) measures the impact of the strategy on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

''(B) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

''(3) REPORTING.—Not later than December 31, 2011 and each December 31 thereafter until the date on which the last evaluation under paragraph (1) is completed, the Secretary shall—

''(A) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

''(i) the status of each State demonstration project; and

''(ii) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

''(B) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2011 through 2014, to remain available until expended.

''(2) USE OF FUNDS.—Funds made available under paragraph (1) may be used to carry out this section, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this section.

''(3) LIMITATIONS.—

''(A) DURATION.—No project may be funded under this section for more than 5 years.

''(B) PERFORMANCE BASIS.—Funds provided under this section shall be made available to each Governor on an annual basis, with the amount of funds provided for each year contingent on the satisfactory implementation of the project plan and progress towards the performance goals defined in the project year plan.

''(C) ALTERING NUTRITION ASSISTANCE PROGRAM REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this section unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

''(D) OTHER BENEFITS.—Funds made available under this section may not be used for any project in a manner that is inconsistent with—

''(i) this Act;

''(ii) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(iii) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

''(iv) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).''.

SEC. 143. REVIEW OF LOCAL POLICIES ON MEAL CHARGES AND PROVISION OF ALTERNATE MEALS.

(a) IN GENERAL.—

(1) REVIEW.—The Secretary, in conjunction with States and participating local educational agencies, shall examine the current policies and practices of States and local educational agencies regarding extending credit to children to pay the cost to the children of reimbursable school lunches and breakfasts.

(2) SCOPE.—The examination under paragraph (1) shall include the policies and practices in effect as of the date of enactment of this Act relating to providing to children who are without funds a meal other than the reimbursable meals.

(3) FEASIBILITY.—In carrying out the examination under paragraph (1), the Secretary shall—

(A) prepare a report on the feasibility of establishing national standards for meal charges and the provision of alternate meals; and

(B) provide recommendations for implementing those standards.

(b) FOLLOWUP ACTIONS.—

(1) IN GENERAL.—Based on the findings and recommendations under subsection (a), the Secretary may—

(A) implement standards described in paragraph (3) of that subsection through regulation;

(B) test recommendations through demonstration projects; or

(C) study further the feasibility of recommendations.

(2) FACTORS FOR CONSIDERATION.—In determining how best to implement recommendations described in subsection (a)(3), the Secretary shall consider such factors as—

(A) the impact of overt identification on children;

(B) the manner in which the affected households will be provided with assistance in establishing eligibility for free or reduced price school meals; and

(C) the potential financial impact on local educational agencies.

TITLE II—REDUCING CHILDHOOD OBESITY AND IMPROVING THE DIETS OF CHILDREN

Subtitle A—National School Lunch Program

SEC. 201. PERFORMANCE-BASED REIMBURSEMENT RATE INCREASES FOR NEW MEAL PATTERNS.

Section 4(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)) is amended by adding at the end the following:

''(3) ADDITIONAL REIMBURSEMENT.—

''(A) REGULATIONS.—

''(i) PROPOSED REGULATIONS.—Notwithstanding section 9(f), not later than 18 months after the date of enactment of this paragraph, the Secretary shall promulgate proposed regulations to update the meal patterns and nutrition standards for the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

''(ii) INTERIM OR FINAL REGULATIONS.—

''(I) IN GENERAL.—Not later than 18 months after promulgation of the proposed regulations under clause (i), the Secretary shall promulgate interim or final regulations.

''(II) DATE OF REQUIRED COMPLIANCE.—The Secretary shall establish in the interim or final regulations a date by which all school food authorities participating in the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) are required to comply with the meal pattern and nutrition standards established in the interim or final regulations.

''(iii) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this paragraph, and each 90 days thereafter until the Secretary has promulgated interim or final regulations under clause (ii), the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a quarterly report on progress made toward promulgation of the regulations described in this subparagraph.

''(B) PERFORMANCE-BASED REIMBURSEMENT RATE INCREASE.—Beginning on the later of the date of promulgation of the implementing regulations described in subparagraph (A)(ii), the date of enactment of this paragraph, or October 1, 2012, the Secretary shall provide additional reimbursement for each lunch served in school food authorities determined to be eligible under subparagraph (D).

''(C) ADDITIONAL REIMBURSEMENT.—

''(i) IN GENERAL.—Each lunch served in school food authorities determined to be eligible under subparagraph (D) shall receive an additional 6 cents, adjusted in accordance with section 11(a)(3), to the national lunch average payment for each lunch served.

''(ii) DISBURSEMENT.—The State agency shall disburse funds made available under this paragraph to school food authorities eligible to receive additional reimbursement.

''(D) ELIGIBLE SCHOOL FOOD AUTHORITY.—To be eligible to receive an additional reimbursement described in this paragraph, a school food authority shall be certified by the State to be in compliance with the interim or final regulations described in subparagraph (A)(ii).

''(E) FAILURE TO COMPLY.—Beginning on the later of the date described in subparagraph (A)(ii)(II), the date of enactment of this paragraph, or October 1, 2012, school food authorities found to be out of compliance with the meal patterns or nutrition standards established by the implementing regulations shall not receive the additional reimbursement for each lunch served described in this paragraph.

''(F) ADMINISTRATIVE COSTS.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Secretary shall make funds available to States for State activities related to training, technical assistance, certification, and oversight activities of this paragraph.

''(ii) PROVISION OF FUNDS.—The Secretary shall provide funds described in clause (i) to States administering a school lunch program in a manner proportional to the administrative expense allocation of each State during the preceding fiscal year.

''(iii) FUNDING.—

''(I) IN GENERAL.—In the later of the fiscal year in which the implementing regulations described in subparagraph (A)(ii) are promulgated or the fiscal year in which this paragraph is enacted, and in the subsequent fiscal year, the Secretary shall use not more than $50,000,000 of funds made available under section 3 to make payments to States described in clause (i).

''(II) RESERVATION.—In providing funds to States under clause (i), the Secretary may reserve not more than $3,000,000 per fiscal year to support Federal administrative activities to carry out this paragraph.''.

SEC. 202. NUTRITION REQUIREMENTS FOR FLUID MILK.

Section 9(a)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(2)(A)) is amended by striking clause (i) and inserting the following:

''(i) shall offer students a variety of fluid milk. Such milk shall be consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);''.

SEC. 203. WATER.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following:

''(5) WATER.—Schools participating in the school lunch program under this Act shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.''.

SEC. 204. LOCAL SCHOOL WELLNESS POLICY IMPLEMENTATION.

(a) IN GENERAL.—The Richard B. Russell National School Lunch Act is amended by inserting after section 9 (42 U.S.C. 1758) the following:

''SEC. 9A. LOCAL SCHOOL WELLNESS POLICY.

''(a) IN GENERAL.—Each local educational agency participating in a program authorized by this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for all schools under the jurisdiction of the local educational agency.

''(b) GUIDELINES.—The Secretary shall promulgate regulations that provide the framework and guidelines for local educational agencies to establish local school wellness policies, including, at a minimum,—

''(1) goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness;

''(2) for all foods available on each school campus under the jurisdiction of the local educational agency during the school day, nutrition guidelines that—

''(A) are consistent with sections 9 and 17 of this Act, and sections 4 and 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779); and

''(B) promote student health and reduce childhood obesity;

''(3) a requirement that the local educational agency permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy;

''(4) a requirement that the local educational agency inform and update the public (including parents, students, and others in the community) about the content and implementation of the local school wellness policy; and

''(5) a requirement that the local educational agency—

''(A) periodically measure and make available to the public an assessment on the implementation of the local school wellness policy, including—

''(i) the extent to which schools under the jurisdiction of the local educational agency are in compliance with the local school wellness policy;

''(ii) the extent to which the local school wellness policy of the local educational agency compares to model local school wellness policies; and

''(iii) a description of the progress made in attaining the goals of the local school wellness policy; and

''(B) designate 1 or more local educational agency officials or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

''(c) LOCAL DISCRETION.—The local educational agency shall use the guidelines promulgated by the Secretary under subsection (b) to determine specific policies appropriate for the schools under the jurisdiction of the local educational agency.

''(d) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall provide information and technical assistance to local educational agencies, school food authorities, and State educational agencies for use in establishing healthy school environments that are intended to promote student health and wellness.

''(2) CONTENT.—The Secretary shall provide technical assistance that—

''(A) includes resources and training on designing, implementing, promoting, disseminating, and evaluating local school wellness policies and overcoming barriers to the adoption of local school wellness policies;

''(B) includes model local school wellness policies and best practices recommended by Federal agencies, State agencies, and nongovernmental organizations;

''(C) includes such other technical assistance as is required to promote sound nutrition and establish healthy school nutrition environments; and

''(D) is consistent with the specific needs and requirements of local educational agencies.

''(3) STUDY AND REPORT.—

''(A) IN GENERAL.—Subject to the availability of appropriations, the Secretary, in conjunction with the Director of the Centers for Disease Control and Prevention, shall prepare a report on the implementation, strength, and effectiveness of the local school wellness policies carried out in accordance with this section.

''(B) STUDY OF LOCAL SCHOOL WELLNESS POLICIES.—The study described in subparagraph (A) shall include—

''(i) an analysis of the strength and weaknesses of local school wellness policies and how the policies compare with model local wellness policies recommended under paragraph (2)(B); and

''(ii) an assessment of the impact of the local school wellness policies in addressing the requirements of subsection (b).

''(C) REPORT.—Not later than January 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the findings of the study.

''(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $3,000,000 for fiscal year 2011, to remain available until expended.''.

(b) REPEAL.—Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1751 note; Public Law 108–265) is repealed.

SEC. 205. EQUITY IN SCHOOL LUNCH PRICING.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

''(p) PRICE FOR A PAID LUNCH.—

''(1) DEFINITION OF PAID LUNCH.—In this subsection, the term 'paid lunch' means a reimbursable lunch served to students who are not certified to receive free or reduced price meals.

''(2) REQUIREMENT.—

''(A) IN GENERAL.—For each school year beginning July 1, 2011, each school food authority shall establish a price for paid lunches in accordance with this subsection.

''(B) LOWER PRICE.—

''(i) IN GENERAL.—In the case of a school food authority that established a price for a paid lunch in the previous school year that was less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the price charged in the previous school year, as adjusted by a percentage equal to the sum obtained by adding—

''(I) 2 percent; and

''(II) the percentage change in the Consumer Price Index for All Urban Consumers (food away from home index) used to increase the Federal reimbursement rate under section 11 for the most recent school year for which data are available, as published in the Federal Register.

''(ii) ROUNDING.—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

''(iii) MAXIMUM REQUIRED PRICE INCREASE.—

''(I) IN GENERAL.—The maximum annual average price increase required to meet the requirements of this subparagraph shall not exceed 10 cents for any school food authority.

''(II) DISCRETIONARY INCREASE.—A school food authority may increase the average price for a paid lunch for a school year by more than 10 cents.

''(C) EQUAL OR GREATER PRICE.—

''(i) IN GENERAL.—In the case of a school food authority that established an average price for a paid lunch in the previous school year that was equal to or greater than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch.

''(ii) ROUNDING.—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

''(3) EXCEPTIONS.—

''(A) REDUCTION IN PRICE.—A school food authority may reduce the average price of a paid lunch established under this subsection if the State agency ensures that funding from non-Federal sources (other than in-kind contributions) is added to the nonprofit school food service account of the school food authority in an amount estimated to be equal to at least the difference between—

''(i) the average price required of the school food authority for the paid lunches under paragraph (2); and

''(ii) the average price charged by the school food authority for the paid lunches.

''(B) NON-FEDERAL SOURCES.—For the purposes of subparagraph (A), non-Federal sources does not include revenue from the sale of foods sold in competition with meals served under the school lunch program authorized under this Act or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(C) OTHER PROGRAMS.—This subsection shall not apply to lunches provided under section 17 of this Act.

''(4) REGULATIONS.—The Secretary shall establish procedures to carry out this subsection, including collecting and publishing the prices that school food authorities charge for paid meals on an annual basis and procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority.''.

SEC. 206. REVENUE FROM NONPROGRAM FOODS SOLD IN SCHOOLS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 205) is amended by adding at the end the following:

''(q) NONPROGRAM FOOD SALES.—

''(1) DEFINITION OF NONPROGRAM FOOD.—In this subsection:

''(A) IN GENERAL.—The term 'nonprogram food' means food that is—

''(i) sold in a participating school other than a reimbursable meal provided under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

''(ii) purchased using funds from the nonprofit school food service account of the school food authority of the school.

''(B) INCLUSION.—The term 'nonprogram food' includes food that is sold in competition with a program established under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(2) REVENUES.—

''(A) IN GENERAL.—The proportion of total school food service revenue provided by the sale of nonprogram foods to the total revenue of the school food service account shall be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

''(B) ACCRUAL.—All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

''(C) EFFECTIVE DATE.—This subsection shall be effective beginning on July 1, 2011.''.

SEC. 207. REPORTING AND NOTIFICATION OF SCHOOL PERFORMANCE.

Section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) UNIFIED ACCOUNTABILITY SYSTEM.—

''(1) IN GENERAL.—There shall be a unified system prescribed and administered by the Secretary to ensure that local food service authorities participating in the school lunch program established under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) comply with those Acts, including compliance with—

''(A) the nutritional requirements of section 9(f) of this Act for school lunches; and

''(B) as applicable, the nutritional requirements for school breakfasts under section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).''; and

(2) in subsection (b)(1), by striking subparagraphs (A) and (B) and inserting the following:

''(A) require that local food service authorities comply with the nutritional requirements described in subparagraphs (A) and (B) of paragraph (1);

''(B) to the maximum extent practicable, ensure compliance through reasonable audits and supervisory assistance reviews;

''(C) in conducting audits and reviews for the purpose of determining compliance with this Act, including the nutritional requirements of section 9(f)—

''(i) conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary;

''(ii) select schools for review in each local educational agency using criteria established by the Secretary;

''(iii) report the final results of the reviews to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary; and

''(iv) submit to the Secretary each year a report containing the results of the reviews in accordance with procedures developed by the Secretary; and

''(D) when any local food service authority is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.''.

SEC. 208. NUTRITION STANDARDS FOR ALL FOODS SOLD IN SCHOOL.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) by striking the section heading and all that follows through ''(a) The Secretary'' and inserting the following:

''SEC. 10. REGULATIONS.

''(a) IN GENERAL.—The Secretary''; and

(2) by striking subsection (b) and inserting the following:

''(b) NATIONAL SCHOOL NUTRITION STANDARDS.—

''(1) PROPOSED REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall—

''(i) establish science-based nutrition standards for foods sold in schools other than foods provided under this Act and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and

''(ii) not later than 1 year after the date of enactment of this paragraph, promulgate proposed regulations to carry out clause (i).

''(B) APPLICATION.—The nutrition standards shall apply to all foods sold—

''(i) outside the school meal programs;

''(ii) on the school campus; and

''(iii) at any time during the school day.

''(C) REQUIREMENTS.—In establishing nutrition standards under this paragraph, the Secretary shall—

''(i) establish standards that are consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), including the food groups to encourage and nutrients of concern identified in the Dietary Guidelines; and

''(ii) consider —

''(I) authoritative scientific recommendations for nutrition standards;

''(II) existing school nutrition standards, including voluntary standards for beverages and snack foods and State and local standards;

''(III) the practical application of the nutrition standards; and

''(IV) special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraisers are approved by the school and are infrequent within the school.

''(D) UPDATING STANDARDS.—As soon as practicable after the date of publication by the Department of Agriculture and the Department of Health and Human Services of a new edition of the Dietary Guidelines for Americans under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), the Secretary shall review and update as necessary the school nutrition standards and requirements established under this subsection.

''(2) IMPLEMENTATION.—

''(A) EFFECTIVE DATE.—The interim or final regulations under this subsection shall take effect at the beginning of the school year that is not earlier than 1 year and not later than 2 years following the date on which the regulations are finalized.

''(B) REPORTING.—The Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives a quarterly report that describes progress made toward promulgating final regulations under this subsection.''.

SEC. 209. INFORMATION FOR THE PUBLIC ON THE SCHOOL NUTRITION ENVIRONMENT.

Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end the following:

''(k) INFORMATION ON THE SCHOOL NUTRITION ENVIRONMENT.—

''(1) IN GENERAL.—The Secretary shall—

''(A) establish requirements for local educational agencies participating in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to report information about the school nutrition environment, for all schools under the jurisdiction of the local educational agencies, to the Secretary and to the public in the State on a periodic basis; and

''(B) provide training and technical assistance to States and local educational agencies on the assessment and reporting of the school nutrition environment, including the use of any assessment materials developed by the Secretary.

''(2) REQUIREMENTS.—In establishing the requirements for reporting on the school nutrition environment under paragraph (1), the Secretary shall—

''(A) include information pertaining to food safety inspections, local wellness policies, meal program participation, the nutritional quality of program meals, and other information as determined by the Secretary; and

''(B) ensure that information is made available to the public by local educational agencies in an accessible, easily understood manner in accordance with guidelines established by the Secretary.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.''.

SEC. 210. ORGANIC FOOD PILOT PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

''(j) ORGANIC FOOD PILOT PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish an organic food pilot program (referred to in this subsection as the 'pilot program') under which the Secretary shall provide grants on a competitive basis to school food authorities selected under paragraph (3).

''(2) USE OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall use funds provided under this section—

''(i) to enter into competitively awarded contracts or cooperative agreements with school food authorities selected under paragraph (3); or

''(ii) to make grants to school food authority applicants selected under paragraph (3).

''(B) SCHOOL FOOD AUTHORITY USES OF FUNDS.—A school food authority that receives a grant under this section shall use the grant funds to establish a pilot program that increases the quantity of organic foods provided to schoolchildren under the school lunch program established under this Act.

''(3) APPLICATION.—

''(A) IN GENERAL.—A school food authority seeking a contract, grant, or cooperative agreement under this subsection shall submit to the Secretary an application in such form, containing such information, and at such time as the Secretary shall prescribe.

''(B) CRITERIA.—In selecting contract, grant, or cooperative agreement recipients, the Secretary shall consider—

''(i) the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section)) applicable

to a family of the size involved of the households in the district served by the school food authority, giving preference to school food authority applicants in which not less than 50 percent of the households in the district are at or below the Federal poverty line;

''(ii) the commitment of each school food authority applicant—

''(I) to improve the nutritional value of school meals;

''(II) to carry out innovative programs that improve the health and wellness of schoolchildren; and

''(III) to evaluate the outcome of the pilot program; and

''(iii) any other criteria the Secretary determines to be appropriate.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $10,000,000 for fiscal years 2011 through 2015.''.

Subtitle B—Child and Adult Care Food Program

SEC. 221. NUTRITION AND WELLNESS GOALS FOR MEALS SERVED THROUGH THE CHILD AND ADULT CARE FOOD PROGRAM.

Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (a), by striking ''(a) GRANT AUTHORITY'' and all that follows through the end of paragraph (1) and inserting the following:

''(a) PROGRAM PURPOSE, GRANT AUTHORITY AND INSTITUTION ELIGIBILITY.—

''(1) IN GENERAL.—

''(A) PROGRAM PURPOSE.—

''(i) FINDINGS.—Congress finds that—

''(I) eating habits and other wellness-related behavior habits are established early in life; and

''(II) good nutrition and wellness are important contributors to the overall health of young children and essential to cognitive development.

''(ii) PURPOSE.—The purpose of the program authorized by this section is to provide aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

''(B) GRANT AUTHORITY.—The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.'';

(2) by striking subsection (g) and inserting the following:

''(g) NUTRITIONAL REQUIREMENTS FOR MEALS AND SNACKS SERVED IN INSTITUTIONS AND FAMILY OR GROUP DAY CARE HOMES.—

''(1) DEFINITION OF DIETARY GUIDELINES.—In this subsection, the term 'Dietary Guidelines' means the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

''(2) NUTRITIONAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), reimbursable meals and snacks served by institutions, family or group day care homes, and sponsored centers participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

''(B) CONFORMITY WITH THE DIETARY GUIDELINES AND AUTHORITATIVE SCIENCE.—

''(i) IN GENERAL.—Not less frequently than once every 10 years, the Secretary shall review and, as appropriate, update requirements for meals served under the program under this section to ensure that the meals—

''(I) are consistent with the goals of the most recent Dietary Guidelines; and

''(II) promote the health of the population served by the program authorized under this section, as indicated by the most recent relevant nutrition science and appropriate authoritative scientific agency and organization recommendations.

''(ii) COST REVIEW.—The review required under clause (i) shall include a review of the cost to child care centers and group or family day care homes resulting from updated requirements for meals and snacks served under the program under this section.

''(iii) REGULATIONS.—Not later than 18 months after the completion of the review of the meal pattern under clause (i), the Secretary shall promulgate proposed regulations to update the meal patterns for meals and snacks served under the program under this section.

''(C) EXCEPTIONS.—

''(i) SPECIAL DIETARY NEEDS.—The minimum nutritional requirements prescribed under subparagraph (A) shall not prohibit institutions, family or group day care homes, and sponsored centers from substituting foods to accommodate the medical or other special dietary needs of individual participants.

''(ii) EXEMPT INSTITUTIONS.—The Secretary may elect to waive all or part of the requirements of this subsection for emergency shelters participating in the program under this section.

''(3) MEAL SERVICE.—Institutions, family or group day care homes, and sponsored centers shall ensure that reimbursable meal service contributes to the development and socialization of enrolled children by providing that food is not used as a punishment or reward.

''(4) FLUID MILK.—

''(A) IN GENERAL.—If an institution, family or group day care home, or sponsored center provides fluid milk as part of a reimbursable meal or supplement, the institution, family or group day care home, or sponsored center shall provide the milk in accordance with the most recent version of the Dietary Guidelines.

''(B) MILK SUBSTITUTES.—In the case of children who cannot consume fluid milk due to medical or other special dietary needs other than a disability, an institution, family or group day care home, or sponsored center may substitute for the fluid milk required in meals served, a nondairy beverage that—

''(i) is nutritionally equivalent to fluid milk; and

''(ii) meets nutritional standards established by the Secretary, including, among other requirements established by the Secretary, fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk.

''(C) APPROVAL.—

''(i) IN GENERAL.—A substitution authorized under subparagraph (B) may be made—

''(I) at the discretion of and on approval by the participating day care institution; and

''(II) if the substitution is requested by written statement of a medical authority, or by the parent or legal guardian of the child, that identifies the medical or other special dietary need that restricts the diet of the child.

''(ii) EXCEPTION.—An institution, family or group day care home, or sponsored center that elects to make a substitution authorized under this paragraph shall not be required to provide beverages other than beverages the State has identified as acceptable substitutes.

''(D) EXCESS EXPENSES BORNE BY INSTITUTION.—A participating institution, family or group day care home, or sponsored center shall be responsible for any expenses that—

''(i) are incurred by the institution, family or group day care home, or sponsored center to provide substitutions under this paragraph; and

''(ii) are in excess of expenses covered under reimbursements under this Act.

''(5) NONDISCRIMINATION POLICY.—No physical segregation or other discrimination against any person shall be made because of the inability of the person to pay, nor shall there be any overt identification of any such person by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

''(6) USE OF ABUNDANT AND DONATED FOODS.—To the maximum extent practicable, each institution shall use in its food service foods that are—

''(A) designated from time to time by the Secretary as being in abundance, either nationally or in the food service area; or

''(B) donated by the Secretary.'';

(3) by adding at the end the following:

''(u) PROMOTING HEALTH AND WELLNESS IN CHILD CARE.—

''(1) PHYSICAL ACTIVITY AND ELECTRONIC MEDIA USE.—The Secretary shall encourage participating child care centers and family or group day care homes—

''(A) to provide to all children under the supervision of the participating child care centers and family or group day care homes daily opportunities for structured and unstructured age-appropriate physical activity; and

''(B) to limit among children under the supervision of the participating child care centers and family or group day care homes the use of electronic media to an appropriate level.

''(2) WATER CONSUMPTION.—Participating child care centers and family or group day care homes shall make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times.

''(3) TECHNICAL ASSISTANCE AND GUIDANCE.—

''(A) IN GENERAL.—The Secretary shall provide technical assistance to institutions participating in the program under this section to assist participating child care centers and family or group day care homes in complying with the nutritional requirements and wellness recommendations prescribed by the Secretary in accordance with this subsection and subsection (g).

''(B) GUIDANCE.—Not later than January 1, 2012, the Secretary shall issue guidance to States and institutions to encourage participating child care centers and family or group day care homes serving meals and snacks under this section to—

''(i) include foods that are recommended for increased serving consumption in amounts recommended by the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), including fresh, canned, dried, or frozen fruits and vegetables, whole grain products, lean meat products, and low-fat and non-fat dairy products; and

''(ii) reduce sedentary activities and provide opportunities for regular physical activity in quantities recommended by the most recent Dietary Guidelines for Americans described in clause (i).

''(C) NUTRITION.—Technical assistance relating to the nutritional requirements of this subsection and subsection (g) shall include—

''(i) nutrition education, including education that emphasizes the relationship between nutrition, physical activity, and health;

''(ii) menu planning;

''(iii) interpretation of nutrition labels; and

''(iv) food preparation and purchasing guidance to produce meals and snacks that are—

''(I) consistent with the goals of the most recent Dietary Guidelines; and

''(II) promote the health of the population served by the program under this section, as recommended by authoritative scientific organizations.

''(D) PHYSICAL ACTIVITY.—Technical assistance relating to the physical activity requirements of this subsection shall include—

''(i) education on the importance of regular physical activity to overall health and well being; and

''(ii) sharing of best practices for physical activity plans in child care centers and homes as recommended by authoritative scientific organizations.

''(E) ELECTRONIC MEDIA USE.—Technical assistance relating to the electronic media use requirements of this subsection shall include—

''(i) education on the benefits of limiting exposure to electronic media by children; and

''(ii) sharing of best practices for the development of daily activity plans that limit use of electronic media.

''(F) MINIMUM ASSISTANCE.—At a minimum, the technical assistance required under this paragraph shall include a handbook, developed by the Secretary in coordination with the Secretary for Health and Human Services, that includes recommendations, guidelines, and best practices for participating institutions and family or group day care homes that are consistent with the nutrition, physical activity, and wellness requirements and recommendations of this subsection.

''(G) ADDITIONAL ASSISTANCE.—In addition to the requirements of this paragraph, the Secretary shall develop and provide such appropriate training and education materials, guidance, and technical assistance as the Secretary considers to be necessary to comply with the nutritional and wellness requirements of this subsection and subsection (g).

''(H) FUNDING.—

''(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to provide technical assistance under this subsection $10,000,000, to remain available until expended.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under clause (i), without further appropriation.''.

SEC. 222. INTERAGENCY COORDINATION TO PROMOTE HEALTH AND WELLNESS IN CHILD CARE LICENSING.

The Secretary shall coordinate with the Secretary of Health and Human Services to encourage State licensing agencies to include nutrition and wellness standards within State licensing standards that ensure, to the maximum extent practicable, that licensed child care centers and family or group day care homes—

(1) provide to all children under the supervision of the child care centers and family or group day care homes daily opportunities for age-appropriate physical activity;

(2) limit among children under the supervision of the child care centers and family or group day care homes the use of electronic media and the quantity of time spent in sedentary activity to an appropriate level;

(3) serve meals and snacks that are consistent with the requirements of the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766); and

(4) promote such other nutrition and wellness goals as the Secretaries determine to be necessary.

SEC. 223. STUDY ON NUTRITION AND WELLNESS QUALITY OF CHILD CARE SETTINGS.

(a) IN GENERAL.—Not less than 3 years after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall enter into a contract for the conduct of a nationally representative study of child care centers and family or group day care homes that includes an assessment of—

(1) the nutritional quality of all foods provided to children in child care settings as compared to the recommendations in most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(2) the quantity and type of opportunities for physical activity provided to children in child care settings;

(3) the quantity of time spent by children in child care settings in sedentary activities;

(4) an assessment of barriers and facilitators to—

(A) providing foods to children in child care settings that meet the recommendations of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(B) providing the appropriate quantity and type of opportunities of physical activity for children in child care settings; and

(C) participation by child care centers and family or group day care homes in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766); and

(5) such other assessment measures as the Secretary may determine to be necessary.

(b) REPORT TO CONGRESS.—The Secretary shall submit to Congress a report that includes a detailed description of the results of the study conducted under subsection (a).

(c) FUNDING.—

(1) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section $5,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

Subtitle C—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 231. SUPPORT FOR BREASTFEEDING IN THE WIC PROGRAM.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (a), in the second sentence, by striking ''supplemental foods and nutrition education through any eligible local agency'' and inserting ''supplemental foods and nutrition education, including breastfeeding promotion and support, through any eligible local agency'';

(2) in subsection (b)(4), by inserting ''breastfeeding support and promotion,'' after ''nutrition education,'';

(3) in subsection (c)(1), in the first sentence, by striking ''supplemental foods and nutrition education to'' and inserting ''supplemental foods, nutrition education, and breastfeeding support and promotion to'';

(4) in subsection (e)(2), in the second sentence, by inserting '', including breastfeeding support and education,'' after ''nutrition education'';

(5) in subsection (f)(6)(B), in the first sentence, by inserting ''and breastfeeding'' after ''nutrition education'';

(6) in subsection (h)—

(A) in paragraph (4)—

(i) by striking ''(4) The Secretary'' and all that follows through ''(A) in consultation'' and inserting the following:

''(4) REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall—

''(i) in consultation'';

(ii) by redesignating subparagraphs (B) through (F) as clauses (ii) through (vi), respectively, and indenting appropriately;

(iii) in clause (v) (as so redesignated), by striking ''and'' at the end;

(iv) in clause (vi) (as so redesignated), by striking ''2010 initiative.'' and inserting ''initiative; and''; and

(v) by adding at the end the following:

''(vii) annually compile and publish breastfeeding performance measurements based on program participant data on the number of partially and fully breast-fed infants, including breastfeeding performance measurements for—

''(I) each State agency; and

''(II) each local agency;

''(viii) in accordance with subparagraph (B), implement a program to recognize exemplary breastfeeding support practices at local agencies or clinics participating in the special supplemental nutrition program established under this section; and

''(ix) in accordance with subparagraph (C), implement a program to provide performance bonuses to State agencies.

''(B) EXEMPLARY BREASTFEEDING SUPPORT PRACTICES.—

''(i) IN GENERAL.—In evaluating exemplary practices under subparagraph (A)(viii), the Secretary shall consider—

''(I) performance measurements of breastfeeding;

''(II) the effectiveness of a peer counselor program;

''(III) the extent to which the agency or clinic has partnered with other entities to build a supportive breastfeeding environment for women participating in the program; and

''(IV) such other criteria as the Secretary considers appropriate after consultation with State and local program agencies.

''(ii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the activities described in clause (viii) of subparagraph (A) such sums as are necessary.

''(C) PERFORMANCE BONUSES.—

''(i) IN GENERAL.—Following the publication of breastfeeding performance measurements under subparagraph (A)(vii), the Secretary shall provide performance bonus payments to not more than 15 State agencies that demonstrate, as compared to other State agencies participating in the program—

''(I) the highest proportion of breast-fed infants; or

''(II) the greatest improvement in proportion of breast-fed infants.

''(ii) CONSIDERATION.—In providing performance bonus payments to State agencies under this subparagraph, the Secretary shall consider the proportion of fully breast-fed infants in the States.

''(iii) USE OF FUNDS.—A State agency that receives a performance bonus under clause (i)—

''(I) shall treat the funds as program income; and

''(II) may transfer the funds to local agencies for use in carrying out the program.

''(iv) IMPLEMENTATION.—The Secretary shall provide the first performance bonuses not later than 1 year after the date of enactment of this clause and may subsequently revise the criteria for awarding performance bonuses; and''; and

(B) by striking paragraph (10) and inserting the following:

''(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

''(A) IN GENERAL.—For each of fiscal years 2010 through 2015, the Secretary shall use for the purposes specified in subparagraph (B) $139,000,000 (as adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B)).

''(B) PURPOSES.—Subject to subparagraph (C), of the amount made available under subparagraph (A) for a fiscal year—

''(i) $14,000,000 shall be used for—

''(I) infrastructure for the program under this section;

''(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

''(III) special State projects of regional or national significance to improve the services of the program;

''(ii) $35,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program, of which up to $5,000,000 may be used for Federal administrative costs; and

''(iii) $90,000,000 shall be used for special nutrition education (such as breastfeeding peer counselors and other related activities), of which not more than $10,000,000 of any funding provided in excess of $50,000,000 shall be used to make performance bonus payments under paragraph (4)(C).

''(C) ADJUSTMENT.—Each of the amounts referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B).

''(D) PROPORTIONAL DISTRIBUTION.—The Secretary shall distribute funds made available under subparagraph (A) in accordance with the proportional distribution described in subparagraphs (B) and (C).''; and

(7) in subsection (j), by striking ''supplemental foods and nutrition education'' each place it appears in paragraphs (1) and (2) and inserting ''supplemental foods, nutrition education, and breastfeeding support and promotion''.

SEC. 232. REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.

Section 17(f)(11)(D) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)(D)) is amended in the matter preceding clause (i) by inserting ''but not less than every 10 years,'' after ''scientific knowledge,''.

Subtitle D—Miscellaneous

SEC. 241. NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM.

(a) IN GENERAL.—The Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) is amended by adding at the end the following:

''SEC. 28. NUTRITION EDUCATION AND OBESITY PREVENTION GRANT PROGRAM.

''(a) DEFINITION OF ELIGIBLE INDIVIDUAL.—In this section, the term 'eligible individual' means an individual who is eligible to receive benefits under a nutrition education and obesity prevention program under this section as a result of being—

''(1) an individual eligible for benefits under—

''(A) this Act;

''(B) sections 9(b)(1)(A) and 17(c)(4) of the Richard B Russell National School Lunch Act (42 U.S.C. 1758(b)(1)(A), 1766(c)(4)); or

''(C) section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A));

''(2) an individual who resides in a community with a significant low-income population, as determined by the Secretary; or

''(3) such other low-income individual as is determined to be eligible by the Secretary.

''(b) PROGRAMS.—Consistent with the terms and conditions of grants awarded under this section, State agencies may implement a nutrition education and obesity prevention program for eligible individuals that promotes healthy food choices consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

''(c) DELIVERY OF NUTRITION EDUCATION AND OBESITY PREVENTION SERVICES.—

''(1) IN GENERAL.—State agencies may deliver nutrition education and obesity prevention services under a program described in subsection (b)—

''(A) directly to eligible individuals; or

''(B) through agreements with other State or local agencies or community organizations.

''(2) NUTRITION EDUCATION STATE PLANS.—

''(A) IN GENERAL.—A State agency that elects to provide nutrition education and obesity prevention services under this subsection shall submit to the Secretary for approval a nutrition education State plan.

''(B) REQUIREMENTS.—Except as provided in subparagraph (C), a nutrition education State plan shall—

''(i) identify the uses of the funding for local projects;

''(ii) ensure that the interventions are appropriate for eligible individuals who are members of low-income populations by recognizing the constrained resources, and the potential eligibility for Federal food assistance programs, of members of those populations; and

''(iii) conform to standards established by the Secretary through regulations, guidance, or grant award documents.

''(C) TRANSITION PERIOD.—During each of fiscal years 2011 and 2012, a nutrition education State plan under this section shall be consistent with the requirements of section 11(f) (as that section, other than paragraph (3)(C), existed on the day before the date of enactment of this section).

''(3) USE OF FUNDS.—

''(A) IN GENERAL.—A State agency may use funds provided under this section for any evidence-based allowable use of funds identified by the Administrator of the Food and Nutrition Service of the Department of Agriculture in consultation with the Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services, including—

''(i) individual and group-based nutrition education, health promotion, and intervention strategies;

''(ii) comprehensive, multilevel interventions at multiple complementary organizational and institutional levels; and

''(iii) community and public health approaches to improve nutrition.

''(B) CONSULTATION.—In identifying allowable uses of funds under subparagraph (A) and in seeking to strengthen delivery, oversight, and evaluation of nutrition education, the Administrator of the Food and Nutrition Service shall consult with the Director of the Centers for Disease Control and Prevention and outside stakeholders and experts, including—

''(i) representatives of the academic and research communities;

''(ii) nutrition education practitioners;

''(iii) representatives of State and local governments; and

''(iv) community organizations that serve low-income populations.

''(4) NOTIFICATION.—To the maximum extent practicable, State agencies shall notify applicants, participants, and eligible individuals under this Act of the availability of nutrition education and obesity prevention services under this section in local communities.

''(5) COORDINATION.—Subject to the approval of the Secretary, projects carried out with funds received under this section may be coordinated with other health promotion or nutrition improvement strategies, whether public or privately funded, if the projects carried out with funds received under this section remain under the administrative control of the State agency.

''(d) FUNDING.—

''(1) IN GENERAL.—Of funds made available each fiscal year under section 18(a)(1), the Secretary shall reserve for allocation to State agencies to carry out the nutrition education and obesity prevention grant program under this section, to remain available for obligation for a period of 2 fiscal years—

''(A) for fiscal year 2011, $375,000,000; and

''(B) for fiscal year 2012 and each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect any increases for the 12-month period ending the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

''(2) ALLOCATION.—

''(A) INITIAL ALLOCATION.—Of the funds set aside under paragraph (1), as determined by the Secretary—

''(i) for each of fiscal years 2011 through 2013, 100 percent shall be allocated to State agencies in direct proportion to the amount of funding that the State received for carrying out section 11(f) (as that section existed on the day before the date of enactment of this section) during fiscal year 2009, as reported to the Secretary as of February 2010; and

''(ii) subject to a reallocation under subparagraph (B)—

''(I) for fiscal year 2014—

''(aa) 90 percent shall be allocated to State agencies in accordance with clause (i); and

''(bb) 10 percent shall be allocated to State agencies based on the respective share of each State of the number of individuals participating in the supplemental nutrition assistance program during the 12-month period ending the preceding January 31;

''(II) for fiscal year 2015—

''(aa) 80 percent shall be allocated to State agencies in accordance with clause (i); and

''(bb) 20 percent shall be allocated in accordance with subclause (I)(bb);

''(III) for fiscal year 2016—

''(aa) 70 percent shall be allocated to State agencies in accordance with clause (i); and

''(bb) 30 percent shall be allocated in accordance with subclause (I)(bb);

''(IV) for fiscal year 2017—

''(aa) 60 percent shall be allocated to State agencies in accordance with clause (i); and

''(bb) 40 percent shall be allocated in accordance with subclause (I)(bb); and

''(V) for fiscal year 2018 and each fiscal year thereafter—

''(aa) 50 percent shall be allocated to State agencies in accordance with clause (i); and

''(bb) 50 percent shall be allocated in accordance with subclause (I)(bb).

''(B) REALLOCATION.—

''(i) IN GENERAL.—If the Secretary determines that a State agency will not expend

all of the funds allocated to the State agency for a fiscal year under paragraph (1) or in the case of a State agency that elects not to receive the entire amount of funds allocated to the State agency for a fiscal year, the Secretary shall reallocate the unexpended funds to other States during the fiscal year or the subsequent fiscal year (as determined by the Secretary) that have approved State plans under which the State agencies may expend the reallocated funds.

''(ii) EFFECT OF ADDITIONAL FUNDS.—

''(I) FUNDS RECEIVED.—Any reallocated funds received by a State agency under clause (i) for a fiscal year shall be considered to be part of the fiscal year 2009 base allocation of funds to the State agency for that fiscal year for purposes of determining allocation under subparagraph (A) for the subsequent fiscal year.

''(II) FUNDS SURRENDERED.—Any funds surrendered by a State agency under clause (i) shall not be considered to be part of the fiscal year 2009 base allocation of funds to a State agency for that fiscal year for purposes of determining allocation under subparagraph (A) for the subsequent fiscal year.

''(3) LIMITATION ON FEDERAL FINANCIAL PARTICIPATION.—

''(A) IN GENERAL.—Grants awarded under this section shall be the only source of Federal financial participation under this Act in nutrition education and obesity prevention.

''(B) EXCLUSION.—Any costs of nutrition education and obesity prevention in excess of the grants authorized under this section shall not be eligible for reimbursement under section 16(a).

''(e) IMPLEMENTATION.—Not later than January 1, 2012, the Secretary shall publish in the Federal Register a description of the requirements for the receipt of a grant under this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(a)) is amended in the first sentence by striking ''and, through an approved State plan, nutrition education''.

(2) Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. 2020) is amended by striking subsection (f).

SEC. 242. PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.

Section 9(a)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(4)) is amended by adding at the end the following:

''(C) PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.—The Secretary shall—

''(i) identify, develop, and disseminate to State departments of agriculture and education, school food authorities, local educational agencies, and local processing entities, model product specifications and practices for foods offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to ensure that the foods reflect the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

''(ii) not later than 1 year after the date of enactment of this subparagraph—

''(I) carry out a study to analyze the quantity and quality of nutritional information available to school food authorities about food service products and commodities; and

''(II) submit to Congress a report on the results of the study that contains such legislative recommendations as the Secretary considers necessary to ensure that school food authorities have access to the nutritional information needed for menu planning and compliance assessments; and

''(iii) to the maximum extent practicable, in purchasing and processing commodities for use in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), purchase the widest variety of healthful foods that reflect the most recent Dietary Guidelines for Americans.''.

SEC. 243. ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended—

(1) by redesignating subsections (h) and (i) and subsection (j) (as added by section 210) as subsections (i) through (k), respectively;

(2) in subsection (g), by striking ''(g) ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.—'' and all that follows through ''(3) PILOT PROGRAM FOR HIGH-POVERTY SCHOOLS.—'' and inserting the following:

''(g) ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.—

''(1) DEFINITION OF ELIGIBLE SCHOOL.—In this subsection, the term 'eligible school' means a school or institution that participates in a program under this Act or the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(2) PROGRAM.—The Secretary shall carry out a program to assist eligible schools, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, and nonprofit entities through grants and technical assistance to implement farm to school programs that improve access to local foods in eligible schools.

''(3) GRANTS.—

''(A) IN GENERAL.—The Secretary shall award competitive grants under this subsection to be used for—

''(i) training;

''(ii) supporting operations;

''(iii) planning;

''(iv) purchasing equipment;

''(v) developing school gardens;

''(vi) developing partnerships; and

''(vii) implementing farm to school programs.

''(B) REGIONAL BALANCE.—In making awards under this subsection, the Secretary shall, to the maximum extent practicable, ensure—

''(i) geographical diversity; and

''(ii) equitable treatment of urban, rural, and tribal communities.

''(C) MAXIMUM AMOUNT.—The total amount provided to a grant recipient under this subsection shall not exceed $100,000.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of costs for a project funded through a grant awarded under this subsection shall not exceed 75 percent of the total cost of the project.

''(B) FEDERAL MATCHING.—As a condition of receiving a grant under this subsection, a grant recipient shall provide matching support in the form of cash or in-kind contributions, including facilities, equipment, or services provided by State and local governments, nonprofit organizations, and private sources.

''(5) CRITERIA FOR SELECTION.—To the maximum extent practicable, in providing assistance under this subsection, the Secretary shall give the highest priority to funding projects that, as determined by the Secretary—

''(A) make local food products available on the menu of the eligible school;

''(B) serve a high proportion of children who are eligible for free or reduced price lunches;

''(C) incorporate experiential nutrition education activities in curriculum planning that encourage the participation of school children in farm and garden-based agricultural education activities;

''(D) demonstrate collaboration between eligible schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners;

''(E) include adequate and participatory evaluation plans;

''(F) demonstrate the potential for long-term program sustainability; and

''(G) meet any other criteria that the Secretary determines appropriate.

''(6) EVALUATION.—As a condition of receiving a grant under this subsection, each grant recipient shall agree to cooperate in an evaluation by the Secretary of the program carried out using grant funds.

''(7) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and information to assist eligible schools, State and local agencies, Indian tribal organizations, and nonprofit entities—

''(A) to facilitate the coordination and sharing of information and resources in the Department that may be applicable to the farm to school program;

''(B) to collect and share information on best practices; and

''(C) to disseminate research and data on existing farm to school programs and the potential for programs in underserved areas.

''(8) FUNDING.—

''(A) IN GENERAL.—On October 1, 2012, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection $5,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

''(9) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available under paragraph (8), there are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

''(h) PILOT PROGRAM FOR HIGH-POVERTY SCHOOLS.—

''(1) IN GENERAL.—''; and

(3) in subsection (h) (as redesignated by paragraph (2))—

(A) in subparagraph (F) of paragraph (1) (as so redesignated), by striking ''in accordance with paragraph (1)(H)'' and inserting ''carried out by the Secretary'';

(B) by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2) (as so redesignated), by striking ''2009'' and inserting ''2015''.

SEC. 244. RESEARCH ON STRATEGIES TO PROMOTE THE SELECTION AND CONSUMPTION OF HEALTHY FOODS.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services, shall establish a research, demonstration, and technical assistance program to promote healthy eating and reduce the prevalence of obesity, among all population groups but especially among children, by applying the principles and insights of behavioral economics research in schools, child care programs, and other settings.

(b) PRIORITIES.—The Secretary shall—

(1) identify and assess the impacts of specific presentation, placement, and other strategies for structuring choices on selection and consumption of healthful foods in a variety of settings, consistent with the most recent version of the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(2) demonstrate and rigorously evaluate behavioral economics-related interventions that hold promise to improve diets and promote health, including through demonstration projects that may include evaluation of the use of portion size, labeling, convenience, and other strategies to encourage healthy choices; and

(3) encourage adoption of the most effective strategies through outreach and technical assistance.

(c) AUTHORITY.—In carrying out the program under subsection (a), the Secretary may—

(1) enter into competitively awarded contracts or cooperative agreements; or

(2) provide grants to States or public or private agencies or organizations, as determined by the Secretary.

(d) APPLICATION.—To be eligible to enter into a contract or cooperative agreement or receive a grant under this section, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) COORDINATION.—The solicitation and evaluation of contracts, cooperative agreements, and grant proposals considered under this section shall be coordinated with the Food and Nutrition Service as appropriate to ensure that funded projects are consistent with the operations of Federally supported nutrition assistance programs and related laws (including regulations).

(f) ANNUAL REPORTS.—Not later than 90 days after the end of each fiscal year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

(1) the policies, priorities, and operations of the program carried out by the Secretary under this section during the fiscal year;

(2) the results of any evaluations completed during the fiscal year; and

(3) the efforts undertaken to disseminate successful practices through outreach and technical assistance.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2011 through 2015.

(2) USE OF FUNDS.—The Secretary may use up to 5 percent of the funds made available under paragraph (1) for Federal administrative expenses incurred in carrying out this section.

TITLE III—IMPROVING THE MANAGEMENT AND INTEGRITY OF CHILD NUTRITION PROGRAMS

Subtitle A—National School Lunch Program

SEC. 301. PRIVACY PROTECTION.

Section 9(d)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(1)) is amended—

(1) in the first sentence, by inserting ''the last 4 digits of'' before ''the social security account number''; and

(2) by striking the second sentence.

SEC. 302. APPLICABILITY OF FOOD SAFETY PROGRAM ON ENTIRE SCHOOL CAMPUS.

Section 9(h)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)(5)) is amended—

(1) by striking ''Each school food'' and inserting the following:

''(A) IN GENERAL.—Each school food''; and

(2) by adding at the end the following:

''(B) APPLICABILITY.—Subparagraph (A) shall apply to any facility or part of a facility in which food is stored, prepared, or served for the purposes of the school nutrition programs under this Act or section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).''.

SEC. 303. FINES FOR VIOLATING PROGRAM REQUIREMENTS.

Section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c) is amended by adding at the end the following:

''(e) FINES FOR VIOLATING PROGRAM REQUIREMENTS.—

''(1) SCHOOL FOOD AUTHORITIES AND SCHOOLS.—

''(A) IN GENERAL.—The Secretary shall establish criteria by which the Secretary or a State agency may impose a fine against any school food authority or school administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary or the State agency determines that the school food authority or school has—

''(i) failed to correct severe mismanagement of the program;

''(ii) disregarded a program requirement of which the school food authority or school had been informed; or

''(iii) failed to correct repeated violations of program requirements.

''(B) LIMITS.—

''(i) IN GENERAL.—In calculating the fine for a school food authority or school, the Secretary shall base the amount of the fine on the reimbursement earned by school food authority or school for the program in which the violation occurred.

''(ii) AMOUNT.—The amount under clause (i) shall not exceed—

''(I) 1 percent of the amount of meal reimbursements earned for the fiscal year for the first finding of 1 or more program violations under subparagraph (A);

''(II) 5 percent of the amount of meal reimbursements earned for the fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

''(III) 10 percent of the amount of meal reimbursements earned for the fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

''(2) STATE AGENCIES.—

''(A) IN GENERAL.—The Secretary shall establish criteria by which the Secretary may impose a fine against any State agency administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary determines that the State agency has—

''(i) failed to correct severe mismanagement of the program;

''(ii) disregarded a program requirement of which the State had been informed; or

''(iii) failed to correct repeated violations of program requirements.

''(B) LIMITS.—In the case of a State agency, the amount of a fine under subparagraph (A) shall not exceed—

''(i) 1 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the first finding of 1 or more program violations under subparagraph (A);

''(ii) 5 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

''(iii) 10 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

''(3) SOURCE OF FUNDING.—Funds to pay a fine imposed under paragraph (1) or (2) shall be derived from non-Federal sources.''.

SEC. 304. INDEPENDENT REVIEW OF APPLICATIONS.

Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)) is amended by adding at the end the following:

''(6) ELIGIBILITY DETERMINATION REVIEW FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

''(A) IN GENERAL.—A local educational agency that has demonstrated a high level of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, shall ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying a household of the eligibility or ineligibility of the household for free or reduced price meals.

''(B) TIMELINESS.—The review of initial eligibility determinations—

''(i) shall be completed in a timely manner; and

''(ii) shall not result in the delay of an eligibility determination for more than 10 operating days after the date on which the application is submitted.

''(C) ACCEPTABLE TYPES OF REVIEW.—Subject to standards established by the Secretary, the system used to review eligibility determinations for accuracy shall be conducted by an individual or entity that did not make the initial eligibility determination.

''(D) NOTIFICATION OF HOUSEHOLD.—Once the review of an eligibility determination has been completed under this paragraph, the household shall be notified immediately of the determination of eligibility or ineligibility for free or reduced price meals.

''(E) REPORTING.—

''(i) LOCAL EDUCATIONAL AGENCIES.—In accordance with procedures established by the Secretary, each local educational agency required to review initial eligibility determinations shall submit to the relevant State agency a report describing the results of the reviews, including—

''(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

''(II) such other information as the Secretary determines to be necessary.

''(ii) STATE AGENCIES.—In accordance with procedures established by the Secretary, each State agency shall submit to the Secretary a report describing the results of the reviews of initial eligibility determinations, including—

''(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

''(II) such other information as the Secretary determines to be necessary.

''(iii) TRANSPARENCY.—The Secretary shall publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.''.

SEC. 305. PROGRAM EVALUATION.

Section 28 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769i) is amended by adding at the end the following:

''(c) COOPERATION WITH PROGRAM RESEARCH AND EVALUATION.—States, State educational agencies, local educational agencies, schools, institutions, facilities, and contractors participating in programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall cooperate with officials and contractors acting on behalf of the Secretary, in the conduct of evaluations and studies under those Acts.''.

SEC. 306. PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended by striking subsection (g) and inserting the following:

''(g) PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.—

''(1) CRITERIA FOR SCHOOL FOOD SERVICE AND STATE AGENCY DIRECTORS.—

''(A) SCHOOL FOOD SERVICE DIRECTORS.—

''(i) IN GENERAL.—The Secretary shall establish a program of required education, training, and certification for all school food service directors responsible for the management of a school food authority.

''(ii) REQUIREMENTS.—The program shall include—

''(I) minimum educational requirements necessary to successfully manage the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act;

''(II) minimum program training and certification criteria for school food service directors; and

''(III) minimum periodic training criteria to maintain school food service director certification.

''(B) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—The Secretary shall establish criteria and standards for States to use in the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

''(C) TRAINING PROGRAM PARTNERSHIP.—The Secretary may provide financial and other assistance to 1 or more professional food service management organizations—

''(i) to establish and manage the program under this paragraph; and

''(ii) to develop voluntary training and certification programs for other school food service workers.

''(D) REQUIRED DATE OF COMPLIANCE.—

''(i) SCHOOL FOOD SERVICE DIRECTORS.—The Secretary shall establish a date by which all school food service directors whose local educational agencies are participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act shall be required to comply with the education, training, and certification criteria established in accordance with subparagraph (A).

''(ii) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—The Secretary shall establish a date by which all State agencies shall be required to comply with criteria and standards established in accordance with subparagraph (B) for the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

''(2) TRAINING AND CERTIFICATION OF FOOD SERVICE PERSONNEL.—

''(A) TRAINING FOR INDIVIDUALS CONDUCTING OR OVERSEEING ADMINISTRATIVE PROCEDURES.—

''(i) IN GENERAL.—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority personnel and other appropriate personnel.

''(ii) FEDERAL ROLE.—The Secretary shall—

''(I) provide training and technical assistance described in clause (i) to the State; or

''(II) at the option of the Secretary, directly provide training and technical assistance described in clause (i).

''(iii) REQUIRED PARTICIPATION.—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in clause (i) receives training at least annually, unless determined otherwise by the Secretary.

''(B) TRAINING AND CERTIFICATION OF ALL LOCAL FOOD SERVICE PERSONNEL.—

''(i) IN GENERAL.—The Secretary shall provide training designed to improve—

''(I) the accuracy of approvals for free and reduced price meals; and

''(II) the identification of reimbursable meals at the point of service.

''(ii) CERTIFICATION OF LOCAL PERSONNEL.—In accordance with criteria established by the Secretary, local food service personnel shall complete annual training and receive annual certification—

''(I) to ensure program compliance and integrity; and

''(II) to demonstrate competence in the training provided under clause (i).

''(iii) TRAINING MODULES.—In addition to the topics described in clause (i), a training program carried out under this subparagraph shall include training modules on—

''(I) nutrition;

''(II) health and food safety standards and methodologies; and

''(III) any other appropriate topics, as determined by the Secretary.

''(3) FUNDING.—

''(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection, to remain available until expended—

''(i) on October 1, 2010, $5,000,000; and

''(ii) on each October 1 thereafter, $1,000,000.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.''.

SEC. 307. INDIRECT COSTS.

(a) GUIDANCE ON INDIRECT COSTS RULES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall issue guidance to school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) covering program rules pertaining to indirect costs, including allowable indirect costs that may be charged to the nonprofit school food service account.

(b) INDIRECT COST STUDY.—The Secretary shall—

(1) conduct a study to assess the extent to which school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) pay indirect costs, including assessments of—

(A) the allocation of indirect costs to, and the methodologies used to establish indirect cost rates for, school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(B) the impact of indirect costs charged to the nonprofit school food service account;

(C) the types and amounts of indirect costs charged and recovered by school districts;

(D) whether the indirect costs charged or recovered are consistent with requirements for the allocation of indirect costs and school food service operations; and

(E) the types and amounts of indirect costs that could be charged or recovered under requirements for the allocation of indirect costs and school food service operations but are not charged or recovered; and

(2) after completing the study required under paragraph (1), issue additional guidance relating to the types of costs that are reasonable and necessary to provide meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(c) REGULATIONS.—After conducting the study under subsection (b)(1) and identifying costs under subsection (b)(2), the Secretary may promulgate regulations to address—

(1) any identified deficiencies in the allocation of indirect costs; and

(2) the authority of school food authorities to reimburse only those costs identified by the Secretary as reasonable and necessary under subsection (b)(2).

(d) REPORT.—Not later than October 1, 2013, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study under subsection (b).

(e) FUNDING.—

(1) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section $2,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

SEC. 308. ENSURING SAFETY OF SCHOOL MEALS.

The Richard B. Russell National School Lunch Act is amended by after section 28 (42 U.S.C. 1769i) the following:

''SEC. 29. ENSURING SAFETY OF SCHOOL MEALS.

''(a) FOOD AND NUTRITION SERVICE.—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall—

''(1) in consultation with the Administrator of the Agricultural Marketing Service and the Administrator of the Farm Service Agency, develop guidelines to determine the circumstances under which it is appropriate for the Secretary to institute an administrative hold on suspect foods purchased by the Secretary that are being used in school meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(2) work with States to explore ways for the States to increase the timeliness of notification of food recalls to schools and school food authorities;

''(3) improve the timeliness and completeness of direct communication between the Food and Nutrition Service and States about holds and recalls, such as through the commodity alert system of the Food and Nutrition Service; and

''(4) establish a timeframe to improve the commodity hold and recall procedures of the Department of Agriculture to address the role of processors and determine the involvement of distributors with processed products that may contain recalled ingredients, to facilitate the provision of more timely and complete information to schools.

''(b) FOOD SAFETY AND INSPECTION SERVICE.—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator of the Food Safety and Inspection Service, shall revise the procedures of the Food Safety and Inspection Service to ensure that schools are included in effectiveness checks.''.

Subtitle B—Summer Food Service Program

SEC. 321. SUMMER FOOD SERVICE PROGRAM PERMANENT OPERATING AGREEMENTS.

Section 13(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)) is amended by striking paragraph (3) and inserting the following:

''(3) PERMANENT OPERATING AGREEMENTS AND BUDGET FOR ADMINISTRATIVE COSTS.—

''(A) PERMANENT OPERATING AGREEMENTS.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the program, a service institution that meets the conditions of eligibility described in this section and in regulations promulgated by the Secretary, shall be required to enter into a permanent agreement with the applicable State agency.

''(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the service institution is in compliance with all requirements established in this section or by the Secretary.

''(iii) TERMINATION.—A permanent agreement described in clause (i)—

''(I) may be terminated for convenience by the service institution and State agency that is a party to the permanent agreement; and

''(II) shall be terminated—

''(aa) for cause by the applicable State agency in accordance with subsection (q) and with regulations promulgated by the Secretary; or

''(bb) on termination of participation of the service institution in the program.

''(B) BUDGET FOR ADMINISTRATIVE COSTS.—

''(i) IN GENERAL.—When applying for participation in the program, and not less frequently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.

''(ii) AMOUNT.—Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study required in paragraph (4).''.

SEC. 322. SUMMER FOOD SERVICE PROGRAM DISQUALIFICATION.

Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) is amended—

(1) by redesignating subsection (q) as subsection (r); and

(2) by inserting after subsection (p) the following:

''(q) TERMINATION AND DISQUALIFICATION OF PARTICIPATING ORGANIZATIONS.—

''(1) IN GENERAL.—Each State agency shall follow the procedures established by the Secretary for the termination of participation of institutions under the program.

''(2) FAIR HEARING.—The procedures described in paragraph (1) shall include provision for a fair hearing and prompt determination for any service institution aggrieved by any action of the State agency that affects—

''(A) the participation of the service institution in the program; or

''(B) the claim of the service institution for reimbursement under this section.

''(3) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

''(A) IN GENERAL.—The Secretary shall maintain a list of service institutions and individuals that have been terminated or otherwise disqualified from participation in the program under the procedures established pursuant to paragraph (1).

''(B) AVAILABILITY.—The Secretary shall make the list available to States for use in approving or renewing applications by service institutions for participation in the program.''.

Subtitle C—Child and Adult Care Food Program

SEC. 331. RENEWAL OF APPLICATION MATERIALS AND PERMANENT OPERATING AGREEMENTS.

(a) PERMANENT OPERATING AGREEMENTS.—Section 17(d)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)(1)) is amended by adding at the end the following:

''(E) PERMANENT OPERATING AGREEMENTS.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the child and adult care food program, an institution that meets the conditions of eligibility described in this subsection shall be required to enter into a permanent agreement with the applicable State agency.

''(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the institution is in compliance with all requirements established in this section or by the Secretary.

''(iii) TERMINATION.—A permanent agreement described in clause (i)—

''(I) may be terminated for convenience by the institution or State agency that is a party to the permanent agreement; and

''(II) shall be terminated—

''(aa) for cause by the applicable State agency in accordance with paragraph (5); or

''(bb) on termination of participation of the institution in the child and adult care food program.''.

(b) APPLICATIONS AND REVIEWS.—Section 17(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)) is amended by striking paragraph (2) and inserting the following:

''(2) PROGRAM APPLICATIONS.—

''(A) IN GENERAL.—The Secretary shall develop a policy under which each institution providing child care that participates in the program under this section shall—

''(i) submit to the State agency an initial application to participate in the program that meets all requirements established by the Secretary by regulation;

''(ii) annually confirm to the State agency that the institution, and any facilities of the institution in which the program is operated by a sponsoring organization, is in compliance with subsection (a)(5); and

''(iii) annually submit to the State agency any additional information necessary to confirm that the institution is in compliance with all other requirements to participate in the program, as established in this Act and by the Secretary by regulation.

''(B) REQUIRED REVIEWS OF SPONSORED FACILITIES.—

''(i) IN GENERAL.—The Secretary shall develop a policy under which each sponsoring organization participating in the program under this section shall conduct—

''(I) periodic unannounced site visits at not less than 3-year intervals to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program; and

''(II) at least 1 scheduled site visit each year to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations.

''(ii) VARIED TIMING.—Sponsoring organizations shall vary the timing of unannounced reviews under clause (i)(I) in a manner that makes the reviews unpredictable to sponsored facilities.

''(C) REQUIRED REVIEWS OF INSTITUTIONS.—The Secretary shall develop a policy under which each State agency shall conduct—

''(i) at least 1 scheduled site visit at not less than 3-year intervals to each institution under the State agency participating in the program under this section—

''(I) to identify and prevent management deficiencies and fraud and abuse under the program; and

''(II) to improve program operations; and

''(ii) more frequent reviews of any institution that—

''(I) sponsors a significant share of the facilities participating in the program;

''(II) conducts activities other than the program authorized under this section;

''(III) has serious management problems, as identified in a prior review, or is at risk of having serious management problems; or

''(IV) meets such other criteria as are defined by the Secretary.

''(D) DETECTION AND DETERRENCE OF ERRONEOUS PAYMENTS AND FALSE CLAIMS.—

''(i) IN GENERAL.—The Secretary may develop a policy to detect and deter, and recover erroneous payments to, and false claims submitted by, institutions, sponsored child and adult care centers, and family or group day care homes participating in the program under this section.

''(ii) BLOCK CLAIMS.—

''(I) DEFINITION OF BLOCK CLAIM.—In this clause, the term 'block claim' has the meaning given the term in section 226.2 of title 7, Code of Federal Regulations (or successor regulations).

''(II) PROGRAM EDIT CHECKS.—The Secretary may not require any State agency, sponsoring organization, or other institution to perform edit checks or on-site reviews relating to the detection of block claims by any child care facility.

''(III) ALLOWANCE.—Notwithstanding subclause (II), the Secretary may require any State agency, sponsoring organization, or other institution to collect, store, and transmit to the appropriate entity information necessary to develop any other policy developed under clause (i).''.

(c) AGREEMENTS.—Section 17(j)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(j)(1)) is amended—

(1) by striking ''may'' and inserting ''shall'';

(2) by striking ''family or group day care'' the first place it appears; and

(3) by inserting ''or sponsored day care centers'' before ''participating''.

SEC. 332. STATE LIABILITY FOR PAYMENTS TO AGGRIEVED CHILD CARE INSTITUTIONS.

Section 17(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) in paragraph (3), by striking ''(3) If a State'' and inserting the following:

''(5) SECRETARIAL HEARING.—If a State''; and

(2) by striking ''(e) Except as provided'' and all that follows through ''(2) A State'' and inserting the following:

''(e) HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (4), each State agency shall provide, in accordance with regulations promulgated by the Secretary, an opportunity for a fair hearing and a prompt determination to any institution aggrieved by any action of the State agency that affects—

''(A) the participation of the institution in the program authorized by this section; or

''(B) the claim of the institution for reimbursement under this section.

''(2) REIMBURSEMENT.—In accordance with paragraph (3), a State agency that fails to meet timeframes for providing an opportunity for a fair hearing and a prompt determination to any institution under paragraph (1) in accordance with regulations promulgated by the Secretary, shall pay, from non-Federal sources, all valid claims for reimbursement to the institution and the facilities of the institution during the period beginning on the day after the end of any regulatory deadline for providing the opportunity and making the determination and ending on the date on which a hearing determination is made.

''(3) NOTICE TO STATE AGENCY.—The Secretary shall provide written notice to a State agency at least 30 days prior to imposing any liability for reimbursement under paragraph (2).

''(4) FEDERAL AUDIT DETERMINATION.—A State''.

SEC. 333. TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.

Section 17(f)(3)(A)(iii)(III) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(A)(iii)(III)) is amended by adding at the end the following:

''(dd) TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.—If a family or group day care home elects to be provided reimbursement factors described in subclause (II), the family or group day care home may assist in the transmission of necessary household income information to the family or group day care home sponsoring organization in accordance with the policy described in item (ee) .

''(ee) POLICY.—The Secretary shall develop a policy under which a sponsored family or group day care home described in item (dd) may, under terms and conditions specified by the Secretary and with the written consent of the parents or guardians of a child in a family or group day care home participating in the program, assist in the transmission of the income information of the family to the family or group day care home sponsoring organization.''.

SEC. 334. SIMPLIFYING AND ENHANCING ADMINISTRATIVE PAYMENTS TO SPONSORING ORGANIZATIONS.

Section 17(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)) is amended by striking subparagraph (B) and inserting the following:

''(B) ADMINISTRATIVE FUNDS.—

''(i) IN GENERAL.—In addition to reimbursement factors described in subparagraph (A), a family or group day care home sponsoring organization shall receive reimbursement for the administrative expenses of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying—

''(I) the number of family and group day care homes of the sponsoring organization submitting a claim for reimbursement during the month; by

''(II) the appropriate administrative rate determined by the Secretary.

''(ii) ANNUAL ADJUSTMENT.—The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which such data are available.

''(iii) CARRYOVER FUNDS.—The Secretary shall develop procedures under which not more than 10 percent of the amount made available to sponsoring organizations under this section for administrative expenses for a fiscal year may remain available for obligation or expenditure in the succeeding fiscal year.''.

SEC. 335. CHILD AND ADULT CARE FOOD PROGRAM AUDIT FUNDING.

Section 17(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(i)) is amended by striking paragraph (2) and inserting the following:

''(2) FUNDING.—

''(A) IN GENERAL.—The Secretary shall make available for each fiscal year to each State agency administering the child and adult care food program, for the purpose of conducting audits of participating institutions, an amount of up to 1.5 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

''(B) ADDITIONAL FUNDING.—

''(i) IN GENERAL.—Subject to clause (ii), for fiscal year 2016 and each fiscal year thereafter, the Secretary may increase the amount of funds made available to any State agency under subparagraph (A), if the State agency demonstrates that the State agency can effectively use the funds to improve program management under criteria established by the Secretary.

''(ii) LIMITATION.—The total amount of funds made available to any State agency under this paragraph shall not exceed 2 percent of the funds used by each State agency in the program under this section, during the second preceding fiscal year.''.

SEC. 336. REDUCING PAPERWORK AND IMPROVING PROGRAM ADMINISTRATION.

(a) DEFINITION OF PROGRAM.—In this section, the term ''program'' means the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(b) ESTABLISHMENT.—The Secretary, in conjunction with States and participating institutions, shall continue to examine the feasibility of reducing unnecessary or duplicative paperwork resulting from regulations and recordkeeping requirements for State agencies, institutions, family and group day care homes, and sponsored centers participating in the program.

(c) DUTIES.—At a minimum, the examination shall include—

(1) review and evaluation of the recommendations, guidance, and regulatory priorities developed and issued to comply with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108–265); and

(2) examination of additional paperwork and administrative requirements that have been established since February 23, 2007, that could be reduced or simplified.

(d) ADDITIONAL DUTIES.—The Secretary, in conjunction with States and institutions participating in the program, may also examine any aspect of administration of the program.

(e) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the actions that have been taken to carry out this section, including—

(1) actions taken to address administrative and paperwork burdens identified as a result of compliance with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108–265);

(2) administrative and paperwork burdens identified as a result of compliance with section 119(i) of that Act for which no regulatory action or policy guidance has been taken;

(3) additional steps that the Secretary is taking or plans to take to address any administrative and paperwork burdens identified under subsection (c)(2) and paragraph (2), including—

(A) new or updated regulations, policy, guidance, or technical assistance; and

(B) a timeframe for the completion of those steps; and

(4) recommendations to Congress for modifications to existing statutory authorities needed to address identified administrative and paperwork burdens.

SEC. 337. STUDY RELATING TO THE CHILD AND ADULT CARE FOOD PROGRAM.

(a) STUDY.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall carry out a study of States participating in an afterschool supper program under the child and adult care food program established under section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress, and make available on the website of the Food and Nutrition Service, a report that describes—

(1) best practices of States in soliciting sponsors for an afterschool supper program described in subsection (a); and

(2) any Federal or State laws or requirements that may be a barrier to participation in the program.

Subtitle D—Special Supplemental Nutrition Program for Women, Infants, and Children

SEC. 351. SHARING OF MATERIALS WITH OTHER PROGRAMS.

Section 17(e)(3) of the Child Nutrition Act (42 U.S.C. 1786(e)(3)) is amended by striking subparagraph (B) and inserting the following:

''(B) SHARING OF MATERIALS WITH OTHER PROGRAMS.—

''(i) COMMODITY SUPPLEMENTAL FOOD PROGRAM.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program established under section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93–86) at no cost to that program.

''(ii) CHILD AND ADULT CARE FOOD PROGRAM.—A State agency may allow the local agencies or clinics under the State agency to share nutrition educational materials with institutions participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.''.

SEC. 352. WIC PROGRAM MANAGEMENT.

(a) WIC EVALUATION FUNDS.—Section 17(g)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(5)) is amended by striking ''$5,000,000'' and inserting ''$15,000,000''.

(b) WIC REBATE PAYMENTS.—Section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) is amended by adding at the end the following:

''(K) REPORTING.—Effective beginning October 1, 2011, each State agency shall report rebate payments received from manufacturers in the month in which the payments are received, rather than in the month in which the payments were earned.''.

(c) COST CONTAINMENT MEASURE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—

(1) in paragraph (8)(A)(iv)(III), by striking ''Any'' and inserting ''Except as provided in paragraph (9)(B)(i)(II), any''; and

(2) by striking paragraph (9) and inserting the following:

''(9) COST CONTAINMENT MEASURE.—

''(A) DEFINITION OF COST CONTAINMENT MEASURE.—In this subsection, the term 'cost

containment measure' means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in the approved State plan of operation and administration of the State agency.

''(B) SOLICITATION AND REBATE BILLING REQUIREMENTS.—Any State agency instituting a cost containment measure for any authorized food, including infant formula, shall—

''(i) in the bid solicitation—

''(I) identify the composition of State alliances for the purposes of a cost containment measure; and

''(II) verify that no additional States shall be added to the State alliance between the date of the bid solicitation and the end of the contract;

''(ii) have a system to ensure that rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section;

''(iii) open and read aloud all bids at a public proceeding on the day on which the bids are due; and

''(iv) unless otherwise exempted by the Secretary, provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due.

''(C) STATE ALLIANCES FOR AUTHORIZED FOODS OTHER THAN INFANT FORMULA.—Program requirements relating to the size of State alliances under paragraph (8)(A)(iv) shall apply to cost containment measures established for any authorized food under this section.''.

(d) ELECTRONIC BENEFIT TRANSFER.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (12) and inserting the following:

''(12) ELECTRONIC BENEFIT TRANSFER.—

''(A) DEFINITIONS.—In this paragraph:

''(i) ELECTRONIC BENEFIT TRANSFER.—The term 'electronic benefit transfer' means a food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits.

''(ii) PROGRAM.—The term 'program' means the special supplemental nutrition program established by this section.

''(B) REQUIREMENTS.—

''(i) IN GENERAL.—Not later than October 1, 2020, each State agency shall be required to implement electronic benefit transfer systems throughout the State, unless the Secretary grants an exemption under subparagraph (C) for a State agency that is facing unusual barriers to implement an electronic benefit transfer system.

''(ii) RESPONSIBILITY.—The State agency shall be responsible for the coordination and management of the electronic benefit transfer system of the agency.

''(C) EXEMPTIONS.—

''(i) IN GENERAL.—To be eligible for an exemption from the statewide implementation requirements of subparagraph (B)(i), a State agency shall demonstrate to the satisfaction of the Secretary 1 or more of the following:

''(I) There are unusual technological barriers to implementation.

''(II) Operational costs are not affordable within the nutrition services and administration grant of the State agency.

''(III) It is in the best interest of the program to grant the exemption.

''(ii) SPECIFIC DATE.—A State agency requesting an exemption under clause (i) shall specify a date by which the State agency anticipates statewide implementation described in subparagraph (B)(i).

''(D) REPORTING.—

''(i) IN GENERAL.—Each State agency shall submit to the Secretary electronic benefit transfer project status reports to demonstrate the progress of the State toward statewide implementation.

''(ii) CONSULTATION.—If a State agency plans to incorporate additional programs in the electronic benefit transfer system of the State, the State agency shall consult with the State agency officials responsible for administering the programs prior to submitting the planning documents to the Secretary for approval.

''(iii) REQUIREMENTS.—At a minimum, a status report submitted under clause (i) shall contain—

''(I) an annual outline of the electronic benefit transfer implementation goals and objectives of the State;

''(II) appropriate updates in accordance with approval requirements for active electronic benefit transfer State agencies; and

''(III) such other information as the Secretary may require.

''(E) IMPOSITION OF COSTS ON VENDORS.—

''(i) COST PROHIBITION.—Except as otherwise provided in this paragraph, the Secretary may not impose, or allow a State agency to impose, the costs of any equipment or system required for electronic benefit transfers on any authorized vendor in order to transact electronic benefit transfers if the vendor equipment or system is used solely to support the program.

''(ii) COST-SHARING.—The Secretary shall establish criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system that is not solely dedicated to transacting electronic benefit transfers for the program.

''(iii) FEES.—

''(I) IN GENERAL.—A vendor that elects to accept electronic benefit transfers using multifunction equipment shall pay commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the electronic benefit transfer system of the State.

''(II) INTERCHANGE FEES.—No interchange fees shall apply to electronic benefit transfer transactions under this paragraph.

''(iv) STATEWIDE OPERATIONS.—After completion of statewide expansion of a system for transaction of electronic benefit transfers—

''(I) a State agency may not be required to incur ongoing maintenance costs for vendors using multifunction systems and equipment to support electronic benefit transfers; and

''(II) any retail store in the State that applies for authorization to become a program vendor shall be required to demonstrate the capability to accept program benefits electronically prior to authorization, unless the State agency determines that the vendor is necessary for participant access.

''(F) MINIMUM LANE COVERAGE.—

''(i) IN GENERAL.—The Secretary shall establish minimum lane coverage guidelines for vendor equipment and systems used to support electronic benefit transfers.

''(ii) PROVISION OF EQUIPMENT.—If a vendor does not elect to accept electronic benefit transfers using its own multifunction equipment, the State agency shall provide such equipment as is necessary to solely support the program to meet the established minimum lane coverage guidelines.

''(G) TECHNICAL STANDARDS.—The Secretary shall—

''(i) establish technical standards and operating rules for electronic benefit transfer systems; and

''(ii) require each State agency, contractor, and authorized vendor participating in the program to demonstrate compliance with the technical standards and operating rules.''.

(e) UNIVERSAL PRODUCT CODES DATABASE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (13) and inserting the following:

''(13) UNIVERSAL PRODUCT CODES DATABASE.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall establish a national universal product code database to be used by all State agencies in carrying out the requirements of paragraph (12).

''(B) FUNDING.—

''(i) IN GENERAL.—On October 1, 2010, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this paragraph $1,000,000, to remain available until expended.

''(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

''(iii) USE OF FUNDS.—The Secretary shall use the funds provided under clause (i) for development, hosting, hardware and software configuration, and support of the database required under subparagraph (A).''.

(f) TEMPORARY SPENDING AUTHORITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended by adding at the end the following:

''(8) TEMPORARY SPENDING AUTHORITY.—During each of fiscal years 2012 and 2013, the Secretary may authorize a State agency to expend more than the amount otherwise authorized under paragraph (3)(C) for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that—

''(A) there has been a significant reduction in reported infant formula cost containment savings for the preceding fiscal year due to the implementation of subsection (h)(8)(K); and

''(B) the reduction would affect the ability of the State agency to serve all eligible participants.''.

Subtitle E—Miscellaneous

SEC. 361. FULL USE OF FEDERAL FUNDS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (b) and inserting the following:

''(b) AGREEMENTS.—

''(1) IN GENERAL.—The Secretary shall incorporate, in the agreement of the Secretary with the State agencies administering programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the express requirements with respect to the operation of the programs to the extent applicable and such other provisions as in the opinion of the Secretary are reasonably necessary or appropriate to effectuate the purposes of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(2) EXPECTATIONS FOR USE OF FUNDS.—Agreements described in paragraph (1) shall include a provision that—

''(A) supports full use of Federal funds provided to State agencies for the administration of programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

''(B) excludes the Federal funds from State budget restrictions or limitations including, at a minimum—

''(i) hiring freezes;

''(ii) work furloughs; and

''(iii) travel restrictions.''.

SEC. 362. DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 206) is amended by adding at the end the following:

''(r) DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.—Any school, institution,

service institution, facility, or individual that has been terminated from any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and is on a list of disqualified institutions and individuals under section 13 or section 17(d)(5)(E) of this Act may not be approved to participate in or administer any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).''.

TITLE IV—MISCELLANEOUS

Subtitle A—Reauthorization of Expiring Provisions

PART I—RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

SEC. 401. COMMODITY SUPPORT.

Section 6(e)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(e)(1)(B)) is amended by striking ''September 30, 2010'' and inserting ''September 30, 2020''.

SEC. 402. FOOD SAFETY AUDITS AND REPORTS BY STATES.

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) is amended—

(1) in paragraph (3), by striking ''2006 through 2010'' and inserting ''2011 through 2015''; and

(2) in paragraph (4), by striking ''2006 through 2010'' and inserting ''2011 through 2015''.

SEC. 403. PROCUREMENT TRAINING.

Section 12(m)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(m)(4)) is amended by striking ''2005 through 2009'' and inserting ''2010 through 2015''.

SEC. 404. AUTHORIZATION OF THE SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Subsection (r) of section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) (as redesignated by section 322(1)) is amended by striking ''September 30, 2009'' and inserting ''September 30, 2015''.

SEC. 405. YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.

Subsection (i)(5) of section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as redesignated by section 243(1)) is amended by striking ''2005 through 2010'' and inserting ''2011 through 2015''.

SEC. 406. TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.

Section 21(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(e)) is amended—

(1) by striking ''(e) AUTHORIZATION OF APPROPRIATIONS'' and all that follows through the end of paragraph (2)(A) and inserting the following:

''(e) FOOD SERVICE MANAGEMENT INSTITUTE.—

''(1) FUNDING.—

''(A) IN GENERAL.—In addition to any amounts otherwise made available for fiscal year 2011, on October 1, 2010, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subsection (a)(2) $5,000,000, to remain available until expended.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subsection (a)(2) the funds transferred under subparagraph (A), without further appropriation.'';

(2) by redesignating subparagraphs (B) and (C) as paragraphs (2) and (3), respectively, and indenting appropriately;

(3) in paragraph (2) (as so redesignated), by striking ''subparagraph (A)'' each place it appears and inserting ''paragraph (1)''; and

(4) in paragraph (3) (as so redesignated), by striking ''subparagraphs (A) and (B)'' and inserting ''paragraphs (1) and (2)''.

SEC. 407. FEDERAL ADMINISTRATIVE SUPPORT.

Section 21(g)(1)(A)) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b-1(g)(1)(A)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause(ii), by striking the period at the end and inserting ''; and''

(3) and by adding at the end the following:

''(iii) on October 1, 2010, and every October 1 thereafter, $4,000,000.''.

SEC. 408. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking ''$6,000,000 for each of fiscal years 2004 through 2009'' and inserting ''$10,000,000 for each of fiscal years 2011 through 2015''.

SEC. 409. INFORMATION CLEARINGHOUSE.

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence by striking ''2005 through 2010'' and inserting ''2010 through 2015''.

PART II—CHILD NUTRITION ACT OF 1966

SEC. 421. TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.

Section 7(i)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)(4)) is amended by striking ''2005 through 2009'' and inserting ''2010 through 2015''.

SEC. 422. STATE ADMINISTRATIVE EXPENSES.

Section 7(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(j)) is amended by striking ''October 1, 2009'' and inserting ''October 1, 2015''.

SEC. 423. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17(g)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)(A)) is amended by striking ''each of fiscal years 2004 through 2009'' and inserting ''each of fiscal years 2010 through 2015''.

SEC. 424. FARMERS MARKET NUTRITION PROGRAM.

Section 17(m)(9) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)) is amended by striking subparagraph (A) and inserting the following:

''(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2010 through 2015.''.

Subtitle B—Technical Amendments

SEC. 441. TECHNICAL AMENDMENTS.

(a) RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT.—

(1) NUTRITIONAL REQUIREMENTS.—Section 9(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)) is amended—

(A) by striking ''(f)'' and all that follows through the end of paragraph (1) and inserting the following:

''(f) NUTRITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Schools that are participating in the school lunch program or school breakfast program shall serve lunches and breakfasts that—

''(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

''(B) consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity.'';

(B) by striking paragraph (2); and

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(2) ROUNDING RULES FOR COMPUTATION OF ADJUSTMENT.—Section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) is amended by striking ''ROUNDING.—'' and all that follows through ''On July'' in subclause (II) and inserting ''ROUNDING.—On July''.

(3) INFORMATION AND ASSISTANCE CONCERNING REIMBURSEMENT OPTIONS.—Section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a) is amended by striking subsection (f).

(4) 1995 REGULATIONS TO IMPLEMENT DIETARY GUIDELINES.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (k).

(5) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—

(A) IN GENERAL.—Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761) is amended by striking the section heading and all that follows through the end of subsection (a)(1) and inserting the following:

''SEC. 13. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

''(a) IN GENERAL.—

''(1) DEFINITIONS.—In this section:

''(A) AREA IN WHICH POOR ECONOMIC CONDITIONS EXIST.—

''(i) IN GENERAL.—Subject to clause (ii), the term 'area in which poor economic conditions exist', as the term relates to an area in which a program food service site is located, means—

''(I) the attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(II) a geographic area, as defined by the Secretary based on the most recent census data available, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(III) an area—

''(aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and

''(bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

''(IV) a geographic area, as defined by the Secretary based on information provided from a department of welfare or zoning commission, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

''(V) an area for which the program food service site demonstrates through other means approved by the Secretary that at least 50 percent of the children enrolled at the program food service site are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(ii) DURATION OF DETERMINATION.—A determination that an area is an 'area in which poor economic conditions exist' under clause (i) shall be in effect for—

''(I) in the case of an area described in clause (i)(I), 5 years;

''(II) in the case of an area described in clause (i)(II), until more recent census data are available;

''(III) in the case of an area described in clause (i)(III), 1 year; and

''(IV) in the case of an area described in subclause (IV) or (V) of clause (i), a period of time to be determined by the Secretary, but not less than 1 year.

''(B) CHILDREN.—The term 'children' means—

''(i) individuals who are 18 years of age and under; and

''(ii) individuals who are older than 18 years of age who are—

''(I) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations promulgated by the Secretary, to have a disability, and

''(II) participating in a public or nonprofit private school program established for individuals who have a disability.

''(C) PROGRAM.—The term 'program' means the summer food service program for children authorized by this section.

''(D) SERVICE INSTITUTION.—The term 'service institution' means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp, that develops special summer or school vacation programs providing food service similar to food service made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(E) STATE.—The term 'State' means—

''(i) each of the several States of the United States;

''(ii) the District of Columbia;

''(iii) the Commonwealth of Puerto Rico;

''(iv) Guam;

''(v) American Samoa;

''(vi) the Commonwealth of the Northern Mariana Islands; and

''(vii) the United States Virgin Islands.''.

(B) CONFORMING AMENDMENTS.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended—

(i) in paragraph (2)—

(I) by striking ''(2) To the maximum extent feasible,'' and inserting the following:

''(2) PROGRAM AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary may carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit summer food service programs for children in service institutions.

''(B) PREPARATION OF FOOD.—

''(i) IN GENERAL.—To the maximum extent feasible,''; and

(II) by striking ''The Secretary shall'' and inserting the following:

''(ii) INFORMATION AND TECHNICAL ASSISTANCE.—The Secretary shall'';

(ii) in paragraph (3)—

(I) by striking ''(3) Eligible service institutions'' and inserting the following:

''(3) ELIGIBLE SERVICE INSTITUTIONS.—Eligible service institutions''; and

(II) by indenting subparagraphs (A) through (D) appropriately;

(iii) in paragraph (4)—

(I) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and indenting appropriately;

(II) by striking ''(4) The following'' and inserting the following:

''(4) PRIORITY.—

''(A) IN GENERAL.—The following''; and

(III) by striking ''The Secretary and the States'' and inserting the following:

''(B) RURAL AREAS.—The Secretary and the States'';

(iv) by striking ''(5) Camps'' and inserting the following:

''(5) CAMPS.—Camps''; and

(v) by striking ''(6) Service institutions'' and inserting the following:

''(6) GOVERNMENT INSTITUTIONS.—Service institutions''.

(6) REPORT ON IMPACT OF PROCEDURES TO SECURE STATE SCHOOL INPUT ON COMMODITY SELECTION.—Section 14(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(d)) is amended by striking the matter that follows paragraph (5).

(7) RURAL AREA DAY CARE HOME PILOT PROGRAM.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended by striking subsection (p).

(8) CHILD AND ADULT CARE FOOD PROGRAM TRAINING AND TECHNICAL ASSISTANCE.—Section 17(q) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(q)) is amended by striking paragraph (3).

(9) PILOT PROJECT FOR PRIVATE NONPROFIT STATE AGENCIES.—Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (a).

(10) MEAL COUNTING AND APPLICATION PILOT PROGRAMS.—Section 18(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(c)) is amended—

(A) by striking paragraphs (1) and (2);

(B) by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively; and

(C) in paragraph (1) (as so redesignated), by striking ''In addition to the pilot projects described in this subsection, the Secretary may conduct other'' and inserting ''The Secretary may conduct''.

(11) MILK FORTIFICATION PILOT.—Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (d).

(12) FREE BREAKFAST PILOT PROJECT.—Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (e).

(13) SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.—Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (f).

(14) ACCOMMODATION OF THE SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.—Section 27 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769h) is repealed.

(b) CHILD NUTRITION ACT OF 1966.—

(1) STATE ADMINISTRATIVE EXPENSES MINIMUM LEVELS FOR 2005 THROUGH 2007.—Section 7(a)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(1)) is amended—

(A) in subparagraph (A), by striking ''Except as provided in subparagraph (B), each fiscal year'' and inserting ''Each fiscal year'';

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B).

(2) FRUIT AND VEGETABLE GRANTS UNDER THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—Section 17(f)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)) is amended—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C).

SEC. 442. USE OF UNSPENT FUTURE FUNDS FROM THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

Section 101(a) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 120) is amended—

(1) in paragraph (1), by inserting before the period at the end '', if the value of the benefits and block grants would be greater under that calculation than in the absence of this subsection''; and

(2) by striking paragraph (2) and inserting the following:

''(2) TERMINATION.—The authority provided by this subsection shall terminate after October 31, 2013.''.

SEC. 443. EQUIPMENT ASSISTANCE TECHNICAL CORRECTION.

(a) IN GENERAL.—Notwithstanding any other provision of law, school food authorities that received a grant for equipment assistance under the grant program carried out under the heading ''FOOD AND NUTRITION SERVICE CHILD NUTRITION PROGRAMS'' in title I of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 119) shall be eligible to receive a grant under section 749(j) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111-80; 123 Stat. 2134).

(b) USE OF GRANT.—A school food authority receiving a grant for equipment assistance described in subsection (a) may use the grant only to make equipment available to schools that did not previously receive equipment from a grant under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 115).

SEC. 444. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SEC. 445. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act or any of the amendments made by this Act, this Act and the amendments made by this Act take effect on October 1, 2010.

SA 4590. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. (a) For the Department of Justice, $20,000,000 are made available for 150 additional investigators or the Law Enforcement Support Center (LESC), administered by U.S. Immigration and Customs Enforcement (ICE).

(b)(1) The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded on a pro rata basis so that the aggregate amount of such rescissions is equal to the net reduction in revenues to the Treasury resulting from amounts appropriated under this section.

(2) The Director of the Office of Management and Budget shall report to each congressional committee the amounts rescinded under paragraph (1) within the jurisdiction of such committee.

SA 4591. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes;

which was ordered to lie on the table; as follows:

On page 2, strike lines 5 through 17 and insert the following:

(a) For an additional amount for ''Salaries and Expenses'' for U.S. Customs and Border Protection, $356,900,000, to remain available until September 30, 2012, of which $78,000,000 shall be for costs to maintain U.S. Customs and Border Protection Officer staffing on the Southwest Border of the United States, of which $58,000,000 shall be for hiring additional U.S. Customs and Border Protection Officers for deployment at ports of entry on the Southwest Border of the United States.

(b)(1) The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded on a pro rata basis so that the aggregate amount of such rescissions is equal to the net reduction in revenues to the Treasury resulting from amounts appropriated under this section.

(2) The Director of the Office of Management and Budget shall report to each congressional committee the amounts rescinded under paragraph (1) within the jurisdiction of such committee.

SA 4592. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. (a) For an additional amount to fully implement a multi-agency law enforcement initiative to address illegal crossings of the Southwest border, including in the Tucson Sector, as authorized under title II of the Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83), $200,000,000, of which—

(1) $155,000,000 shall be available for—

(A) hiring additional Deputy United States Marshals;

(B) constructing additional permanent and temporary detention space; and

(C) related needs, as determined by the Secretary of Homeland Security and the Attorney General; and

(2) $45,000,000 shall be available for—

(A) courthouse renovation;

(B) administrative support, including hiring additional clerks for each District to process additional criminal cases; and

(C) hiring additional judges.

(b)(1) The unobligated balance of each amount appropriated or made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (other than under title X of division A of such Act) is rescinded on a pro rata basis so that the aggregate amount of such rescissions is equal to the net reduction in revenues to the Treasury resulting from amounts appropriated under this section.

(2) The Director of the Office of Management and Budget shall report to each congressional committee the amounts rescinded under paragraph (1) within the jurisdiction of such committee.

SA 4593. Mr. SCHUMER (for himself, Mr. REID, Mr. INOUYE, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. BINGAMAN, Mrs. MCCASKILL, Mr. CASEY, Mr. MERKLEY, Mr. UDALL of Colorado, Mr. BEGICH, Mr. BURRIS, Mrs. LINCOLN, Mr. UDALL of New Mexico, Mr. KYL, and Mr. MCCAIN) proposed an amendment to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $253,900,000, to remain available until September 30, 2011, of which $39,000,000 shall be for costs to maintain U.S. Customs and Border Protection Officer staffing on the Southwest Border of the United States, $29,000,000 shall be for hiring additional U.S. Customs and Border Protection Officers for deployment at ports of entry on the Southwest Border of the United States, $175,900,000 shall be for hiring additional Border Patrol agents for deployment to the Southwest Border of the United States, and $10,000,000 shall be to support integrity and background investigation programs.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For an additional amount for ''Border Security Fencing, Infrastructure, and Technology,'' $14,000,000, to remain available until September 30, 2011, for costs of designing, building, and deploying tactical communications for support of enforcement activities on the Southwest Border of the United States.

AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND PROCUREMENT

For an additional amount for ''Air and Marine Interdiction, Operations, Maintenance, and Procurement'', $32,000,000, to remain available until September 30, 2012, for costs of acquisition and deployment of unmanned aircraft systems.

CONSTRUCTION AND FACILITIES MANAGEMENT

For an additional amount for ''Construction and Facilities Management'', $6,000,000, to remain available until September 30, 2011, for costs to construct up to 2 forward operating bases for use by the Border Patrol to carry out enforcement activities on the Southwest Border of the United States.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $80,000,000 to remain available until September 30, 2011, of which $30,000,000 shall be for law enforcement activities targeted at reducing the threat of violence along the Southwest Border of the United States, and $50,000,000 shall be for hiring of additional agents, investigators, intelligence analysts, and support personnel.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $8,100,000, to remain available until September 30, 2011, for costs to provide basic training for new U.S. Customs and Border Protection Officers, Border Patrol agents, and U.S. Immigration and Customs Enforcement personnel.

GENERAL PROVISIONS

(RESCISSION)

SEC. 101. From unobligated balances made available to U.S. Customs and Border Protection ''Border Security Fencing, Infrastructure, and Technology'', $100,000,000 are rescinded: *Provided*, That section 401 shall not apply to the amount in this section.

TITLE II

DEPARTMENT OF JUSTICE

SEC. 201. For an additional amount for the Department of Justice for necessary expenses for increased law enforcement activities related to Southwest Border enforcement, $196,000,000, to remain available until September 30, 2011: *Provided*, That funds shall be distributed to the following accounts and in the following specified amounts:

(1) ''Administrative Review and Appeals'', $2,118,000.

(2) ''Detention Trustee'', $7,000,000.

(3) ''Legal Activities, Salaries and Expenses, General Legal Activities'', $3,862,000.

(4) ''Legal Activities, Salaries and Expenses, United States Attorneys'', $9,198,000.

(5) ''United States Marshals Service, Salaries and Expenses'', $29,651,000.

(6) ''United States Marshals Service, Construction'', $8,000,000.

(7) ''Interagency Law Enforcement, Interagency Crime and Drug Enforcement'', $21,000,000.

(8) ''Federal Bureau of Investigation, Salaries and Expenses'', $24,000,000.

(9) ''Drug Enforcement Administration, Salaries and Expenses'', $33,671,000.

(10) ''Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses'', $37,500,000.

(11) ''Federal Prison System, Salaries and Expenses'', $20,000,000.

TITLE III

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for ''Salaries and Expenses'', $10,000,000, to remain available until September 30, 2011: *Provided*, That notwithstanding section 302 of division C of Public Law 111–117, funding shall be available for transfer between Judiciary accounts to meet increased workload requirements resulting from immigration and other law enforcement initiatives.

TITLE IV

GENERAL PROVISIONS

SEC. 401. Each amount appropriated or otherwise made available under this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SEC. 402. (a) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) shall be increased by $2,250 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are nonimmigrants admitted pursuant to section 101(a)(15)(H)(i)(b) of such Act or section 101(a)(15)(L) of such Act.

(b) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the

enactment of this Act and ending on September 30, 2014, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) shall be increased by $2,000 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are such nonimmigrants or nonimmigrants described in section 101(a)(15)(L) of such Act.

(c) During the period beginning on the date of the enactment of this Act and ending on September 30, 2014, all amounts collected pursuant to the fee increases authorized under this section shall be deposited in the General Fund of the Treasury.

SA 4594. Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) proposed an amendment to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Jobs Act of 2010''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—SMALL BUSINESSES

Sec. 1001. Definitions.

Subtitle A—Small Business Access to Credit

Sec. 1101. Short title.

PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

Sec. 1111. Section 7(a) business loans.
Sec. 1112. Maximum loan amounts under 504 program.
Sec. 1113. Maximum loan limits under microloan program.
Sec. 1114. Loan guarantee enhancement extensions.
Sec. 1115. New Markets Venture Capital company investment limitations.
Sec. 1116. Alternative size standards.
Sec. 1117. Sale of 7(a) loans in secondary market.
Sec. 1118. Online lending platform.
Sec. 1119. SBA Secondary Market Guarantee Authority.

PART II—SMALL BUSINESS ACCESS TO CAPITAL

Sec. 1122. Low-interest refinancing under the local development business loan program.

PART III—OTHER MATTERS

Sec. 1131. Small business intermediary lending pilot program.
Sec. 1132. Public policy goals.
Sec. 1133. Floor plan pilot program extension.
Sec. 1134. Guarantees for bonds and notes issued for community or economic development purposes.
Sec. 1135. Temporary express loan enhancement.
Sec. 1136. Prohibition on using TARP funds or tax increases.

Subtitle B—Small Business Trade and Exporting

Sec. 1201. Short title.
Sec. 1202. Definitions.
Sec. 1203. Office of International Trade.
Sec. 1204. Duties of the Office of International Trade.
Sec. 1205. Export assistance centers.
Sec. 1206. International trade finance programs.
Sec. 1207. State Trade and Export Promotion Grant Program.
Sec. 1208. Rural export promotion.
Sec. 1209. International trade cooperation by small business development centers.

Subtitle C—Small Business Contracting

PART I—CONTRACT BUNDLING

Sec. 1311. Small Business Act.
Sec. 1312. Leadership and oversight.
Sec. 1313. Consolidation of contract requirements.
Sec. 1314. Small business teams pilot program.

PART II—SUBCONTRACTING INTEGRITY

Sec. 1321. Subcontracting misrepresentations.
Sec. 1322. Small business subcontracting improvements.

PART III—ACQUISITION PROCESS

Sec. 1331. Reservation of prime contract awards for small businesses.
Sec. 1332. Micro-purchase guidelines.
Sec. 1333. Agency accountability.
Sec. 1334. Payment of subcontractors.
Sec. 1335. Repeal of Small Business Competitiveness Demonstration Program.

PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

Sec. 1341. Policy and presumptions.
Sec. 1342. Annual certification.
Sec. 1343. Training for contracting and enforcement personnel.
Sec. 1344. Updated size standards.
Sec. 1345. Study and report on the mentor-protege program.
Sec. 1346. Contracting goals reports.
Sec. 1347. Small business contracting parity.

Subtitle D—Small Business Management and Counseling Assistance

Sec. 1401. Matching requirements under small business programs.
Sec. 1402. Grants for SBDCs.

Subtitle E—Disaster Loan Improvement

Sec. 1501. Aquaculture business disaster assistance.

Subtitle F—Small Business Regulatory Relief

Sec. 1601. Requirements providing for more detailed analyses.
Sec. 1602. Office of advocacy.

Subtitle G—Appropriations Provisions

Sec. 1701. Salaries and expenses.
Sec. 1702. Business loans program account.
Sec. 1703. Community Development Financial Institutions Fund program account.
Sec. 1704. Small business loan guarantee enhancement extensions.

TITLE II—TAX PROVISIONS

Sec. 2001. Short title.

Subtitle A—Small Business Relief

PART I—PROVIDING ACCESS TO CAPITAL

Sec. 2011. Temporary exclusion of 100 percent of gain on certain small business stock.
Sec. 2012. General business credits of eligible small businesses for 2010 carried back 5 years.
Sec. 2013. General business credits of eligible small businesses in 2010 not subject to alternative minimum tax.
Sec. 2014. Temporary reduction in recognition period for built-in gains tax.

PART II—ENCOURAGING INVESTMENT

Sec. 2021. Increased expensing limitations for 2010 and 2011; certain real property treated as section 179 property.
Sec. 2022. Additional first-year depreciation for 50 percent of the basis of certain qualified property.
Sec. 2023. Special rule for long-term contract accounting.

PART III—PROMOTING ENTREPRENEURSHIP

Sec. 2031. Increase in amount allowed as deduction for start-up expenditures in 2010.
Sec. 2032. Authorization of appropriations for the United States Trade Representative to develop market access opportunities for United States small- and medium-sized businesses and to enforce trade agreements.

PART IV—PROMOTING SMALL BUSINESS FAIRNESS

Sec. 2041. Limitation on penalty for failure to disclose reportable transactions based on resulting tax benefits.
Sec. 2042. Deduction for health insurance costs in computing self-employment taxes in 2010.
Sec. 2043. Removal of cellular telephones and similar telecommunications equipment from listed property.

Subtitle B—Revenue Provisions

PART I—REDUCING THE TAX GAP

Sec. 2101. Information reporting for rental property expense payments.
Sec. 2102. Increase in information return penalties.
Sec. 2103. Report on tax shelter penalties and certain other enforcement actions.
Sec. 2104. Application of continuous levy to tax liabilities of certain Federal contractors.

PART II—PROMOTING RETIREMENT PREPARATION

Sec. 2111. Participants in government section 457 plans allowed to treat elective deferrals as Roth contributions.
Sec. 2112. Rollovers from elective deferral plans to designated Roth accounts.
Sec. 2113. Special rules for annuities received from only a portion of a contract.

PART III—CLOSING UNINTENDED LOOPHOLES

Sec. 2121. Crude tall oil ineligible for cellulosic biofuel producer credit.
Sec. 2122. Source rules for income on guarantees.

PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

Sec. 2131. Time for payment of corporate estimated taxes.

TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

Sec. 3001. Short title.
Sec. 3002. Definitions.
Sec. 3003. Federal funds allocated to States.
Sec. 3004. Approving States for participation.
Sec. 3005. Approving State capital access programs.
Sec. 3006. Approving collateral support and other innovative credit access and guarantee initiatives for small businesses and manufacturers.

Sec. 3007. Reports.
Sec. 3008. Remedies for State program termination or failures.
Sec. 3009. Implementation and administration.
Sec. 3010. Regulations.
Sec. 3011. Oversight and audits.
TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS
Subtitle A—Small Business Lending Fund
Sec. 4101. Purpose.
Sec. 4102. Definitions.
Sec. 4103. Small business lending fund.
Sec. 4104. Additional authorities of the Secretary.
Sec. 4105. Considerations.
Sec. 4106. Reports.
Sec. 4107. Oversight and audits.
Sec. 4108. Credit reform; funding.
Sec. 4109. Termination and continuation of authorities.
Sec. 4110. Preservation of authority.
Sec. 4111. Assurances.
Sec. 4112. Study and report with respect to women-owned, veteran-owned, and minority-owned businesses.
Sec. 4113. Sense of congress.
Subtitle B—Other Provisions
PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES
Sec. 4221. Short title.
Sec. 4222. Global business development and promotion activities of the Department of Commerce.
Sec. 4223. Additional funding to improve access to global markets for rural businesses.
Sec. 4224. Additional funding for the ExporTech program.
Sec. 4225. Additional funding for the market development cooperator program of the department of commerce.
Sec. 4226. Hollings Manufacturing Partnership Program; Technology Innovation Program.
Sec. 4227. Sense of the Senate concerning Federal collaboration with States on export promotion issues.
Sec. 4228. Report on tariff and nontariff barriers.
PART II—MEDICARE FRAUD
Sec. 4241. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program.
TITLE V—BUDGETARY PROVISIONS
Sec. 5001. Determination of budgetary effects.

TITLE I—SMALL BUSINESSES

SEC. 1001. DEFINITIONS.

In this title—

(1) the terms ''Administration'' and ''Administrator'' mean the Small Business Administration and the Administrator thereof, respectively; and

(2) the term ''small business concern'' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

Subtitle A—Small Business Access to Credit

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the ''Small Business Job Creation and Access to Capital Act of 2010''.

PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

SEC. 1111. SECTION 7(a) BUSINESS LOANS.

(a) AMENDMENT.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking ''75 percent'' and inserting ''90 percent''; and

(B) in clause (ii), by striking ''85 percent'' and inserting ''90 percent''; and

(2) in paragraph (3)(A), by striking ''$1,500,000 (or if the gross loan amount would exceed $2,000,000'' and inserting ''$4,500,000 (or if the gross loan amount would exceed $5,000,000''.

(b) PROSPECTIVE REPEAL.—Effective January 1, 2011, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking ''90 percent'' and inserting ''75 percent''; and

(B) in clause (ii), by striking ''90 percent'' and inserting ''85 percent''; and

(2) in paragraph (3)(A), by striking ''$4,500,000'' and inserting ''$3,750,000''.

SEC. 1112. MAXIMUM LOAN AMOUNTS UNDER 504 PROGRAM.

Section 502(2)(A) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

(1) in clause (i), by striking ''$1,500,000'' and inserting ''$5,000,000'';

(2) in clause (ii), by striking ''$2,000,000'' and inserting ''$5,000,000'';

(3) in clause (iii), by striking ''$4,000,000'' and inserting ''$5,500,000'';

(4) in clause (iv), by striking ''$4,000,000'' and inserting ''$5,500,000''; and

(5) in clause (v), by striking ''$4,000,000'' and inserting ''$5,500,000''.

SEC. 1113. MAXIMUM LOAN LIMITS UNDER MICROLOAN PROGRAM.

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)(B)(iii), by striking ''$35,000'' and inserting ''$50,000'';

(2) in paragraph (3)—

(A) in subparagraph (C), by striking ''$3,500,000'' and inserting ''$5,000,000''; and

(B) in subparagraph (E), by striking ''$35,000'' each place that term appears and inserting ''$50,000''; and

(3) in paragraph (11)(B), by striking ''$35,000'' and inserting ''$50,000''.

SEC. 1114. LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) FEES.—Section 501 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151) is amended by striking ''September 30, 2010'' each place that term appears and inserting ''December 31, 2010''.

(b) LOAN GUARANTEES.—Section 502(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 153) is amended by striking ''May 31, 2010'' and inserting ''December 31, 2010''.

SEC. 1115. NEW MARKETS VENTURE CAPITAL COMPANY INVESTMENT LIMITATIONS.

Section 355 of the Small Business Investment Act of 1958 (15 U.S.C. 689d) is amended by adding at the end the following:

''(e) INVESTMENT LIMITATIONS.—

''(1) DEFINITION.—In this subsection, the term 'covered New Markets Venture Capital company' means a New Markets Venture Capital company—

''(A) granted final approval by the Administrator under section 354(e) on or after March 1, 2002; and

''(B) that has obtained a financing from the Administrator.

''(2) LIMITATION.—Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

''(A) the regulatory capital of the covered New Markets Venture Capital company; and

''(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.''.

SEC. 1116. ALTERNATIVE SIZE STANDARDS.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

''(5) ALTERNATIVE SIZE STANDARD.—

''(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

''(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

''(i) the maximum tangible net worth of the applicant is not more than $15,000,000; and

''(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than $5,000,000.''.

SEC. 1117. SALE OF 7(a) LOANS IN SECONDARY MARKET.

Section 5(g) of the Small Business Act (15 U.S.C. 634(g)) is amended by adding at the end the following:

''(6) If the amount of the guaranteed portion of any loan under section 7(a) is more than $500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of $500,000 and 1 increment of any remaining amount less than $500,000, in order to permit the maximum amount of any loan in a pool to be not more than $500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.''.

SEC. 1118. ONLINE LENDING PLATFORM.

It is the sense of Congress that the Administrator of the Small Business Administration should establish a website that—

(1) lists each lender that makes loans guaranteed by the Small Business Administration and provides information about the loan rates of each such lender; and

(2) allows prospective borrowers to compare rates on loans guaranteed by the Small Business Administration.

SEC. 1119. SBA SECONDARY MARKET GUARANTEE AUTHORITY.

Section 503(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 155) is amended by striking ''on the date 2 years after the date of enactment of this section'' and inserting ''2 years after the date of the first sale of a pool of first lien position 504 loans guaranteed under this section to a third-party investor''.

PART II—SMALL BUSINESS ACCESS TO CAPITAL

SEC. 1122. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.

(a) REFINANCING.—Section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by adding at the end the following:

''(C) REFINANCING NOT INVOLVING EXPANSIONS.—

''(i) DEFINITIONS.—In this subparagraph—

''(I) the term 'borrower' means a small business concern that submits an application to a development company for financing under this subparagraph;

''(II) the term 'eligible fixed asset' means tangible property relating to which the Administrator may provide financing under this section; and

''(III) the term 'qualified debt' means indebtedness—

''(aa) that—

''(AA) was incurred not less than 2 years before the date of the application for assistance under this subparagraph;

''(BB) is a commercial loan;

''(CC) is not subject to a guarantee by a Federal agency;

''(DD) the proceeds of which were used to acquire an eligible fixed asset;

''(EE) was incurred for the benefit of the small business concern; and

''(FF) is collateralized by eligible fixed assets; and

''(bb) for which the borrower has been current on all payments for not less than 1 year before the date of the application.

''(ii) AUTHORITY.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

''(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

''(II) the borrower has been in operation for all of the 2-year period ending on the date of the loan; and

''(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

''(iii) FINANCING FOR BUSINESS EXPENSES.—

''(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

''(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

''(aa) a specific description of the expenses for which the additional financing is requested; and

''(bb) an itemization of the amount of each expense.

''(III) CONDITION ON ADDITIONAL FINANCING.—A borrower may not use any part of the financing under this clause for non-business purposes.

''(iv) LOANS BASED ON JOBS.—

''(I) JOB CREATION AND RETENTION GOALS.—

''(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 501.

''(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by $65,000.

''(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

''(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

''(bb) the product obtained by multiplying—

''(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

''(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

''(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

''(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of $7,500,000,000 of financing under this subparagraph for each fiscal year.''.

(b) PROSPECTIVE REPEAL.—Effective 2 years after the date of enactment of this Act, section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by striking subparagraph (C).

(c) TECHNICAL CORRECTION.—Section 502(2)(A)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)(i)) is amended by striking ''subparagraph (B) or (C)'' and inserting ''clause (ii), (iii), (iv), or (v)''.

PART III—OTHER MATTERS

SEC. 1131. SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.

(a) IN GENERAL.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by striking subsection (l) and inserting the following:

''(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'eligible intermediary'—

''(i) means a private, nonprofit entity that—

''(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

''(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

''(ii) includes—

''(I) a private, nonprofit community development corporation;

''(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

''(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

''(B) the term 'Program' means the small business intermediary lending pilot program established under paragraph (2).

''(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

''(3) PURPOSES.—The purposes of the Program are—

''(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

''(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

''(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

''(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

''(i) the type of small business concerns to be assisted;

''(ii) the size and range of loans to be made;

''(iii) the interest rate and terms of loans to be made;

''(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

''(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

''(vi) the qualifications of the applicant to carry out this subsection.

''(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed $1,000,000 during the participation of the eligible intermediary in the Program.

''(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

''(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

''(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

''(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

''(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

''(i) to not more than 20 eligible intermediaries; and

''(ii) in a total amount of not more than $20,000,000.

''(5) LOANS TO SMALL BUSINESS CONCERNS.—

''(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

''(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than $200,000 to any 1 small business concern.

''(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

''(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

''(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.''.

(b) RULEMAKING AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out section 7(l) of the Small Business Act, as amended by subsection (a).

(c) AVAILABILITY OF FUNDS.—Any amounts provided to the Administrator for the purposes of carrying out section 7(l) of the Small Business Act, as amended by subsection (a), shall remain available until expended.

SEC. 1132. PUBLIC POLICY GOALS.

Section 501(d)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

(1) in subparagraph (J), by striking ''or'' at the end;

(2) in subparagraph (K), by striking the period at the end and inserting '', or''; and

(3) by adding at the end the following:

''(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.''.

SEC. 1133. FLOOR PLAN PILOT PROGRAM EXTENSION.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by redesignating paragraph (32), relating to increased veteran participation, as added by section 208 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186; 122 Stat. 631), as paragraph (33); and

(2) by adding at the end the following:

''(34) FLOOR PLAN FINANCING PROGRAM.—

''(A) DEFINITION.—In this paragraph, the term 'eligible retail good'—

''(i) means a good for which a title may be obtained under State law; and

''(ii) includes an automobile, recreational vehicle, boat, and manufactured home.

''(B) PROGRAM.—The Administrator may guarantee the timely payment of an open-end extension of credit to a small business concern, the proceeds of which may be used for the purchase of eligible retail goods for resale.

''(C) AMOUNT.—An open-end extension of credit guaranteed under this paragraph shall be in an amount not less than $500,000 and not more than $5,000,000.

''(D) TERM.—An open-end extension of credit guaranteed under this paragraph shall have a term of not more than 5 years.

''(E) GUARANTEE PERCENTAGE.—The Administrator may guarantee—

''(i) not less than 60 percent of an open-end extension of credit under this paragraph; and

''(ii) not more than 75 percent of an open-end extension of credit under this paragraph.

''(F) ADVANCE RATE.—The lender for an open-end extension of credit guaranteed under this paragraph may allow the borrower to draw funds on the line of credit in an amount equal to not more than 100 percent of the value of the eligible retail goods to be purchased.''.

(b) SUNSET.—Effective September 30, 2013, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) by striking paragraph (34); and

(2) by redesignating paragraph (35), as added by section 1206 of this Act, as paragraph (34).

SEC. 1134. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

''SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'eligible community development financial institution' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

''(2) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term 'eligible community or economic development purpose'—

''(A) means any purpose described in section 108(b); and

''(B) includes the provision of community or economic development in low-income or underserved rural areas.

''(3) GUARANTEE.—The term 'guarantee' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

''(4) LOAN.—The term 'loan' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

''(5) MASTER SERVICER.—

''(A) IN GENERAL.—The term 'master servicer' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

''(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

''(i) loan administration, servicing, and loan monitoring;

''(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

''(iii) managing regional or national originator communication systems and infrastructure;

''(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

''(v) compliance monitoring, investor relations, and reporting.

''(6) PROGRAM.—The term 'Program' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

''(7) PROGRAM ADMINISTRATOR.—The term 'Program administrator' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

''(8) QUALIFIED ISSUER.—

''(A) IN GENERAL.—The term 'qualified issuer' means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

''(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—

''(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

''(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—

''(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

''(II) provide to the Secretary—

''(aa) an acceptable statement of the proposed sources and uses of the funds; and

''(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

''(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

''(C) DEPARTMENT OPINION; TIMING.—

''(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

''(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(10) SERVICER.—The term 'servicer' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

''(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

''(1) for eligible community or economic development purposes; or

''(2) to refinance loans or notes issued for such purposes.

''(c) GENERAL PROGRAM REQUIREMENTS.—

''(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

''(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

''(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

''(A) community or economic development loans;

''(B) a relending account, to the extent authorized under paragraph (2); or

''(C) a risk-share pool established under subsection (d).

''(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

''(5) PROHIBITED USES.—The Secretary shall, by regulation—

''(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

''(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

''(i) the qualified issuer; or

''(ii) any recipient of amounts from the guarantee of a bond or note.

''(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

''(e) GUARANTEES.—

''(1) IN GENERAL.—A guarantee issued under the Program shall—

''(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

''(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

''(C) represent the full faith and credit of the United States; and

''(D) not exceed 30 years.

''(2) LIMITATIONS.—

''(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

''(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

''(f) SERVICING OF TRANSACTIONS.—

''(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

''(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

''(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

''(B) compliance monitoring;

''(C) bond packaging in connection with the Program; and

''(D) all other duties and related services that are customarily expected of a Program administrator.

''(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

''(A) billing and collecting loan payments;

''(B) initiating collection activities on past-due loans;

''(C) transferring loan payments to the master servicing accounts;

''(D) loan administration and servicing;

''(E) systematic and timely reporting of loan performance through remittance and servicing reports;

''(F) proper measurement of annual outstanding loan requirements; and

''(G) all other duties and related services that are customarily expected of servicers.

''(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

''(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

''(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

''(C) monitoring the collection comments and foreclosure actions;

''(D) aggregating the reporting and distribution of funds to trustees and investors;

''(E) removing and replacing a servicer, as necessary;

''(F) loan administration and servicing;

''(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

''(H) proper distribution of funds to investors; and

''(I) all other duties and related services that are customarily expected of a master servicer.

''(g) FEES.—

''(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

''(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

''(3) USE OF FEES.—Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

''(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

''(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

''(j) ADMINISTRATION.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

''(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall implement this section.

''(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.''.

SEC. 1135. TEMPORARY EXPRESS LOAN ENHANCEMENT.

(a) IN GENERAL.—Section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking ''$350,000'' and inserting ''$1,000,000''.

(b) PROSPECTIVE REPEAL.—Effective 1 year after the date of enactment of this Act, section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking ''$1,000,000'' and inserting ''$350,000''.

SEC. 1136. PROHIBITION ON USING TARP FUNDS OR TAX INCREASES.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections, shall be construed to limit the ability of Congress to appropriate funds.

(b) TARP FUNDS AND TAX INCREASES.—

(1) IN GENERAL.—Any covered amounts may not be used to carry out section 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1122, or 1131, or an amendment made by such sections.

(2) DEFINITION.—In this subsection, the term ''covered amounts'' means—

(A) the amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 S.C. 5201 et seq.) to purchase (under section 101) or guarantee (under section 102) assets under that Act; and

(B) any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 made during the period beginning on the date of enactment of this Act and ending on December 31, 2010.

Subtitle B—Small Business Trade and Exporting

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the ''Small Business Export Enhancement and International Trade Act of 2010''.

SEC. 1202. DEFINITIONS.

(a) DEFINITIONS.—In this subtitle—

(1) the term ''Associate Administrator'' means the Associate Administrator for International Trade appointed under section 22(a)(2) of the Small Business Act, as amended by this subtitle;

(2) the term ''Export Assistance Center'' means a one-stop shop referred to in section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)); and

(3) the term ''rural small business concern'' means a small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

''(t) SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term 'small business development center' means a small business development center described in section 21.

''(u) REGION OF THE ADMINISTRATION.—In this Act, the term 'region of the Administration' means the geographic area served by a regional office of the Administration established under section 4(a).''.

(2) CONFORMING AMENDMENT.—Section 4(b)(3)(B)(x) of the Small Business Act (15 U.S.C. 633(b)(3)(B)(x)) is amended by striking ''Administration district and region'' and inserting ''district and region of the Administration''.

SEC. 1203. OFFICE OF INTERNATIONAL TRADE.

(a) ESTABLISHMENT.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking ''SEC. 22. (a) There'' and inserting the following:

''SEC. 22. OFFICE OF INTERNATIONAL TRADE.

''(a) ESTABLISHMENT.—

''(1) OFFICE.—There''; and

(2) in subsection (a)—

(A) in paragraph (1), as so designated, by striking the period and inserting ''for the primary purposes of increasing—

''(A) the number of small business concerns that export; and

''(B) the volume of exports by small business concerns.''; and

(B) by adding at the end the following:

''(2) ASSOCIATE ADMINISTRATOR.—The head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.''.

(b) AUTHORITY FOR ADDITIONAL ASSOCIATE ADMINISTRATOR.—Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended—

(1) in the fifth sentence, by striking ''five Associate Administrators'' and inserting ''Associate Administrators''; and

(2) by adding at the end the following: ''One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 22.''.

(c) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended by adding at the end the following:

''(h) DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—The Administrator shall ensure that—

''(1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator;

''(2) the Associate Administrator has sufficient resources to carry out such responsibilities; and

''(3) the Associate Administrator has direct supervision and control over—

''(A) the staff of the Office; and

''(B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity.''.

(d) ROLE OF ASSOCIATE ADMINISTRATOR IN CARRYING OUT INTERNATIONAL TRADE POLICY.—Section 2(b)(1) of the Small Business Act (15 U.S.C. 631(b)(1)) is amended in the matter preceding subparagraph (A)—

(1) by inserting ''the Administrator of'' before ''the Small Business Administration''; and

(2) by inserting ''through the Associate Administrator for International Trade, and'' before ''in cooperation with''.

(e) IMPLEMENTATION DATE.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section.

SEC. 1204. DUTIES OF THE OFFICE OF INTERNATIONAL TRADE.

(a) AMENDMENTS TO SECTION 22.—Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) TRADE DISTRIBUTION NETWORK.—The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Secretary of Agriculture, the Secretary of State, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, Director of the United States Trade and Development Agency, and other relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance Centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

''(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women's business centers, the Service Corps of Retired Executives authorized by section 8(b)(1), and Export Assistance Centers, for programs relating to—

''(A) trade promotion;

''(B) trade finance;

''(C) trade adjustment assistance;

''(D) trade remedy assistance; and

''(E) trade data collection;

''(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

''(3) promote export assistance programs through the district and regional offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

''(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

''(A) accompany small business concerns on foreign trade missions; and

''(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.'';

(2) in subsection (c)—

(A) by striking ''(c) The Office'' and inserting the following:

''(c) PROMOTION OF SALES OPPORTUNITIES.—The Associate Administrator'';

(B) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(C) by inserting before paragraph (2), as so redesignated, the following:

''(1) establish annual goals for the Office relating to—

''(A) enhancing the exporting capability of small business concerns and small manufacturers;

''(B) facilitating technology transfers;

''(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently in foreign markets;

''(D) increasing the ability of small business concerns to access capital; and

''(E) disseminating information concerning Federal, State, and private programs and initiatives;'';

(D) in paragraph (2), as so redesignated, by striking ''mechanism for'' and all that follows through ''(D) assisting'' and inserting the following: ''mechanism for—

''(A) identifying subsectors of the small business community with strong export potential;

''(B) identifying areas of demand in foreign markets;

''(C) prescreening foreign buyers for commercial and credit purposes; and

''(D) assisting'';

(E) in paragraph (3), as so redesignated, by striking ''assist small businesses in the formation and utilization of'' and inserting ''assist small business concerns in forming and using'';

(F) in paragraph (4), as so redesignated—

(i) by striking ''local'' and inserting ''district'';

(ii) by striking ''existing'';

(iii) by striking ''Small Business Development Center network'' and inserting ''small business development center network''; and

(iv) by striking ''Small Business Development Center Program'' and inserting ''small business development center program'';

(G) in paragraph (5), as so redesignated—

(i) in subparagraph (A), by striking ''Gross State Produce'' and inserting ''Gross State Product'';

(ii) in subparagraph (B), by striking ''SIC'' each place it appears and inserting ''North American Industry Classification System''; and

(iii) in subparagraph (C), by striking ''small businesses'' and inserting ''small business concerns'';

(H) in paragraph (6), as so redesignated, by striking the period at the end and inserting a semicolon;

(I) in paragraph (7), as so redesignated—

(i) in the matter preceding subparagraph (A)—

(I) by inserting ''concerns'' after ''small business''; and

(II) by striking ''current'' and inserting ''up to date'';

(ii) in subparagraph (A), by striking ''Administration's regional offices'' and inserting ''regional and district offices of the Administration'';

(iii) in subparagraph (B) by striking ''current'';

(iv) in subparagraph (C), by striking ''current''; and

(v) by striking ''small businesses'' each place that term appears and inserting ''small business concerns'';

(J) in paragraph (8), as so redesignated, by striking and at the end;

(K) in paragraph (9), as so redesignated—

(i) in the matter preceding subparagraph (A)—

(I) by striking ''full-time export development specialists to each Administration regional office and assigning''; and

(II) by striking ''person in each district office. Such specialists'' and inserting ''individual in each district office and providing each Administration regional office with a full-time export development specialist, who'';

(ii) in subparagraph (B)—

(I) by striking ''current''; and

(II) by striking ''with'' and inserting ''in'';

(iii) in subparagraph (D)—

(I) by striking ''Administration personnel involved in granting'' and inserting ''personnel of the Administration involved in making''; and

(II) by striking ''and'' at the end;

(iv) in subparagraph (E)—

(I) by striking ''small businesses' needs'' and inserting ''the needs of small business concerns''; and

(II) by striking the period at the end and inserting a semicolon;

(v) by adding at the end the following:

''(F) participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and

''(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, the Department of Agriculture, small business development centers, women's business centers, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and other relevant Federal agencies;''; and

(vi) by striking ''small businesses'' each place that term appears and inserting ''small business concerns''; and

(L) by adding at the end the following:

''(10) make available on the website of the Administration the name and contact information of each individual described in paragraph (9);

''(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

''(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives authorized by section 8(b)(1), State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

''(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the Administration on export promotion and providing assistance relating to exports.'';

(3) in subsection (d)—

(A) by redesignating paragraphs (1) through (5) as clauses (i) through (v), respectively, and adjusting the margins accordingly;

(B) by striking ''(d) The Office'' and inserting the following:

''(d) EXPORT FINANCING PROGRAMS.—

''(1) IN GENERAL.—The Associate Administrator''; and

(C) by striking ''To accomplish this goal, the Office shall work'' and inserting the following:

''(2) TRADE FINANCE SPECIALIST.—To accomplish the goal established under paragraph (1), the Associate Administrator shall—

''(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

''(B) work'';

(4) in subsection (e), by striking ''(e) The Office'' and inserting the following:

''(e) TRADE REMEDIES.—The Associate Administrator'';

(5) by amending subsection (f) to read as follows:

''(f) REPORTING REQUIREMENT.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

''(1) a description of the progress of the Office in implementing the requirements of this section;

''(2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i);

''(3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;

''(4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and

''(5) a description of the participation by the Office in trade negotiations.'';

(6) in subsection (g), by striking ''(g) The Office'' and inserting the following:

''(g) STUDIES.—The Associate Administrator''; and

(7) by adding after subsection (h), as added by section 1203 of this subtitle, the following:

''(i) EXPORT AND TRADE COUNSELING.—

''(1) DEFINITION.—In this subsection—

''(A) the term 'lead small business development center' means a small business development center that has received a grant from the Administration; and

''(B) the term 'lead women's business center' means a women's business center that has received a grant from the Administration.

''(2) CERTIFICATION PROGRAM.—The Administrator shall establish an export and trade counseling certification program to certify employees of lead small business development centers and lead women's business centers in providing export assistance to small business concerns.

''(3) NUMBER OF CERTIFIED EMPLOYEES.—The Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

''(A) 5; or

''(B) 10 percent of the total number of employees of the lead small business development center.

''(4) REIMBURSEMENT FOR CERTIFICATION.—

''(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women's business center for costs relating to the certification of an employee of the lead small business center or lead women's business center in providing export assistance under the program established under paragraph (2).

''(B) LIMITATION.—The total amount reimbursed by the Administrator under subparagraph (A) may not exceed $350,000 in any fiscal year.

''(j) PERFORMANCE MEASURES.—

''(1) IN GENERAL.—The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

''(A) the number of small business concerns that—

''(i) receive assistance from the Administration;

''(ii) had not exported goods or services before receiving the assistance described in clause (i); and

''(iii) export goods or services;

''(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which the small business concern did not export before receiving the assistance;

''(C) export revenues by small business concerns assisted by programs of the Administration;

''(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

''(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

''(F) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the United States Trade and Development Agency by the staff of the Office, an Export Assistance Center, or a small business development center.

''(2) JOINT PERFORMANCE MEASURES.—The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance Centers that include the number of export loans made under—

''(A) section 7(a)(16);

''(B) the Export Working Capital Program established under section 7(a)(14);

''(C) the Preferred Lenders Program, as defined in section 7(a)(2)(C)(ii); and

''(D) the export express program established under section 7(a)(34).

''(3) CONSISTENCY OF TRACKING.—The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727) and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.''.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on any travel by the staff of the Office of International Trade of the Administration, during the period beginning on October 1, 2004, and ending on the date of enactment of the Act, including the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel.

SEC. 1205. EXPORT ASSISTANCE CENTERS.

(a) EXPORT ASSISTANCE CENTERS.—Section 22 of the Small Business Act (15 U.S.C. 649), as amended by this subtitle, is amended by adding at the end the following:

''(k) EXPORT ASSISTANCE CENTERS.—

''(1) EXPORT FINANCE SPECIALISTS.—

''(A) MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.—On and after the date that is 90 days after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

''(B) EXPORT FINANCE SPECIALISTS ASSIGNED TO EACH REGION OF THE ADMINISTRATION.—On and after the date that is 2 years after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

''(2) PLACEMENT OF EXPORT FINANCE SPECIALISTS.—

''(A) PRIORITY.—The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

''(i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

''(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on the date of enactment of this subsection, either through retirement or reassignment.

''(B) NEEDS OF EXPORTERS.—The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

''(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on the date of enactment of this subsection.

''(3) GOALS.—The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation to establish shared annual goals for the Export Assistance Centers.

''(4) OVERSIGHT.—The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

''(l) DEFINITIONS.—In this section—

''(1) the term 'Associate Administrator' means the Associate Administrator for International Trade described in subsection (a)(2);

''(2) the term 'Export Assistance Center' means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8));

''(3) the term 'export finance specialist' means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and

''(4) the term 'Office' means the Office of International Trade established under subsection (a)(1).''.

(b) STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS.—

(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act, and every 2 years thereafter, the Administrator shall—

(A) conduct a study of—

(i) the volume of exports for each State;

(ii) the availability of export finance specialists in each State;

(iii) the number of exporters in each State that are small business concerns;

(iv) the percentage of exporters in each State that are small business concerns;

(v) the change, if any, in the number of exporters that are small business concerns in each State—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced;

(vi) the total value of the exports in each State by small business concerns;

(vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and

(viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

(B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

(i) the results of the study under subparagraph (A);

(ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;

(iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and

(iv) such additional information as the Administrator determines is appropriate.

(2) DEFINITION.—In this subsection, the term ''export finance specialist'' has the meaning given that term in section 22(l) of the Small Business Act, as added by this title.

SEC. 1206. INTERNATIONAL TRADE FINANCE PROGRAMS.

(a) LOAN LIMITS.—

(1) TOTAL AMOUNT OUTSTANDING.—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended by striking ''$1,750,000, of which not more than $1,250,000'' and inserting ''$4,500,000 (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000''.

(2) PARTICIPATION.—Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended—

(A) in subparagraph (A), in the matter preceding clause (i), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B), (D), and (E)'';

(B) in subparagraph (D), by striking ''Notwithstanding subparagraph (A), in'' and inserting ''In''; and

(C) by adding at the end the following:

''(E) PARTICIPATION IN INTERNATIONAL TRADE LOAN.—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.''.

(b) WORKING CAPITAL.—Section 7(a)(16)(A) of the Small Business Act (15 U.S.C. 636(a)(16)(A)) is amended—

(1) in the matter preceding clause (i), by striking ''in—'' and inserting ''—'';

(2) in clause (i)—

(A) by inserting ''in'' after ''(i)''; and

(B) by striking ''or'' at the end;

(3) in clause (ii)—

(A) by inserting ''in'' after ''(ii)''; and

(B) by striking the period at the end and inserting '', including any debt that qualifies for refinancing under any other provision of this subsection; or''; and

(4) by adding at the end the following:

''(iii) by providing working capital.''.

(c) COLLATERAL.—Section 7(a)(16)(B) of the Small Business Act (15 U.S.C. 636(a)(16)(B)) is amended—

(1) by striking ''Each loan'' and inserting the following:

''(i) IN GENERAL.—Except as provided in clause (ii), each loan''; and

(2) by adding at the end the following:

''(ii) EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.''.

(d) EXPORT WORKING CAPITAL PROGRAM.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (2)(D), by striking ''not exceed'' and inserting ''be''; and

(2) in paragraph (14)—

(A) by striking ''(A) The Administration'' and inserting the following: ''EXPORT WORKING CAPITAL PROGRAM.—

''(A) IN GENERAL.—The Administrator'';

(B) by striking ''(B) When considering'' and inserting the following:

''(C) CONSIDERATIONS.—When considering'';

(C) by striking ''(C) The Administration'' and inserting the following:

''(D) MARKETING.—The Administrator''; and

(D) by inserting after subparagraph (A) the following:

''(B) TERMS.—

''(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than $5,000,000.

''(ii) FEES.—

''(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

''(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.''.

(e) PARTICIPATION IN PREFERRED LENDERS PROGRAM.—Section 7(a)(2)(C) of the Small Business Act (15 U.S.C. 636(a)(2)(C)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following:

''(ii) EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.''.

(f) EXPORT EXPRESS PROGRAM.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

''(35) EXPORT EXPRESS PROGRAM.—

''(A) DEFINITIONS.—In this paragraph—

''(i) the term 'export development activity' includes—

''(I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

''(II) participation in a trade show that takes place outside the United States;

''(III) translation of product brochures or catalogues for use in markets outside the United States;

''(IV) obtaining a general line of credit for export purposes;

''(V) performing a service contract from buyers located outside the United States;

''(VI) obtaining transaction-specific financing associated with completing export orders;

''(VII) purchasing real estate or equipment to be used in the production of goods or services for export;

''(VIII) providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

''(IX) acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

''(ii) the term 'express loan' means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

''(B) AUTHORITY.—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

''(C) LEVEL OF PARTICIPATION.—

''(i) MAXIMUM AMOUNT.—The maximum amount of an express loan guaranteed under this paragraph shall be $500,000.

''(ii) PERCENTAGE.—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

''(I) 90 percent of a loan that is not more than $350,000; and

''(II) 75 percent of a loan that is more than $350,000 and not more than $500,000.''.

(g) ANNUAL LISTING OF EXPORT FINANCE LENDERS.—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended by adding at the end the following:

''(F) LIST OF EXPORT FINANCE LENDERS.—

''(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

''(I) this paragraph;

''(II) paragraph (14); or

''(III) paragraph (34).

''(ii) AVAILABILITY OF LIST.—The Administrator shall—

''(I) post the list published under clause (i) on the website of the Administration; and

''(II) make the list published under clause (i) available, upon request, at each district office of the Administration.''.

(h) APPLICABILITY.—The amendments made by subsections (a) through (f) shall apply with respect to any loan made after the date of enactment of this Act.

SEC. 1207. STATE TRADE AND EXPORT PROMOTION GRANT PROGRAM.

(a) DEFINITIONS.—In this section—

(1) the term ''eligible small business concern'' means a small business concern that—

(A) has been in business for not less than the 1-year period ending on the date on which assistance is provided using a grant under this section;

(B) is operating profitably, based on operations in the United States;

(C) has demonstrated understanding of the costs associated with exporting and doing business with foreign purchasers, including the costs of freight forwarding, customs brokers, packing and shipping, as determined by the Associate Administrator; and

(D) has in effect a strategic plan for exporting;

(2) the term ''program'' means the State Trade and Export Promotion Grant Program established under subsection (b);

(3) the term ''small business concern owned and controlled by women'' has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632);

(4) the term ''socially and economically disadvantaged small business concern'' has the meaning given that term in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 6537(a)(4)(A)); and

(5) the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(b) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall establish a 3-year trade and export promotion pilot program to be known as the State Trade and Export Promotion Grant Program, to make grants to States to carry out export programs that assist eligible small business concerns in—

(1) participation in a foreign trade mission;

(2) a foreign market sales trip;

(3) a subscription to services provided by the Department of Commerce;

(4) the payment of website translation fees;

(5) the design of international marketing media;

(6) a trade show exhibition;

(7) participation in training workshops; or

(8) any other export initiative determined appropriate by the Associate Administrator.

(c) GRANTS.—

(1) JOINT REVIEW.—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State that export or to increase the value of the exports by eligible small business concerns in the State.

(2) CONSIDERATIONS.—In making grants under this section, the Associate Administrator may give priority to an application by a State that proposes a program that—

(A) focuses on eligible small business concerns as part of an export promotion program;

(B) demonstrates success in promoting exports by—

(i) socially and economically disadvantaged small business concerns;

(ii) small business concerns owned or controlled by women; and

(iii) rural small business concerns;

(C) promotes exports from a State that is not 1 of the 10 States with the highest percentage of exporters that are small business concerns, based upon the latest data available from the Department of Commerce; and

(D) promotes new-to-market export opportunities to the People's Republic of China for eligible small business concerns in the United States.

(3) LIMITATIONS.—

(A) SINGLE APPLICATION.—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

(B) PROPORTION OF AMOUNTS.—The total value of grants under the program made during a fiscal year to the 10 States with the highest number of exporters that are small business concerns, based upon the latest data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

(4) APPLICATION.—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

(d) COMPETITIVE BASIS.—The Associate Administrator shall award grants under the program on a competitive basis.

(e) FEDERAL SHARE.—The Federal share of the cost of an export program carried out using a grant under the program shall be—

(1) for a State that has a high export volume, as determined by the Associate Administrator, not more than 65 percent; and

(2) for a State that does not have a high export volume, as determined by the Associate Administrator, not more than 75 percent.

(f) NON-FEDERAL SHARE.—The non-Federal share of the cost of an export program carried using a grant under the program shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(g) REPORTS.—

(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of this Act, the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

(A) a description of the structure of and procedures for the program;

(B) a management plan for the program; and

(C) a description of the merit-based review process to be used in the program.

(2) ANNUAL REPORTS.—The Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the program, which shall include—

(A) the number and amount of grants made under the program during the preceding year;

(B) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with grant; and

(C) the effect of each grant on exports by eligible small business concerns in the State receiving the grant.

(h) REVIEWS BY INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

(B) the overall management and effectiveness of the program.

(2) REPORT.—Not later than September 30, 2012, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under paragraph (1).

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program $30,000,000 for each of fiscal years 2011, 2012, and 2013.

(j) TERMINATION.—The authority to carry out the program shall terminate 3 years after the date on which the Associate Administrator establishes the program.

SEC. 1208. RURAL EXPORT PROMOTION.

Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that contains—

(1) a description of each program of the Administration that promotes exports by rural small business concerns, including—

(A) the number of rural small business concerns served by the program;

(B) the change, if any, in the number of rural small business concerns as a result of participation in the program during the 10-year period ending on the date of enactment of this Act;

(C) the volume of exports by rural small business concerns that participate in the program; and

(D) the change, if any, in the volume of exports by rural small businesses that participate in the program during the 10-year period ending on the date of enactment of this Act;

(2) a description of the coordination between programs of the Administration and other Federal programs that promote exports by rural small business concerns;

(3) recommendations, if any, for improving the coordination described in paragraph (2);

(4) a description of any plan by the Administration to market the international trade financing programs of the Administration through lenders that—

(A) serve rural small business concerns; and

(B) are associated with financing programs of the Department of Agriculture;

(5) recommendations, if any, for improving coordination between the counseling programs and export financing programs of the Administration, in order to increase the volume of exports by rural small business concerns; and

(6) any additional information the Administrator determines is necessary.

SEC. 1209. INTERNATIONAL TRADE COOPERATION BY SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended—

(1) by striking ''(2) The Small Business Development Centers'' and inserting the following:

''(2) COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

''(A) INFORMATION AND SERVICES.—The small business development centers''; and

(2) in paragraph (2)—

(A) in subparagraph (A), as so designated, by inserting ''(including State trade agencies),'' after ''local agencies''; and

(B) by adding at the end the following:

''(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

''(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

''(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

''(C) DEFINITION.—In this paragraph, the term 'Export Assistance Center' has the same meaning as in section 22.''.

Subtitle C—Small Business Contracting

PART I—CONTRACT BUNDLING

SEC. 1311. SMALL BUSINESS ACT.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1202, is amended by adding at the end the following:

''(v) MULTIPLE AWARD CONTRACT.—In this Act, the term 'multiple award contract' means—

''(1) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

''(2) any other indefinite delivery, indefinite quantity contract that is entered into

by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.''.

SEC. 1312. LEADERSHIP AND OVERSIGHT.

(a) IN GENERAL.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following:

''(q) BUNDLING ACCOUNTABILITY MEASURES.—

''(1) TEAMING REQUIREMENTS.—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

''(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 4219(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

''(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (1); and

''(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

''(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

''(3) REPORTING.—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

''(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

''(B) explain why the Administration selected the areas identified under subparagraph (A); and

''(C) describe the activities performed by procurement center representatives and commercial market representatives.''.

(b) TECHNICAL CORRECTION.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by striking ''Administrator of the Office of Federal Procurement Policy'' each place it appears and inserting ''Administrator for Federal Procurement Policy''.

(c) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report regarding the procurement center representative program of the Administration.

(2) CONTENTS.—The report submitted under paragraph (1) shall—

(A) address ways to improve the effectiveness of the procurement center representative program in helping small business concerns obtain Federal contracts;

(B) evaluate the effectiveness of procurement center representatives and commercial marketing representatives; and

(C) include recommendations, if any, on how to improve the procurement center representative program.

(d) ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall implement a 3-year pilot electronic procurement center representative program.

(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program.

SEC. 1313. CONSOLIDATION OF CONTRACT REQUIREMENTS.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 44 as section 45; and

(2) by inserting after section 43 the following:

''SEC. 44. CONSOLIDATION OF CONTRACT REQUIREMENTS.

''(a) DEFINITIONS.—In this section—

''(1) the term 'Chief Acquisition Officer' means the employee of a Federal agency designated as the Chief Acquisition Officer for the Federal agency under section 16(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(a));

''(2) the term 'consolidation of contract requirements', with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; and

''(3) the term 'senior procurement executive' means an official designated under section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)) as the senior procurement executive for a Federal agency.

''(b) POLICY.—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

''(c) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—

''(1) IN GENERAL.—Subject to paragraph (4), the head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than $2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

''(A) conducts market research;

''(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

''(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

''(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

''(E) certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy.

''(2) DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.—

''(A) IN GENERAL.—A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

''(B) SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

''(3) BENEFITS TO BE CONSIDERED.—The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

''(A) quality;

''(B) acquisition cycle;

''(C) terms and conditions; and

''(D) any other benefit.

''(4) DEPARTMENT OF DEFENSE.—

''(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

''(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10, United States Code.

''(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 15.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 2382(b)(1) of title 10, United States Code, is amended by striking ''An official'' and inserting ''Subject to section 44(c)(4), an official''.

SEC. 1314. SMALL BUSINESS TEAMS PILOT PROGRAM.

(a) DEFINITIONS.—In this section—

(1) the term ''Pilot Program'' means the Small Business Teaming Pilot Program established under subsection (b); and

(2) the term ''eligible organization'' means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

(A) customer relations and outreach;

(B) team relations and outreach; and

(C) performance measurement and quality assurance.

(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit

to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) $5,000,000 for each of fiscal years 2010 through 2015.

PART II—SUBCONTRACTING INTEGRITY

SEC. 1321. SUBCONTRACTING MISREPRESENTATIONS.

Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Administrator for Federal Procurement Policy, shall promulgate regulations relating to, and the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to establish a policy on, subcontracting compliance relating to small business concerns, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices and periodic oversight and review activities.

SEC. 1322. SMALL BUSINESS SUBCONTRACTING IMPROVEMENTS.

Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end, the following:

''(G) a representation that the offeror or bidder will—

''(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

''(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (i).''.

PART III—ACQUISITION PROCESS

SEC. 1331. RESERVATION OF PRIME CONTRACT AWARDS FOR SMALL BUSINESSES.

Section 15 of the Small Business Act (15 U.S.C. 644), as amended by this Act, is amended by adding at the end the following:

''(r) MULTIPLE AWARD CONTRACTS.—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

''(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

''(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

''(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).''.

SEC. 1332. MICRO-PURCHASE GUIDELINES.

Not later than 1 year after the date of enactment of this Act, the Director of the Office of Management and Budget, in coordination with the Administrator of General Services, shall issue guidelines regarding the analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small business concerns in purchases in an amount not in excess of the micro-purchase threshold, as defined in section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) (in this section referred to as ''micro-purchases''), consistent with the national policy on small business participation in Federal procurements set forth in sections 2(a) and 15(g) of the Small Business Act (15 U.S.C. 631(a) and 644(g)), and dissemination of best practices for participation of small business concerns in micro-purchases.

SEC. 1333. AGENCY ACCOUNTABILITY.

Section 15(g)(2) of the Small Business Act (15 U.S.C. 644(g)(2)) is amended—

(1) by inserting ''(A)'' after ''(2)'';

(2) by striking ''Goals established'' and inserting the following:

''(B) Goals established'';

(3) by striking ''Whenever'' and inserting the following:

''(C) Whenever'';

(4) by striking ''For the purpose of'' and inserting the following:

''(D) For the purpose of'';

(5) by striking ''The head of each Federal agency, in attempting to attain such participation'' and inserting the following:

''(E) The head of each Federal agency, in attempting to attain the participation described in subparagraph (D)''.

(6) in subparagraph (E), as so designated—

(A) by striking ''(A) contracts'' and inserting ''(i) contracts''; and

(B) by striking ''(B) contracts'' and inserting ''(ii) contracts''; and

(7) by adding at the end the following:

''(F)(i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

''(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.''.

SEC. 1334. PAYMENT OF SUBCONTRACTORS.

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) is amended by adding at the end the following:

''(12) PAYMENT OF SUBCONTRACTORS.—

''(A) DEFINITION.—In this paragraph, the term 'covered contract' means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

''(B) NOTICE.—

''(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

''(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

''(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

''(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors, the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

''(E) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued under section 25 of such Act to—

''(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

''(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

''(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.''.

SEC. 1335. REPEAL OF SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Business Opportunity Development Reform Act of 1988 (Public Law 100–656) is amended by striking title VII (15 U.S.C. 644 note).

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendment made by this section—

(1) shall take effect on the date of enactment of this Act; and

(2) apply to the first full fiscal year after the date of enactment of this Act.

PART IV—SMALL BUSINESS SIZE AND STATUS INTEGRITY

SEC. 1341. POLICY AND PRESUMPTIONS.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1311, is amended by adding at the end the following:

''(w) PRESUMPTION.—

''(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

''(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

''(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

''(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

''(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research agreement, as a small business concern.

''(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

''(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

''(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

''(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.''.

SEC. 1342. ANNUAL CERTIFICATION.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1341, is amended by adding at the end the following:

''(x) ANNUAL CERTIFICATION.—

''(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

''(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the Chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that—

''(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

''(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.''.

SEC. 1343. TRAINING FOR CONTRACTING AND ENFORCEMENT PERSONNEL.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Federal Acquisition Institute, in consultation with the Administrator for Federal Procurement Policy, the Defense Acquisition University, and the Administrator, shall develop courses for acquisition personnel concerning proper classification of business concerns and small business size and status for purposes of Federal contracts, subcontracts, grants, cooperative agreements, and cooperative research and development agreements.

(b) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1342, is amended by adding at the end the following:

''(y) POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.''.

SEC. 1344. UPDATED SIZE STANDARDS.

(a) ROLLING REVIEW.—

(1) IN GENERAL.—The Administrator shall—

(A) during the 18-month period beginning on the date of enactment of this Act, and during every 18-month period thereafter, conduct a detailed review of not less than ⅓ of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

(C) make publicly available—

(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and

(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

(i) used the factors and criteria described in subparagraph (C); and

(ii) adjusted or did not adjust each size standard that was reviewed under the review.

(2) COMPLETE REVIEW OF SIZE STANDARDS.—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

(b) RULES.—Not later than 1 year after the date of enactment of this Act, the Administrator shall promulgate rules for conducting the reviews required under subsection (a).

SEC. 1345. STUDY AND REPORT ON THE MENTOR-PROTEGE PROGRAM.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), and other relationships and strategic alliances pairing a larger business and a small business concern partner to gain access to Federal Government contracts, to determine whether the programs and relationships are effectively supporting the goal of increasing the participation of small business concerns in Government contracting.

(b) MATTERS TO BE STUDIED.—The study conducted under this section shall include—

(1) a review of a broad cross-section of industries; and

(2) an evaluation of—

(A) how each Federal agency carrying out a program described in subsection (a) administers and monitors the program;

(B) whether there are systems in place to ensure that the mentor-protege relationship, or similar affiliation, promotes real gain to the protege, and is not just a mechanism to enable participants that would not otherwise qualify under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to receive contracts under that section; and

(C) the degree to which protege businesses become able to compete for Federal contracts without the assistance of a mentor.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of the study conducted under this section.

SEC. 1346. CONTRACTING GOALS REPORTS.

Section 15(h)(2) of the Small Business Act (15 U.S.C. 644(h)(2)) is amended by striking ''submit them'' and all that follows through ''the following:'' and inserting ''submit to the President and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives the compilation and analysis, which shall include the following:''.

SEC. 1347. SMALL BUSINESS CONTRACTING PARITY.

(a) DEFINITIONS.—In this section—

(1) the terms ''Administration'' and ''Administrator'' mean the Small Business Administration and the Administrator thereof, respectively; and

(2) the terms ''HUBZone small business concern'', ''small business concern'', ''small business concern owned and controlled by service-disabled veterans'', and ''small business concern owned and controlled by women'' have the same meanings as in section 3 of the Small Business Act (15 U.S.C. 632).

(b) CONTRACTING IMPROVEMENTS.—

(1) CONTRACTING OPPORTUNITIES.—Section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)) is amended by striking ''shall'' and inserting ''may''.

(2) CONTRACTING GOALS.—Section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) is amended in the fourth sentence by inserting ''and subcontract'' after ''not less than 3 percent of the total value of all prime contract''.

(3) MENTOR-PROTEGE PROGRAMS.—The Administrator may establish mentor-protege programs for small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by women, and HUBZone small business concerns modeled on the mentor-protege program of the Administration for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(c) SMALL BUSINESS CONTRACTING PROGRAMS PARITY.—Section 31(b)(2) of the Small Business Act (15 U.S.C. 657a(b)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''Notwithstanding any other provision of law—'';

(2) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking ''a contracting'' and inserting ''SOLE SOURCE CONTRACTS.—A contracting''; and

(B) in clause (iii), by striking the semicolon at the end and inserting a period;

(3) in subparagraph (B)—

(A) by striking ''a contract opportunity shall'' and inserting ''RESTRICTED COMPETITION.—A contract opportunity may''; and

(B) by striking ''; and'' and inserting a period; and

(4) in subparagraph (C), by striking ''not later'' and inserting ''APPEALS.—Not later''.

Subtitle D—Small Business Management and Counseling Assistance

SEC. 1401. MATCHING REQUIREMENTS UNDER SMALL BUSINESS PROGRAMS.

(a) MICROLOAN PROGRAM.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (3)(B)—

(A) by striking ''As a condition'' and inserting the following:

''(i) IN GENERAL.—Subject to clause (ii), as a condition'';

(B) by striking ''the Administration'' and inserting ''the Administrator''; and

(C) by adding at the end the following:

''(ii) WAIVER OF NON-FEDERAL SHARE.—

''(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

''(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

''(aa) the economic conditions affecting the intermediary;

''(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

''(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

''(dd) the performance of the intermediary.

''(III) LIMITATIONS.—

''(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting the waiver would undermine the credibility of the microloan program under this subsection.

''(bb) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.''; and

(2) in paragraph (4)(B)—

(A) by striking ''As a condition'' and all that follows through ''the Administration shall require'' and inserting the following:

''(i) IN GENERAL.—Subject to clause (ii), as a condition of a grant made under subparagraph (A), the Administrator shall require''; and

(B) by adding at the end the following:

''(ii) WAIVER OF NON-FEDERAL SHARE.—

''(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

''(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

''(aa) the economic conditions affecting the intermediary;

''(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

''(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

''(dd) the performance of the intermediary.

''(III) LIMITATIONS.—

''(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting the waiver would undermine the credibility of the microloan program under this subsection.

''(bb) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.''.

(b) WOMEN'S BUSINESS CENTER PROGRAM.—Section 29(c) of the Small Business Act (15 U.S.C. 656(c)) is amended—

(1) in paragraph (1), by striking ''As a condition'' and inserting ''Subject to paragraph (5), as a condition''; and

(2) by adding at the end the following:

''(5) WAIVER OF NON-FEDERAL SHARE RELATING TO TECHNICAL ASSISTANCE AND COUNSELING.—

''(A) IN GENERAL.—Upon request by a recipient organization, and in accordance with this paragraph, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under this subsection for the technical assistance and counseling activities of the recipient organization carried out using financial assistance under this section for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this paragraph for successive fiscal years.

''(B) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this paragraph, the Administrator shall consider—

''(i) the economic conditions affecting the recipient organization;

''(ii) the impact a waiver under this clause would have on the credibility of the women's business center program under this section;

''(iii) the demonstrated ability of the recipient organization to raise non-Federal funds; and

''(iv) the performance of the recipient organization.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph if granting the waiver would undermine the credibility of the women's business center program under this section.

''(ii) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph for fiscal year 2013 or any fiscal year thereafter.''.

(c) PROSPECTIVE REPEALS.—Effective October 1, 2012, the Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) in section 7(m) (15 U.S.C. 636(m))—

(A) in paragraph (3)(B)—

(i) by striking ''INTERMEDIARY CONTRIBUTION.—'' and all that follows through ''Subject to clause (ii), as'' and inserting ''INTERMEDIARY CONTRIBUTION.—As''; and

(ii) by striking clause (ii); and

(B) in paragraph (4)(B)—

(i) by striking ''CONTRIBUTION.—'' and all that follows through ''Subject to clause (ii), as'' and inserting ''CONTRIBUTION.—As''; and

(ii) by striking clause (ii); and

(2) in section 29(c) (15 U.S.C. 656(c))—

(A) in paragraph (1), by striking ''Subject to paragraph (5), as'' and inserting ''As''; and

(B) by striking paragraph (5).

SEC. 1402. GRANTS FOR SBDCS.

(a) IN GENERAL.—The Administrator may make grants to small business development centers under section 21 of the Small Business Act (15 U.S.C. 648) to provide targeted technical assistance to small business concerns seeking access to capital or credit, Federal procurement opportunities, energy efficiency audits to reduce energy bills, opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance.

(b) ALLOCATION.—

(1) IN GENERAL.—Subject to paragraph (2), and notwithstanding the requirements of section 21(a)(4)(C)(iii) of the Small Business Act (15 U.S.C. 648(a)(4)(C)(iii)), the amount appropriated to carry out this section shall be allocated under the formula under section 21(a)(4)(C)(i) of that Act.

(2) MINIMUM FUNDING.—The amount made available under this section to each State shall be not less than $325,000.

(3) TYPES OF USES.—Of the total amount of the grants awarded by the Administrator under this section—

(A) not less than 80 percent shall be used for counseling of small business concerns; and

(B) not more than 20 percent may be used for classes or seminars.

(c) NO NON-FEDERAL SHARE REQUIRED.—Notwithstanding section 21(a)(4)(A) of the Small Business Act (15 U.S.C. 648(a)(4)(A)), the recipient of a grant made under this section shall not be required to provide non-Federal matching funds.

(d) DISTRIBUTION.—Not later than 30 days after the date on which amounts are appropriated to carry out this section, the Administrator shall disburse the total amount appropriated.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator $50,000,000 to carry out this section.

Subtitle E—Disaster Loan Improvement

SEC. 1501. AQUACULTURE BUSINESS DISASTER ASSISTANCE.

Section 3 of the Small Business Act (15 U.S.C. 632), as amended by section 1343, is amended by adding at the end the following:

''(z) AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.''.

Subtitle F—Small Business Regulatory Relief

SEC. 1601. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

Section 604(a) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking ''succinct'';

(2) in paragraph (2), by striking ''summary'' each place it appears and inserting ''statement'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(4) by inserting after paragraph (2) the following:

''(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;''.

SEC. 1602. OFFICE OF ADVOCACY.

(a) IN GENERAL.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) in paragraph (4), by striking ''and'' at the end;

(2) in paragraph (5), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(6) carry out the responsibilities of the Office of Advocacy under chapter 6 of title 5, United States Code.''.

(b) BUDGETARY LINE ITEM AND AUTHORIZATION OF APPROPRIATIONS.—Title II of Public Law 94–305 (15 U.S.C. 634a et seq.) is amended by striking section 207 and inserting the following:

''SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF APPROPRIATIONS.

''(a) APPROPRIATION REQUESTS.—Each budget of the United States Government submitted by the President under section 1105 of title 31, United States Code, shall include a separate statement of the amount of appropriations requested for the Office of Advocacy of the Small Business Administration, which shall be designated in a separate account in the General Fund of the Treasury.

''(b) ADMINISTRATIVE OPERATIONS.—The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations, together with such equipment, operating budget, and communications facilities and services as may be necessary, and shall provide necessary maintenance services for such offices and the equipment and facilities located in such offices.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

sums as are necessary to carry out this title. Any amount appropriated under this subsection shall remain available, without fiscal year limitation, until expended.''.

Subtitle G—Appropriations Provisions

SEC. 1701. SALARIES AND EXPENSES.

(a) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, $150,000,000, to remain available until September 30, 2012, for an additional amount for the appropriations account appropriated under the heading ''SALARIES AND EXPENSES'' under the heading ''SMALL BUSINESS ADMINISTRATION'', of which—

(1) $50,000,000 is for grants to small business development centers authorized under section 1402;

(2) $1,000,000 is for the costs of administering grants authorized under section 1402;

(3) $30,000,000 is for grants to States for fiscal year 2011 to carry out export programs that assist small business concerns authorized under section 1207;

(4) $30,000,000 is for grants to States for fiscal year 2012 to carry out export programs that assist small business concerns authorized under section 1207;

(5) $2,500,000 is for the costs of administering grants authorized under section 1207;

(6) $5,000,000 is for grants for fiscal year 2011 under the Small Business Teaming Pilot Program under section 1314; and

(7) $5,000,000 is for grants for fiscal year 2012 under the Small Business Teaming Pilot Program under section 1314.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives a detailed expenditure plan for using the funds provided under subsection (a).

SEC. 1702. BUSINESS LOANS PROGRAM ACCOUNT.

(a) IN GENERAL.—There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, for an additional amount for the appropriations account appropriated under the heading ''BUSINESS LOANS PROGRAM ACCOUNT'' under the heading ''SMALL BUSINESS ADMINISTRATION''—

(1) $8,000,000, to remain available until September 30, 2012, for fiscal year 2011 for the cost of direct loans authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, including the cost of modifying the loans;

(2) $8,000,000, to remain available until September 30, 2012, for fiscal year 2012 for the cost of direct loans authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, including the cost of modifying the loans;

(3) $6,500,000, to remain available until September 30, 2012, for administrative expenses to carry out the direct loan program authorized under section 7(l) of the Small Business Act, as added by section 1131 of this title, which may be transferred to and merged with the appropriations account appropriated under the heading ''SALARIES AND EXPENSES'' under the heading ''SMALL BUSINESS ADMINISTRATION''; and

(4) $15,000,000, to remain available until September 30, 2011, for the cost of guaranteed loans as authorized under section 7(a) of the Small Business Act, including the cost of modifying the loans.

(b) DEFINITION.—In this section, the term ''cost'' has the meaning given that term in section 502 of the Congressional Budget Act of 1974.

SEC. 1703. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT.

There is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2010, for an additional amount for the appropriations account appropriated under the heading ''COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT'' under the heading ''DEPARTMENT OF THE TREASURY'', $13,500,000, to remain available until September 30, 2012, for the costs of administering guarantees for bonds and notes as authorized under section 114A of the Riegle Community Development and Regulatory Improvement Act of 1994, as added by section 1134 of this Act.

SEC. 1704. SMALL BUSINESS LOAN GUARANTEE ENHANCEMENT EXTENSIONS.

(a) EXTENSION OF PROGRAMS.—

(1) IN GENERAL.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, for an additional amount for ''Small Business Administration—Business Loans Program Account'', $505,000,000, to remain available through December 31, 2010, for the cost of—

(A) fee reductions and eliminations under section 501 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 151), as amended by this Act; and

(B) loan guarantees under section 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 152), as amended by this Act.

(2) COST.—For purposes of this subsection, the term ''cost'' has the same meaning as in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

(b) ADMINISTRATIVE EXPENSES.—There is appropriated for an additional amount, out of any funds in the Treasury not otherwise appropriated, for administrative expenses to carry out sections 501 and 502 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), $5,000,000, to remain available until expended, which may be transferred and merged with the appropriation for ''Small Business Administration—Salaries and Expenses''.

TITLE II—TAX PROVISIONS

SEC. 2001. SHORT TITLE.

This title may be cited as the ''Creating Small Business Jobs Act of 2010''.

Subtitle A—Small Business Relief

PART I—PROVIDING ACCESS TO CAPITAL

SEC. 2011. TEMPORARY EXCLUSION OF 100 PERCENT OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) IN GENERAL.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) 100 PERCENT EXCLUSION FOR STOCK ACQUIRED DURING CERTAIN PERIODS IN 2010.—In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010 and before January 1, 2011—

''(A) paragraph (1) shall be applied by substituting '100 percent' for '50 percent',

''(B) paragraph (2) shall not apply, and

''(C) paragraph (7) of section 57(a) shall not apply.''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 1202(a) of the Internal Revenue Code of 1986 is amended—

(1) by inserting ''CERTAIN PERIODS IN'' before ''2010'' in the heading, and

(2) by striking ''before January 1, 2011'' and inserting ''on or before the date of the enactment of the Creating Small Business Jobs Act of 2010''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired after the date of the enactment of this Act.

SEC. 2012. GENERAL BUSINESS CREDITS OF ELIGIBLE SMALL BUSINESSES FOR 2010 CARRIED BACK 5 YEARS.

(a) IN GENERAL.—Section 39(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) 5-YEAR CARRYBACK FOR ELIGIBLE SMALL BUSINESS CREDITS.—

''(A) IN GENERAL.—Notwithstanding subsection (d), in the case of eligible small business credits determined in the first taxable year of the taxpayer beginning in 2010—

''(i) paragraph (1) shall be applied by substituting 'each of the 5 taxable years' for 'the taxable year' in subparagraph (A) thereof, and

''(ii) paragraph (2) shall be applied—

''(I) by substituting '25 taxable years' for '21 taxable years' in subparagraph (A) thereof, and

''(II) by substituting '24 taxable years' for '20 taxable years' in subparagraph (B) thereof.

''(B) ELIGIBLE SMALL BUSINESS CREDITS.—For purposes of this subsection, the term 'eligible small business credits' has the meaning given such term by section 38(c)(5)(B).''.

(b) CONFORMING AMENDMENT.—Section 39(a)(3)(A) of the Internal Revenue Code of 1986 is amended by inserting ''or the eligible small business credits'' after ''credit)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to credits determined in taxable years beginning after December 31, 2009.

SEC. 2013. GENERAL BUSINESS CREDITS OF ELIGIBLE SMALL BUSINESSES IN 2010 NOT SUBJECT TO ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 38(c) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ELIGIBLE SMALL BUSINESS CREDITS IN 2010.—

''(A) IN GENERAL.—In the case of eligible small business credits determined in taxable years beginning in 2010—

''(i) this section and section 39 shall be applied separately with respect to such credits, and

''(ii) in applying paragraph (1) to such credits—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits).

''(B) ELIGIBLE SMALL BUSINESS CREDITS.—For purposes of this subsection, the term 'eligible small business credits' means the sum of the credits listed in subsection (b) which are determined for the taxable year with respect to an eligible small business. Such credits shall not be taken into account under paragraph (2), (3), or (4).

''(C) ELIGIBLE SMALL BUSINESS.—For purposes of this subsection, the term 'eligible small business' means, with respect to any taxable year—

''(i) a corporation the stock of which is not publicly traded,

''(ii) a partnership, or

''(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed $50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(D) TREATMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—Credits determined with respect to a partnership or S corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (C) for the taxable year in which such credits are treated as current year business credits.''.

(b) TECHNICAL AMENDMENT.—Section 55(e)(5) of the Internal Revenue Code of 1986 is amended by striking ''38(c)(3)(B)'' and inserting ''38(c)(6)(B)''.

(c) CONFORMING AMENDMENTS.—

(1) Subclause (II) of section 38(c)(2)(A)(ii) of the Internal Revenue Code of 1986 is amended by inserting ''the eligible small business credits,'' after ''the New York Liberty Zone business employee credit,''.

(2) Subclause (II) of section 38(c)(3)(A)(ii) of such Code is amended by inserting '', the eligible small business credits,'' after ''the New York Liberty Zone business employee credit''.

(3) Subclause (II) of section 38(c)(4)(A)(ii) of such Code is amended by inserting ''the eligible small business credits and'' before ''the specified credits''.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to credits determined in taxable years beginning after December 31, 2009, and to carrybacks of such credits.

SEC. 2014. TEMPORARY REDUCTION IN RECOGNITION PERIOD FOR BUILT-IN GAINS TAX.

(a) IN GENERAL.—Subparagraph (B) of section 1374(d)(7) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) SPECIAL RULES FOR 2009, 2010, AND 2011.—No tax shall be imposed on the net recognized built-in gain of an S corporation—

''(i) in the case of any taxable year beginning in 2009 or 2010, if the 7th taxable year in the recognition period preceded such taxable year, or

''(ii) in the case of any taxable year beginning in 2011, if the 5th year in the recognition period preceded such taxable year.

The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

PART II—ENCOURAGING INVESTMENT

SEC. 2021. INCREASED EXPENSING LIMITATIONS FOR 2010 AND 2011; CERTAIN REAL PROPERTY TREATED AS SECTION 179 PROPERTY.

(a) INCREASED LIMITATIONS.—Subsection (b) of section 179 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''shall not exceed'' and all that follows in paragraph (1) and inserting ''shall not exceed—

''(A) $250,000 in the case of taxable years beginning after 2007 and before 2010,

''(B) $500,000 in the case of taxable years beginning in 2010 or 2011, and

''(C) $25,000 in the case of taxable years beginning after 2011.'', and

(2) by striking ''exceeds'' and all that follows in paragraph (2) and inserting ''exceeds—

''(A) $800,000 in the case of taxable years beginning after 2007 and before 2010,

''(B) $2,000,000 in the case of taxable years beginning in 2010 or 2011, and

''(C) $200,000 in the case of taxable years beginning after 2011.''.

(b) INCLUSION OF CERTAIN REAL PROPERTY.—Section 179 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) SPECIAL RULES FOR QUALIFIED REAL PROPERTY.—

''(1) IN GENERAL.—If a taxpayer elects the application of this subsection for any taxable year beginning in 2010 or 2011, the term 'section 179 property' shall include any qualified real property which is—

''(A) of a character subject to an allowance for depreciation,

''(B) acquired by purchase for use in the active conduct of a trade or business, and

''(C) not described in the last sentence of subsection (d)(1).

''(2) QUALIFIED REAL PROPERTY.—For purposes of this subsection, the term 'qualified real property' means—

''(A) qualified leasehold improvement property described in section 168(e)(6),

''(B) qualified restaurant property described in section 168(e)(7) (without regard to the dates specified in subparagraph (A)(i) thereof), and

''(C) qualified retail improvement property described in section 168(e)(8) (without regard to subparagraph (E) thereof).

''(3) LIMITATION.—For purposes of applying the limitation under subsection (b)(1)(B), not more than $250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

''(4) CARRYOVER LIMITATION.—

''(A) IN GENERAL.—Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2011.

''(B) TREATMENT OF DISALLOWED AMOUNTS.—Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2011 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

''(C) AMOUNTS CARRIED OVER FROM 2010.—If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2011, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2011.

''(D) ALLOCATION OF AMOUNTS.—For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

''(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

''(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.''.

(c) REVOCABILITY OF ELECTION.—Paragraph (2) of section 179(c) of the Internal Revenue Code of 1986 is amended by striking ''2011'' and inserting ''2012''.

(d) COMPUTER SOFTWARE TREATED AS 179 PROPERTY.—Clause (ii) of section 179(d)(1)(A) is amended by striking ''2011'' and inserting ''2012''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

(2) EXTENSIONS.—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after December 31, 2010.

SEC. 2022. ADDITIONAL FIRST-YEAR DEPRECIATION FOR 50 PERCENT OF THE BASIS OF CERTAIN QUALIFIED PROPERTY.

(a) IN GENERAL.—Paragraph (2) of section 168(k) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''January 1, 2011'' in subparagraph (A)(iv) and inserting ''January 1, 2012'', and

(2) by striking ''January 1, 2010'' each place it appears and inserting ''January 1, 2011''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subsection (k) of section 168 of the Internal Revenue Code of 1986 is amended by striking ''JANUARY 1, 2010'' and inserting ''JANUARY 1, 2011''.

(2) The heading for clause (ii) of section 168(k)(2)(B) of such Code is amended by striking ''PRE-JANUARY 1, 2010'' and inserting ''PRE-JANUARY 1, 2011''.

(3) Subparagraph (D) of section 168(k)(4) of such Code is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

''(iv) 'January 1, 2011' shall be substituted for 'January 1, 2012' in subparagraph (A)(iv) thereof, and

''(v) 'January 1, 2010' shall be substituted for 'January 1, 2011' each place it appears in subparagraph (A) thereof.''.

(4) Subparagraph (B) of section 168(l)(5) of such Code is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(5) Subparagraph (C) of section 168(n)(2) of such Code is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(6) Subparagraph (D) of section 1400L(b)(2) of such Code is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(7) Subparagraph (B) of section 1400N(d)(3) of such Code is amended by striking ''January 1, 2010'' and inserting ''January 1, 2011''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2009, in taxable years ending after such date.

SEC. 2023. SPECIAL RULE FOR LONG-TERM CONTRACT ACCOUNTING.

(a) IN GENERAL.—Section 460(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR ALLOCATION OF BONUS DEPRECIATION WITH RESPECT TO CERTAIN PROPERTY.—

''(A) IN GENERAL.—Solely for purposes of determining the percentage of completion under subsection (b)(1)(A), the cost of qualified property shall be taken into account as a cost allocated to the contract as if subsection (k) of section 168 had not been enacted.

''(B) QUALIFIED PROPERTY.—For purposes of this paragraph, the term 'qualified property' means property described in section 168(k)(2) which—

''(i) has a recovery period of 7 years or less, and

''(ii) is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2009.

PART III—PROMOTING ENTREPRENEURSHIP

SEC. 2031. INCREASE IN AMOUNT ALLOWED AS DEDUCTION FOR START-UP EXPENDITURES IN 2010.

(a) START-UP EXPENDITURES.—Subsection (b) of section 195 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 2010.—In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

''(A) by substituting '$10,000' for '$5,000', and

''(B) by substituting '$60,000' for '$50,000'.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

SEC. 2032. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES TRADE REPRESENTATIVE TO DEVELOP MARKET ACCESS OPPORTUNITIES FOR UNITED STATES SMALL- AND MEDIUM-SIZED BUSINESSES AND TO ENFORCE TRADE AGREEMENTS.

(a) IN GENERAL.—There are authorized to be appropriated to the Office of the United States Trade Representative $5,230,000, to remain available until expended, for—

(1) analyzing and developing opportunities for businesses in the United States to access the markets of foreign countries; and

(2) enforcing trade agreements to which the United States is a party.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated under subsection (a), the United States Trade Representative shall—

(1) give preference to those initiatives that the United States Trade Representative determines will create or sustain the greatest number of jobs in the United States or result in the greatest benefit to the economy of the United States; and

(2) consider the needs of small- and medium-sized businesses in the United States with respect to—

(A) accessing the markets of foreign countries; and

(B) the enforcement of trade agreements to which the United States is a party.

PART IV—PROMOTING SMALL BUSINESS FAIRNESS

SEC. 2041. LIMITATION ON PENALTY FOR FAILURE TO DISCLOSE REPORTABLE TRANSACTIONS BASED ON RESULTING TAX BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 6707A of the Internal Revenue Code of 1986 is amended to read as follows:

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

''(2) MAXIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any reportable transaction shall not exceed—

''(A) in the case of a listed transaction, $200,000 ($100,000 in the case of a natural person), or

''(B) in the case of any other reportable transaction, $50,000 ($10,000 in the case of a natural person).

''(3) MINIMUM PENALTY.—The amount of the penalty under subsection (a) with respect to any transaction shall not be less than $10,000 ($5,000 in the case of a natural person).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after December 31, 2006.

SEC. 2042. DEDUCTION FOR HEALTH INSURANCE COSTS IN COMPUTING SELF-EMPLOYMENT TAXES IN 2010.

(a) IN GENERAL.—Paragraph (4) of section 162(l) of the Internal Revenue Code of 1986 is amended by inserting ''for taxable years beginning before January 1, 2010, or after December 31, 2010'' before the period.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 2043. REMOVAL OF CELLULAR TELEPHONES AND SIMILAR TELECOMMUNICATIONS EQUIPMENT FROM LISTED PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 280F(d)(4) of the Internal Revenue Code of 1986 (defining listed property) is amended by adding '' 'and' '' at the end of clause (iv), by striking clause (v), and by redesignating clause (vi) as clause (v).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

Subtitle B—Revenue Provisions

PART I—REDUCING THE TAX GAP

SEC. 2101. INFORMATION REPORTING FOR RENTAL PROPERTY EXPENSE PAYMENTS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006 of the Patient Protection and Affordable Care Act, is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

''(h) TREATMENT OF RENTAL PROPERTY EXPENSE PAYMENTS.—

''(1) IN GENERAL.—Solely for purposes of subsection (a) and except as provided in paragraph (2), a person receiving rental income from real estate shall be considered to be engaged in a trade or business of renting property.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A) any individual, including any individual who is an active member of the uniformed services or an employee of the intelligence community (as defined in section 121(d)(9)(C)(iv)), if substantially all rental income is derived from renting the principal residence (within the meaning of section 121) of such individual on a temporary basis,

''(B) any individual who receives rental income of not more than the minimal amount, as determined under regulations prescribed by the Secretary, and

''(C) any other individual for whom the requirements of this section would cause hardship, as determined under regulations prescribed by the Secretary.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made after December 31, 2010.

SEC. 2102. INCREASE IN INFORMATION RETURN PENALTIES.

(a) FAILURE TO FILE CORRECT INFORMATION RETURNS.—

(1) IN GENERAL.—Subsections (a)(1), (b)(1)(A), and (b)(2)(A) of section 6721 of the Internal Revenue Code of 1986 are each amended by striking ''$50'' and inserting ''$100''.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (a)(1), (d)(1)(A), and (e)(3)(A) of section 6721 of such Code are each amended by striking ''$250,000'' and inserting ''$1,500,000''.

(b) REDUCTION WHERE CORRECTION WITHIN 30 DAYS.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(1) of the Internal Revenue Code of 1986 is amended by striking ''$15'' and inserting ''$30''.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(1)(B) and (d)(1)(B) of section 6721 of such Code are each amended by striking ''$75,000'' and inserting ''$250,000''.

(c) REDUCTION WHERE CORRECTION ON OR BEFORE AUGUST 1.—

(1) IN GENERAL.—Subparagraph (A) of section 6721(b)(2) of the Internal Revenue Code of 1986 is amended by striking ''$30'' and inserting ''$60''.

(2) AGGREGATE ANNUAL LIMITATION.—Subsections (b)(2)(B) and (d)(1)(C) of section 6721 of such Code are each amended by striking ''$150,000'' and inserting ''$500,000''.

(d) AGGREGATE ANNUAL LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

(1) IN GENERAL.—Paragraph (1) of section 6721(d) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''$100,000'' in subparagraph (A) and inserting ''$500,000'',

(B) by striking ''$25,000'' in subparagraph (B) and inserting ''$75,000'', and

(C) by striking ''$50,000'' in subparagraph (C) and inserting ''$200,000''.

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 6721(d) of such Code is amended by striking ''such taxable year'' and inserting ''such calendar year''.

(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—Paragraph (2) of section 6721(e) of the Internal Revenue Code of 1986 is amended by striking ''$100'' and inserting ''$250''.

(f) ADJUSTMENT FOR INFLATION.—Section 6721 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2011' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under paragraph (1)—

''(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

''(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.''.

(g) FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.—Section 6722 of the Internal Revenue Code of 1986 is amended to read as follows:

''SEC. 6722. FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.

''(a) IMPOSITION OF PENALTY.—

''(1) GENERAL RULE.—In the case of each failure described in paragraph (2) by any person with respect to a payee statement, such person shall pay a penalty of $100 for each statement with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $1,500,000.

''(2) FAILURES SUBJECT TO PENALTY.—For purposes of paragraph (1), the failures described in this paragraph are—

''(A) any failure to furnish a payee statement on or before the date prescribed therefor to the person to whom such statement is required to be furnished, and

''(B) any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

''(b) REDUCTION WHERE CORRECTION IN SPECIFIED PERIOD.—

''(1) CORRECTION WITHIN 30 DAYS.—If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

''(A) the penalty imposed by subsection (a) shall be $30 in lieu of $100, and

''(B) the total amount imposed on the person for all such failures during any calendar

year which are so corrected shall not exceed $250,000.

''(2) FAILURES CORRECTED ON OR BEFORE AUGUST 1.—If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

''(A) the penalty imposed by subsection (a) shall be $60 in lieu of $100, and

''(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed $500,000.

''(c) EXCEPTION FOR DE MINIMIS FAILURES.—

''(1) IN GENERAL.—If—

''(A) a payee statement is furnished to the person to whom such statement is required to be furnished,

''(B) there is a failure described in subsection (a)(2)(B) (determined after the application of section 6724(a)) with respect to such statement, and

''(C) such failure is corrected on or before August 1 of the calendar year in which the required filing date occurs,

for purposes of this section, such statement shall be treated as having been furnished with all of the correct required information.

''(2) LIMITATION.—The number of payee statements to which paragraph (1) applies for any calendar year shall not exceed the greater of—

''(A) 10, or

''(B) one-half of 1 percent of the total number of payee statements required to be filed by the person during the calendar year.

''(d) LOWER LIMITATIONS FOR PERSONS WITH GROSS RECEIPTS OF NOT MORE THAN $5,000,000.—

''(1) IN GENERAL.—If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such calendar year—

''(A) subsection (a)(1) shall be applied by substituting '$500,000' for '$1,500,000',

''(B) subsection (b)(1)(B) shall be applied by substituting '$75,000' for '$250,000', and

''(C) subsection (b)(2)(B) shall be applied by substituting '$200,000' for '$500,000'.

''(2) GROSS RECEIPTS TEST.—A person meets the gross receipts test of this paragraph if such person meets the gross receipts test of section 6721(d)(2).

''(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—If 1 or more failures to which subsection (a) applies are due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement), then, with respect to each such failure—

''(1) subsections (b), (c), and (d) shall not apply,

''(2) the penalty imposed under subsection (a)(1) shall be $250, or, if greater—

''(A) in the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c), 10 percent of the aggregate amount of the items required to be reported correctly, or

''(B) in the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate amount of the items required to be reported correctly, and

''(3) in the case of any penalty determined under paragraph (2)—

''(A) the $1,500,000 limitation under subsection (a) shall not apply, and

''(B) such penalty shall not be taken into account in applying such limitation to penalties not determined under paragraph (2).

''(f) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d)(1), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2011' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under paragraph (1)—

''(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

''(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to information returns required to be filed on or after January 1, 2011.

SEC. 2103. REPORT ON TAX SHELTER PENALTIES AND CERTAIN OTHER ENFORCEMENT ACTIONS.

(a) IN GENERAL.—The Commissioner of Internal Revenue, in consultation with the Secretary of the Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the Internal Revenue Service during the preceding year under each of the following provisions of the Internal Revenue Code of 1986:

(1) Section 6662A (relating to accuracy-related penalty on understatements with respect to reportable transactions).

(2) Section 6700(a) (relating to promoting abusive tax shelters).

(3) Section 6707 (relating to failure to furnish information regarding reportable transactions).

(4) Section 6707A (relating to failure to include reportable transaction information with return).

(5) Section 6708 (relating to failure to maintain lists of advisees with respect to reportable transactions).

(b) ADDITIONAL INFORMATION.—The report required under subsection (a) shall also include information on the following with respect to each year:

(1) Any action taken under section 330(b) of title 31, United States Code, with respect to any reportable transaction (as defined in section 6707A(c) of the Internal Revenue Code of 1986).

(2) Any extension of the time for assessment of tax enforced, or assessment of any amount under such an extension, under paragraph (10) of section 6501(c) of the Internal Revenue Code of 1986.

(c) DATE OF REPORT.—The first report required under subsection (a) shall be submitted not later than December 31, 2010.

SEC. 2104. APPLICATION OF CONTINUOUS LEVY TO TAX LIABILITIES OF CERTAIN FEDERAL CONTRACTORS.

(a) IN GENERAL.—Subsection (f) of section 6330 of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of paragraph (2), by inserting ''or'' at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

''(4) the Secretary has served a Federal contractor levy,''.

(b) FEDERAL CONTRACTOR LEVY.—Subsection (h) of section 6330 of the Internal Revenue Code of 1986 is amended—

(1) by striking all that precedes ''any levy in connection with the collection'' and inserting the following:

''(h) DEFINITIONS RELATED TO EXCEPTIONS.—For purposes of subsection (f)—

''(1) DISQUALIFIED EMPLOYMENT TAX LEVY.—A disqualified employment tax levy is''; and

(2) by adding at the end the following new paragraph:

''(2) FEDERAL CONTRACTOR LEVY.—A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.''.

(c) CONFORMING AMENDMENT.—The heading of subsection (f) of section 6330 of the Internal Revenue Code of 1986 is amended by striking ''JEOPARDY AND STATE REFUND COLLECTION'' and inserting ''EXCEPTIONS''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to levies issued after the date of the enactment of this Act.

PART II—PROMOTING RETIREMENT PREPARATION

SEC. 2111. PARTICIPANTS IN GOVERNMENT SECTION 457 PLANS ALLOWED TO TREAT ELECTIVE DEFERRALS AS ROTH CONTRIBUTIONS.

(a) IN GENERAL.—Section 402A(e)(1) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).''.

(b) ELECTIVE DEFERRALS.—Section 402A(e)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

''(2) ELECTIVE DEFERRAL.—The term 'elective deferral' means—

''(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

''(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SEC. 2112. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS TO DESIGNATED ROTH ACCOUNTS.

(a) IN GENERAL.—Section 402A(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) TAXABLE ROLLOVERS TO DESIGNATED ROTH ACCOUNTS.—

''(A) IN GENERAL.—Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

''(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

''(ii) section 72(t) shall not apply, and

''(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

''(B) DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

''(C) COORDINATION WITH LIMIT.—Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

''(D) OTHER RULES.—The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 2113. SPECIAL RULES FOR ANNUITIES RECEIVED FROM ONLY A PORTION OF A CONTRACT.

(a) IN GENERAL.—Subsection (a) of section 72 of the Internal Revenue Code of 1986 is amended to read as follows:

''(a) GENERAL RULES FOR ANNUITIES.—

''(1) INCOME INCLUSION.—Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

''(2) PARTIAL ANNUITIZATION.—If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

''(A) such portion shall be treated as a separate contract for purposes of this section,

''(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

''(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts received in taxable years beginning after December 31, 2010.

PART III—CLOSING UNINTENDED LOOPHOLES

SEC. 2121. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) IN GENERAL.—Clause (iii) of section 40(b)(6)(E) of the Internal Revenue Code of 1986, as added by the Health Care and Education Reconciliation Act of 2010, is amended—

(1) by striking ''or'' at the end of subclause (I),

(2) by striking the period at the end of subclause (II) and inserting '', or'',

(3) by adding at the end the following new subclause:

''(III) such fuel has an acid number greater than 25.'', and

(4) by striking ''UNPROCESSED'' in the heading and inserting ''CERTAIN''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels sold or used on or after January 1, 2010.

SEC. 2122. SOURCE RULES FOR INCOME ON GUARANTEES.

(a) AMOUNTS SOURCED WITHIN THE UNITED STATES.—Subsection (a) of section 861 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(9) GUARANTEES.—Amounts received, directly or indirectly, from—

''(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

''(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.''.

(b) AMOUNTS SOURCED WITHOUT THE UNITED STATES.—Subsection (a) of section 862 of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ''; and'', and by adding at the end the following new paragraph:

''(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).''.

(c) CONFORMING AMENDMENT.—Clause (ii) of section 864(c)(4)(B) of the Internal Revenue Code of 1986 is amended by striking ''dividends or interest'' and inserting ''dividends, interest, or amounts received for the provision of guarantees of indebtedness''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees issued after the date of the enactment of this Act.

PART IV—TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

SEC. 2131. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 36 percentage points.

TITLE III—STATE SMALL BUSINESS CREDIT INITIATIVE

SEC. 3001. SHORT TITLE.

This title may be cited as the ''State Small Business Credit Initiative Act of 2010''.

SEC. 3002. DEFINITIONS.

In this title, the following definitions shall apply:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term ''appropriate Federal banking agency''—

(A) has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act.

(3) ENROLLED LOAN.—The term ''enrolled loan'' means a loan made by a financial institution lender that is enrolled by a participating State in an approved State capital access program in accordance with this title.

(4) FEDERAL CONTRIBUTION.—The term ''Federal contribution'' means the portion of the contribution made by a participating State to, or for the account of, an approved State program that is made with Federal funds allocated to the State by the Secretary under section 3003.

(5) FINANCIAL INSTITUTION.—The term ''financial institution'' means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

(6) PARTICIPATING STATE.—The term ''participating State'' means any State that has been approved for participation in the Program under section 3004.

(7) PROGRAM.—The term ''Program'' means the State Small Business Credit Initiative established under this title.

(8) QUALIFYING LOAN OR SWAP FUNDING FACILITY.—The term ''qualifying loan or swap funding facility'' means a contractual arrangement between a participating State and a private financial entity under which—

(A) the participating State delivers funds to the entity as collateral;

(B) the entity provides funding from the arrangement back to the participating State; and

(C) the full amount of resulting funding from the arrangement, less any fees and other costs of the arrangement, is contributed to, or for the account of, an approved State program.

(9) RESERVE FUND.—The term ''reserve fund'' means a fund, established by a participating State, dedicated to a particular financial institution lender, for the purposes of—

(A) depositing all required premium charges paid by the financial institution lender and by each borrower receiving a loan under an approved State program from that financial institution lender;

(B) depositing contributions made by the participating State, including State contributions made with Federal contributions; and

(C) covering losses on enrolled loans by disbursing accumulated funds.

(10) STATE.—The term ''State'' means—

(A) a State of the United States;

(B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands;

(C) when designated by a State of the United States, a political subdivision of that State that the Secretary determines has the capacity to participate in the Program; and

(D) under the circumstances described in section 3004(d), a municipality of a State of the United States to which the Secretary has given a special permission under section 3004(d).

(11) STATE CAPITAL ACCESS PROGRAM.—The term ''State capital access program'' means a program of a State that—

(A) uses public resources to promote private access to credit; and

(B) meets the eligibility criteria in section 3005(c).

(12) STATE OTHER CREDIT SUPPORT PROGRAM.—The term ''State other credit support program''—

(A) means a program of a State that—

(i) uses public resources to promote private access to credit;

(ii) is not a State capital access program; and

(iii) meets the eligibility criteria in section 3006(c); and

(B) includes, collateral support programs, loan participation programs, State-run venture capital fund programs, and credit guarantee programs.

(13) STATE PROGRAM.—The term ''State program'' means a State capital access program or a State other credit support program.

(14) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

SEC. 3003. FEDERAL FUNDS ALLOCATED TO STATES.

(a) PROGRAM ESTABLISHED; PURPOSE.—There is established the State Small Business Credit Initiative, to be administered by the Secretary. Under the Program, the Secretary shall allocate Federal funds to participating States and make the allocated funds available to the participating States as

provided in this section for the uses described in this section.

(b) ALLOCATION FORMULA.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall allocate Federal funds to participating States so that each State is eligible to receive an amount equal to the average of the respective amounts that the State—

(A) would receive under the 2009 allocation, as determined under paragraph (2); and

(B) would receive under the 2010 allocation, as determined under paragraph (3).

(2) 2009 ALLOCATION FORMULA.—

(A) IN GENERAL.—The Secretary shall determine the 2009 allocation by allocating Federal funds among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all States.

(B) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

(C) 2008 STATE EMPLOYMENT DECLINE DEFINED.—In this paragraph and with respect to a State, the term ''2008 State employment decline'' means the excess (if any) of—

(i) the number of individuals employed in such State determined for December 2007; over

(ii) the number of individuals employed in such State determined for December 2008.

(3) 2010 ALLOCATION FORMULA.—

(A) IN GENERAL.—The Secretary shall determine the 2010 allocation by allocating Federal funds among the States in the proportion that each such State's 2009 unemployment number bears to the aggregate of the 2009 unemployment numbers for all of the States.

(B) MINIMUM ALLOCATION.—The Secretary shall adjust the allocations under subparagraph (A) for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the Federal funds.

(C) 2009 UNEMPLOYMENT NUMBER DEFINED.—In this paragraph and with respect to a State, the term ''2009 unemployment number'' means the number of individuals within such State who were determined to be unemployed by the Bureau of Labor Statistics for December 2009.

(c) AVAILABILITY OF ALLOCATED AMOUNT.—The amount allocated by the Secretary to each participating State under subsection (b) shall be made available to the State as follows:

(1) ALLOCATED AMOUNT GENERALLY TO BE AVAILABLE TO STATE IN ONE-THIRDS.—

(A) IN GENERAL.—The Secretary shall—

(i) apportion the participating State's allocated amount into thirds;

(ii) transfer to the participating State the first ⅓ when the Secretary approves the State for participation under section 3004; and

(iii) transfer to the participating State each successive ⅓ when the State has certified to the Secretary that it has expended, transferred, or obligated 80 percent of the last transferred ⅓ for Federal contributions to, or for the account of, State programs.

(B) AUTHORITY TO WITHHOLD PENDING AUDIT.—The Secretary may withhold the transfer of any successive ⅓ pending results of a financial audit.

(C) INSPECTOR GENERAL AUDITS.—

(i) IN GENERAL.—The Inspector General of the Department of the Treasury shall carry out an audit of the participating State's use of allocated Federal funds transferred to the State.

(ii) RECOUPMENT OF MISUSED TRANSFERRED FUNDS REQUIRED.—The allocation agreement between the Secretary and the participating State shall provide that the Secretary shall recoup any allocated Federal funds transferred to the participating State if the results of the an audit include a finding that there was an intentional or reckless misuse of transferred funds by the State.

(iii) PENALTY FOR MISSTATEMENT.—Any participating State that is found to have intentionally misstated any report issued to the Secretary under the Program shall be ineligible to receive any additional funds under the Program. Funds that had been allocated or that would otherwise have been allocated to such participating State shall be paid into the general fund of the Treasury for reduction of the public debt.

(iv) MUNICIPALITIES.—In this subparagraph, the term ''participating State'' shall include a municipality given special permission to participate in the Program, under section 3004(d).

(D) EXCEPTION.—The Secretary may, in the Secretary's discretion, transfer the full amount of the participating State's allocated amount to the State in a single transfer if the participating State applies to the Secretary for approval to use the full amount of the allocation as collateral for a qualifying loan or swap funding facility.

(2) TRANSFERRED AMOUNTS.—Each amount transferred to a participating State under this section shall remain available to the State until used by the State as permitted under paragraph (3).

(3) USE OF TRANSFERRED FUNDS.—Each participating State may use funds transferred to it under this section only—

(A) for making Federal contributions to, or for the account of, an approved State program;

(B) as collateral for a qualifying loan or swap funding facility;

(C) in the case of the first ⅓ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 5 percent of that first ⅓; or

(D) in the case of each successive ⅓ transferred, for paying administrative costs incurred by the State in implementing an approved State program in an amount not to exceed 3 percent of that successive ⅓.

(4) TERMINATION OF AVAILABILITY OF AMOUNTS NOT TRANSFERRED WITHIN 2 YEARS OF PARTICIPATION.—Any portion of a participating State's allocated amount that has not been transferred to the State under this section by the end of the 2-year period beginning on the date that the Secretary approves the State for participation may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the General Fund of the Treasury.

(5) TRANSFERRED AMOUNTS NOT ASSISTANCE.—The amounts transferred to a participating State under this section shall not be considered assistance for purposes of subtitle V of title 31, United States Code.

(6) DEFINITIONS.—In this section—

(A) the term ''allocated amount'' means the total amount of Federal funds allocated by the Secretary under subsection (b) to the participating State; and

(B) the term ''⅓'' means—

(i) in the case of the first ⅓ and second ⅓, an amount equal to 33 percent of a participating State's allocated amount; and

(ii) in the case of the last ⅓, an amount equal to 34 percent of a participating State's allocated amount.

SEC. 3004. APPROVING STATES FOR PARTICIPATION.

(a) APPLICATION.—Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for an allocation of Federal funds under the Program.

(b) GENERAL APPROVAL CRITERIA.—The Secretary shall approve a State to be a participating State, if—

(1) a specific department, agency, or political subdivision of the State has been designated to implement a State program and participate in the Program;

(2) all legal actions necessary to enable such designated department, agency, or political subdivision to implement a State program and participate in the Program have been accomplished;

(3) the State has filed an application with the Secretary for approval of a State capital access program under section 3005 or approval as a State other credit support program under section 3006, in each case within the time period provided in the respective section; and

(4) the State and the Secretary have executed an allocation agreement that—

(A) conforms to the requirements of this title;

(B) ensures that the State program complies with such national standards as are established by the Secretary under section 3009(a)(2);

(C) sets forth internal control, compliance, and reporting requirements as established by the Secretary, and such other terms and conditions necessary to carry out the purposes of this title, including an agreement by the State to allow the Secretary to audit State programs;

(D) requires that the State program be fully positioned, within 90 days of the State's execution of the allocation agreement with the Secretary, to act on providing the kind of credit support that the State program was established to provide; and

(E) includes an agreement by the State to deliver to the Secretary, and update annually, a schedule describing how the State intends to apportion among its State programs the Federal funds allocated to the State.

(c) CONTRACTUAL ARRANGEMENTS FOR IMPLEMENTATION OF STATE PROGRAMS.—A State may be approved to be a participating State, and be eligible for an allocation of Federal funds under the Program, if the State has contractual arrangements for the implementation and administration of its State program with—

(1) an existing, approved State program administered by another State; or

(2) an authorized agent of, or entity supervised by, the State, including for-profit and not-for-profit entities.

(d) SPECIAL PERMISSION.—

(1) CIRCUMSTANCES WHEN A MUNICIPALITY MAY APPLY DIRECTLY.—If a State does not, within 60 days after the date of enactment of this Act, file with the Secretary a notice of its intent to apply for approval by the Secretary of a State program or within 9 months after the date of enactment of this Act, file with the Secretary a complete application for approval of a State program, the Secretary may grant to municipalities of that State a special permission that will allow them to apply directly to the Secretary without the State for approval to be participating municipalities.

(2) TIMING REQUIREMENTS APPLICABLE TO MUNICIPALITIES APPLYING DIRECTLY.—To qualify for the special permission, a municipality of a State shall be required, within 12 months after the date of enactment of this Act, to file with the Secretary a complete application for approval by the Secretary of a State program.

(3) NOTICES OF INTENT AND APPLICATIONS FROM MORE THAN 1 MUNICIPALITY.—A municipality of a State may combine with 1 or more other municipalities of that State to

file a joint notice of intent to file and a joint application.

(4) APPROVAL CRITERIA.—The general approval criteria in paragraphs (2) and (4) shall apply.

(5) ALLOCATION TO MUNICIPALITIES.—

(A) IF MORE THAN 3.—If more than 3 municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to the 3 municipalities with the largest populations.

(B) IF 3 OR FEWER.—If 3 or fewer municipalities, or combination of municipalities as provided in paragraph (3), of a State apply for approval by the Secretary to be participating municipalities under this subsection, and the applications meet the approval criteria in paragraph (4), the Secretary shall allocate Federal funds to each applicant municipality or combination of municipalities.

(6) APPORTIONMENT OF ALLOCATED AMOUNT AMONG PARTICIPATING MUNICIPALITIES.—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall apportion the full amount of the Federal funds that are allocated to that State to municipalities that are approved under this subsection in amounts proportionate to the population of those municipalities, based on the most recent available decennial census.

(7) APPROVING STATE PROGRAMS FOR MUNICIPALITIES.—If the Secretary approves municipalities to be participating municipalities under this subsection, the Secretary shall take into account the additional considerations in section 3006(d) in making the determination under section 3005 or 3006 that the State program or programs to be implemented by the participating municipalities, including a State capital access program, is eligible for Federal contributions to, or for the account of, the State program.

SEC. 3005. APPROVING STATE CAPITAL ACCESS PROGRAMS.

(a) APPLICATION.—A participating State that establishes a new, or has an existing, State capital access program that meets the eligibility criteria in subsection (c) may apply to Secretary to have the State capital access program approved as eligible for Federal contributions to the reserve fund.

(b) APPROVAL.—The Secretary shall approve such State capital access program as eligible for Federal contributions to the reserve fund if—

(1) within 60 days after the date of enactment of this Act, the State has filed with the Secretary a notice of intent to apply for approval by the Secretary of a State capital access program;

(2) within 9 months after the date of enactment of this Act, the State has filed with the Secretary a complete application for approval by the Secretary of a capital access program;

(3) the State satisfies the requirements of subsections (a) and (b) of section 3004; and

(4) the State capital access program meets the eligibility criteria in subsection (c).

(c) ELIGIBILITY CRITERIA FOR STATE CAPITAL ACCESS PROGRAMS.—For a State capital access program to be approved under this section, that program shall be required to be a program of the State that—

(1) provides portfolio insurance for business loans based on a separate loan-loss reserve fund for each financial institution;

(2) requires insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund to have their loans enrolled in the reserve fund;

(3) provides for contributions to be made by the State to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and

(4) provides its portfolio insurance solely for loans that meet both the following requirements:

(A) The borrower has 500 employees or less at the time that the loan is enrolled in the Program.

(B) The loan amount does not exceed $5,000,000.

(d) FEDERAL CONTRIBUTIONS TO APPROVED STATE CAPITAL ACCESS PROGRAMS.—A State capital access program approved under this section will be eligible for receiving Federal contributions to the reserve fund in an amount equal to the sum of the amount of the insurance premium charges paid by the borrowers and by the financial institution to the reserve fund for loans that meet the requirements in subsection (c)(4). A participating State may use the Federal contribution to make its contribution to the reserve fund of an approved State capital access program.

(e) MINIMUM PROGRAM REQUIREMENTS FOR STATE CAPITAL ACCESS PROGRAMS.—The Secretary shall, by regulation or other guidance, prescribe Program requirements that meet the following minimum requirements:

(1) EXPERIENCE AND CAPACITY.—The participating State shall determine for each financial institution that participates in the State capital access program, after consultation with the appropriate Federal banking agency or, in the case of a financial institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the approved State capital access program. The determination by the State shall not be reviewable by the Secretary.

(2) INVESTMENT AUTHORITY.—Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the financial institution lender in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(3) LOAN TERMS AND CONDITIONS TO BE DETERMINED BY AGREEMENT.—A loan to be filed for enrollment in an approved State capital access program may be made with such interest rate, fees, and other terms and conditions, and the loan may be enrolled in the approved State capital access program and claims may be filed and paid, as agreed upon by the financial institution lender and the borrower, consistent with applicable law.

(4) LENDER CAPITAL AT-RISK.—A loan to be filed for enrollment in the State capital access program shall require the financial institution lender to have a meaningful amount of its own capital resources at risk in the loan.

(5) PREMIUM CHARGES MINIMUM AND MAXIMUM AMOUNTS.—The insurance premium charges payable to the reserve fund by the borrower and the financial institution lender shall be prescribed by the financial institution lender, within minimum and maximum limits that require that the sum of the insurance premium charges paid in connection with a loan by the borrower and the financial institution lender may not be less than 2 percent nor more than 7 percent of the amount of the loan enrolled in the approved State capital access program.

(6) STATE CONTRIBUTIONS.—In enrolling a loan in an approved State capital access program, the participating State may make a contribution to the reserve fund to supplement Federal contributions made under this Program.

(7) LOAN PURPOSE.—

(A) PARTICULAR LOAN PURPOSE REQUIREMENTS AND PROHIBITIONS.—In connection with the filing of a loan for enrollment in an approved State capital access program, the financial institution lender—

(i) shall obtain an assurance from each borrower that—

(I) the proceeds of the loan will be used for a business purpose;

(II) the loan will not be used to finance such business activities as the Secretary, by regulation, may proscribe as prohibited loan purposes for enrollment in an approved State capital access program; and

(III) the borrower is not—

(aa) an executive officer, director, or principal shareholder of the financial institution lender;

(bb) a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or

(cc) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(ii) shall provide assurances to the participating State that the loan has not been made in order to place under the protection of the approved State capital access program prior debt that is not covered under the approved State capital access program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

(iii) shall not allow the enrollment of a loan to a borrower that is a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender; and

(iv) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this title, including compliance with all applicable Federal and State laws, regulations, ordinances, and Executive orders.

(B) DEFINITIONS.—In this paragraph, the terms ''executive officer'', ''director'', ''principal shareholder'', ''immediate family'', and ''related interest'' refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(8) CAPITAL ACCESS FOR SMALL BUSINESSES IN UNDERSERVED COMMUNITIES.—At the time that a State applies to the Secretary to have the State capital access program approved as eligible for Federal contributions, the State shall deliver to the Secretary a report stating how the State plans to use the Federal contributions to the reserve fund to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

SEC. 3006. APPROVING COLLATERAL SUPPORT AND OTHER INNOVATIVE CREDIT ACCESS AND GUARANTEE INITIATIVES FOR SMALL BUSINESSES AND MANUFACTURERS.

(a) APPLICATION.—A participating State that establishes a new, or has an existing, credit support program that meets the eligibility criteria in subsection (c) may apply to the Secretary to have the State other credit support program approved as eligible for Federal contributions to, or for the account of, the State program.

(b) APPROVAL.—The Secretary shall approve such State other credit support program as eligible for Federal contributions to, or for the account of, the program if—

(1) the Secretary determines that the State satisfies the requirements of paragraphs (1) through (3) of section 3005(b);

(2) the Secretary determines that the State other credit support program meets the eligibility criteria in subsection (c);

(3) the Secretary determines the State other credit support program to be eligible based on the additional considerations in subsection (d); and

(4) within 9 months after the date of enactment of this Act, the State has filed with Treasury a complete application for Treasury approval.

(c) ELIGIBILITY CRITERIA FOR STATE OTHER CREDIT SUPPORT PROGRAMS.—For a State other credit support program to be approved under this section, that program shall be required to be a program of the State that—

(1) can demonstrate that, at a minimum, $1 of public investment by the State program will cause and result in $1 of new private credit;

(2) can demonstrate a reasonable expectation that, when considered with all other State programs of the State, such State programs together have the ability to use amounts of new Federal contributions to, or for the account of, all such programs in the State to cause and result in amounts of new small business lending at least 10 times the new Federal contribution amount;

(3) for those State other credit support programs that provide their credit support through 1 or more financial institution lenders, requires the financial institution lenders to have a meaningful amount of their own capital resources at risk in their small business lending; and

(4) uses Federal funds allocated under this title to extend credit support that—

(A) targets an average borrower size of 500 employees or less;

(B) does not extend credit support to borrowers that have more than 750 employees;

(C) targets support towards loans with an average principal amount of $5,000,000 or less; and

(D) does not extend credit support to loans that exceed a principal amount of $20,000,000.

(d) ADDITIONAL CONSIDERATIONS.—In making a determination that a State other credit support program is eligible for Federal contributions to, or for the account of, the State program, the Secretary shall take into account the following additional considerations:

(1) The anticipated benefits to the State, its businesses, and its residents to be derived from the Federal contributions to, or for the account of, the approved State other credit support program, including the extent to which resulting small business lending will expand economic opportunities.

(2) The operational capacity, skills, and experience of the management team of the State other credit support program.

(3) The capacity of the State other credit support program to manage increases in the volume of its small business lending.

(4) The internal accounting and administrative controls systems of the State other credit support program, and the extent to which they can provide reasonable assurance that funds of the State program are safeguarded against waste, loss, unauthorized use, or misappropriation.

(5) The soundness of the program design and implementation plan of the State other credit support program.

(e) FEDERAL CONTRIBUTIONS TO APPROVED STATE OTHER CREDIT SUPPORT PROGRAMS.—A State other credit support program approved under this section will be eligible for receiving Federal contributions to, or for the account of, the State program in an amount consistent with the schedule describing the apportionment of allocated Federal funds among State programs delivered by the State to the Secretary under the allocation agreement.

(f) MINIMUM PROGRAM REQUIREMENTS FOR STATE OTHER CREDIT SUPPORT PROGRAMS.—

(1) FUND TO PRESCRIBE.—The Secretary shall, by regulation or other guidance, prescribe Program requirements for approved State other credit support programs.

(2) CONSIDERATIONS FOR FUND.—In prescribing minimum Program requirements for approved State other credit support programs, the Secretary shall take into consideration, to the extent the Secretary determines applicable and appropriate, the minimum Program requirements for approved State capital access programs in section 3005(e).

SEC. 3007. REPORTS.

(a) QUARTERLY USE-OF-FUNDS REPORT.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each calendar quarter, beginning after the first full calendar quarter to occur after the date the Secretary approves a State for participation, the participating State shall submit to the Secretary a report on the use of Federal funding by the participating State during the previous calendar quarter.

(2) REPORT CONTENTS.—Each report under this subsection shall—

(A) indicate the total amount of Federal funding used by the participating State; and

(B) include a certification by the participating State that—

(i) the information provided in accordance with subparagraph (A) is accurate;

(ii) funds continue to be available and legally committed to contributions by the State to, or for the account of, approved State programs, less any amount that has been contributed by the State to, or for the account of, approved State programs subsequent to the State being approved for participation in the Program; and

(iii) the participating State is implementing its approved State program or programs in accordance with this title and regulations issued under section 3010.

(b) ANNUAL REPORT.—Not later than March 31 of each year, beginning March 31, 2011, each participating State shall submit to the Secretary an annual report that shall include the following information:

(1) The number of borrowers that received new loans originated under the approved State program or programs after the State program was approved as eligible for Federal contributions.

(2) The total amount of such new loans.

(3) Breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers that received such new loans.

(4) The zip code of each borrower that received such a new loan.

(5) Such other data as the Secretary, in the Secretary's sole discretion, may require to carry out the purposes of the Program.

(c) FORM.—The reports and data filed under subsections (a) and (b) shall be in such form as the Secretary, in the Secretary's sole discretion, may require.

(d) TERMINATION OF REPORTING REQUIREMENTS.—The requirement to submit reports under subsections (a) and (b) shall terminate for a participating State with the submission of the completed reports due on the first March 31 to occur after 5 complete 12-month periods after the State is approved by the Secretary to be a participating State.

SEC. 3008. REMEDIES FOR STATE PROGRAM TERMINATION OR FAILURES.

(a) REMEDIES.—

(1) IN GENERAL.—If any of the events listed in paragraph (2) occur, the Secretary, in the Secretary's discretion, may—

(A) reduce the amount of Federal funds allocated to the State under the Program; or

(B) terminate any further transfers of allocated amounts that have not yet been transferred to the State.

(2) CAUSAL EVENTS.—The events referred to in paragraph (1) are—

(A) termination by a participating State of its participation in the Program;

(B) failure on the part of a participating State to submit complete reports under section 3007 on a timely basis; or

(C) noncompliance by the State with the terms of the allocation agreement between the Secretary and the State.

(b) DEALLOCATED AMOUNTS TO BE REALLOCATED.—If, after 13 months, any portion of the amount of Federal funds allocated to a participating State is deemed by the Secretary to be no longer allocated to the State after actions taken by the Secretary under subsection (a)(1), the Secretary shall reallocate that portion among the participating States, excluding the State whose allocated funds were deemed to be no longer allocated, as provided in section 3003(b).

SEC. 3009. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

(1) consult with the Administrator of the Small Business Administration and the appropriate Federal banking agencies on the administration of the Program;

(2) establish minimum national standards for approved State programs;

(3) provide technical assistance to States for starting State programs and generally disseminate best practices;

(4) manage, administer, and perform necessary program integrity functions for the Program; and

(5) ensure adequate oversight of the approved State programs, including oversight of the cash flows, performance, and compliance of each approved State program.

(b) APPROPRIATIONS.—There is hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $1,500,000,000 to carry out the Program, including to pay reasonable costs of administering the Program.

(c) TERMINATION OF SECRETARY'S PROGRAM ADMINISTRATION FUNCTIONS.—The authorities and duties of the Secretary to implement and administer the Program shall terminate at the end of the 7-year period beginning on the date of enactment of this Act.

(d) EXPEDITED CONTRACTING.—During the 1-year period beginning on the date of enactment of this Act, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this title.

SEC. 3010. REGULATIONS.

The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SEC. 3011. OVERSIGHT AND AUDITS.

(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the use of funds made available under the Program.

(b) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

(c) REQUIRED CERTIFICATION.—

(1) FINANCIAL INSTITUTIONS CERTIFICATION.—With respect to funds received by a participating State under the Program, any

financial institution that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this Act shall certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312 (a)(2) and (c)(1)(A) of title 31, United States Code, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) SEX OFFENSE CERTIFICATION.—With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after the date of the enactment of this Act shall certify to the participating State that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

(d) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this title may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

TITLE IV—ADDITIONAL SMALL BUSINESS PROVISIONS

Subtitle A—Small Business Lending Fund

SEC. 4101. PURPOSE.

The purpose of this subtitle is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

SEC. 4102. DEFINITIONS.

For purposes of this subtitle:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term ''appropriate Federal banking agency'' has the meaning given such term under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) BANK HOLDING COMPANY.—The term ''bank holding company'' has the meaning given such term under section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)).

(4) CALL REPORT.—The term ''call report'' means—

(A) reports of Condition and Income submitted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(B) the Office of Thrift Supervision Thrift Financial Report;

(C) any report that is designated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraph (A) or (B);

(D) reports of Condition and Income as designated through guidance developed by the Secretary, in consultation with the Director of the Community Development Financial Institutions Fund; and

(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

(5) CDCI.—The term ''CDCI'' means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(6) CDCI INVESTMENT.—The term ''CDCI investment'' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms ''CDFI'' and ''community development financial institution'' have the meaning given the term ''community development financial institution'' under the Riegle Community Development and Regulatory Improvement Act of 1994.

(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms ''CDLF'' and ''community development loan fund'' mean any entity that—

(A) is certified by the Department of the Treasury as a community development financial institution loan fund;

(B) is exempt from taxation under the Internal Revenue Code of 1986; and

(C) had assets less than or equal to $10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

(9) CPP.—The term ''CPP'' means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

(10) CPP INVESTMENT.—The term ''CPP investment'' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

(11) ELIGIBLE INSTITUTION.—The term ''eligible institution'' means—

(A) any insured depository institution, which—

(i) is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

(ii) has total assets of equal to or less than $10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than $10,000,000,000, as so reported;

(B) any bank holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

(C) any savings and loan holding company which has total consolidated assets of equal to or less than $10,000,000,000, as reported in the call report of the savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

(D) any community development financial institution loan fund which has total assets of equal to or less than $10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

(12) FUND.—The term ''Fund'' means the Small Business Lending Fund established under section 4103(a)(1).

(13) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(14) MINORITY-OWNED AND WOMEN-OWNED BUSINESS.—The terms ''minority-owned business'' and ''women-owned business'' shall have the meaning given the terms ''minority-owned business'' and ''women's business'', respectively, under section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441A(r)(4)).

(15) PROGRAM.—The term ''Program'' means the Small Business Lending Fund Program authorized under section 4103(a)(2).

(16) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the meaning given such term under section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(17) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(18) SMALL BUSINESS LENDING.—

(A) IN GENERAL.—The term ''small business lending'' means lending, as defined by and reported in an eligible institutions' quarterly call report, where each loan comprising such lending is one of the following types:

(i) Commercial and industrial loans.

(ii) Owner-occupied nonfarm, nonresidential real estate loans.

(iii) Loans to finance agricultural production and other loans to farmers.

(iv) Loans secured by farmland.

(B) EXCLUSION.—No loan that has an original amount greater than $10,000,000 or that goes to a business with more than $50,000,000 in revenues shall be included in the measure.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

(19) VETERAN-OWNED BUSINESS.—

(A) The term ''veteran-owned business'' means a business—

(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more veterans; and

(iii) a significant percentage of senior management positions of which are held by veterans.

(B) For purposes of this paragraph, the term ''veteran'' has the meaning given such term in section 101(2) of title 38, United States Code.

SEC. 4103. SMALL BUSINESS LENDING FUND.

(a) FUND AND PROGRAM.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the ''Small Business Lending Fund'', which shall be administered by the Secretary.

(2) PROGRAMS AUTHORIZED.—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this subtitle.

(b) USE OF FUND.—

(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term ''other financial instruments'' shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordinated to the claims of other creditors of the eligible institution.

(2) MAXIMUM PURCHASE LIMIT.—The aggregate amount of purchases (and commitments to purchase) made pursuant to paragraph (1) may not exceed $30,000,000,000.

(3) PROCEEDS USED TO PAY DOWN PUBLIC DEBT.—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

(4) LIMITATION ON PURCHASES FROM CDLFS.—

(A) IN GENERAL.—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

(B) ELIGIBILITY STANDARDS.—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the Program and repay the investment. Such criteria shall include the following:

(i) Ratio of net assets to total assets is at least 20 percent.

(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

(iii) Positive net income measured on a 3-year rolling average.

(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 4108, to the extent provided by appropriations Acts.

(d) TERMS.—

(1) APPLICATION.—

(A) INSTITUTIONS WITH ASSETS OF $1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than $1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(B) INSTITUTIONS WITH ASSETS OF MORE THAN $1,000,000,000 AND LESS THAN OR EQUAL TO $10,000,000,000.—Eligible institutions having total assets of more than $1,000,000,000 but less than $10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(C) TREATMENT OF HOLDING COMPANIES.—In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term ''control'' with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term ''control'' with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall—

(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether the eligible institution may receive such capital investment;

(B) in the case of an eligible institution that is a State-chartered bank, consider any views received from the State banking regulator of the State of the eligible institution regarding the financial condition of the eligible institution; and

(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial condition of the institution if the conditions in subparagraph (B) are satisfied.

(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

(I) equal to or greater than 100 percent of the capital to be received under the Program; and

(II) subordinate to the capital investment made by the Secretary under the Program.

(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

(A) IN GENERAL.—An eligible institution may not receive any capital investment under the Program, if—

(i) such institution is on the FDIC problem bank list; or

(ii) such institution has been removed from the FDIC problem bank list for less than 90 days.

(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term ''FDIC problem bank list'' means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

(5) INCENTIVES TO LEND.—

(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially;

(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters

immediately preceding the date of enactment of this Act, minus adjustments from each quarterly balance in respect of—

(I) net loan charge offs with respect to small business lending; and

(II) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary; and

(iii) during any calendar quarter during the initial 2-year period referred to in clause (ii), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in the amount of small business lending relative to the baseline—

(I) if the amount of small business lending has increased by less than 2.5 percent, the dividend or interest rate shall be 5 percent;

(II) if the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;

(III) if the amount of small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;

(IV) if the amount of small business lending has increased by 7.5 percent or greater, and but by less than 10.0 percent, the dividend or interest rate shall be 2 percent; or

(V) if the amount of small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

(B) BASIS OF INITIAL RATE.—The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

(C) TIMING OF RATE ADJUSTMENTS.—Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following calendar quarter and payable in the second following quarter.

(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

(E) RATE FOLLOWING INITIAL 4½ -YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period that begins on the date of the capital investment under the Program.

(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term ''S corporation'' has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986.

(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

(i) includes, as a term and condition, that the capital investment will—

(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or

(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock or instrument shall carry the highest dividend or interest rate payable; and

(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock or financial instrument under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle.

(7) CAPITAL PURCHASE PROGRAM REFINANCE.—

(A) IN GENERAL.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

(B) PROHIBITION ON PARTICIPATION BY NONPAYING CPP PARTICIPANTS.—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment.

(8) OUTREACH TO MINORITIES, WOMEN, AND VETERANS.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that—

(A) represent or work within or are members of minority communities;

(B) represent or work with or are women; and

(C) represent or work with or are veterans.

(9) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 4104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

(10) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds.

SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in this subtitle, including, without limitation, the following:

(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act, to perform reasonable duties related to this subtitle.

(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this subtitle.

(5) Subject to section 4103(b)(3), the Secretary may manage any assets purchased under this subtitle, including revenues and portfolio risks therefrom.

(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this subtitle, upon terms and conditions and at a price determined by the Secretary.

(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this subtitle.

(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this subtitle.

SEC. 4105. CONSIDERATIONS.

In exercising the authorities granted in this subtitle, the Secretary shall take into consideration—

(1) increasing the availability of credit for small businesses;

(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;

(3) protecting and increasing American jobs;

(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;

(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;

(6) providing transparency with respect to use of funds provided under this subtitle;

(7) minimizing the cost to taxpayers of exercising the authorities;

(8) promoting and engaging in financial education to would-be borrowers; and

(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

SEC. 4106. REPORTS.

The Secretary shall provide to the appropriate committees of Congress—

(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;

(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and amounts each institution has received under the Program; and

(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

SEC. 4107. OVERSIGHT AND AUDITS.

(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

(b) OFFICE OF SMALL BUSINESS LENDING FUND PROGRAM OVERSIGHT.—

(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the ''Office of Small Business Lending Fund Program Oversight'' to provide oversight of the Program.

(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

(3) REPORTING.—

(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

(B) RECOMMENDATIONS.—With respect to any deficiencies identified in a report under subparagraph (A), the Secretary shall either—

(i) take actions to address such deficiencies; or

(ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.

(5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.

(6) DEFINITIONS.—For purposes of this subsection:

(A) OFFICE.—The term ''Office'' means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).

(B) INSPECTOR GENERAL.—The term ''Inspector General'' means the Inspector General of the Department of the Treasury.

(c) GAO AUDIT.—The Comptroller General of the United States shall perform an annual audit of the Program and issue a report to the appropriate committees of Congress containing the results of such audit.

(d) REQUIRED CERTIFICATIONS.—

(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

(2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

(e) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

SEC. 4108. CREDIT REFORM; FUNDING.

(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this subtitle shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) FUNDS MADE AVAILABLE.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the costs of $30,000,000,000 of capital investments in eligible institutions, including the costs of modifying such investments, and reasonable costs of administering the program of making, holding, managing, and selling the capital investments.

SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORITIES.

(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle shall terminate 1 year after the date of enactment of this Act.

(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 4104 shall not be limited by the termination date in subsection (a).

SEC. 4110. PRESERVATION OF AUTHORITY.

Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

SEC. 4111. ASSURANCES.

(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal banking agency for the eligible institution, repay the investment without impediment.

SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses, veteran-owned businesses, and minority-owned businesses.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

SEC. 4113. SENSE OF CONGRESS.

It is the sense of Congress that the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a contributing cause of decreased small business lending and increased regulatory uncertainty at community banks.

Subtitle B—Other Provisions

PART I—SMALL BUSINESS EXPORT PROMOTION INITIATIVES

SEC. 4221. SHORT TITLE.

This part may be cited as the ''Export Promotion Act of 2010''.

SEC. 4222. GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.

(a) INCREASE IN EMPLOYEES WITH RESPONSIBILITY FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES.—

(1) IN GENERAL.—During the 24-month period beginning on the date of the enactment of this Act, the Secretary of Commerce shall increase the number of full-time departmental employees whose primary responsibilities involve promoting or facilitating participation by United States businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by United States businesses. In carrying out this subsection, the Secretary shall ensure that—

(A) the cohort of such employees is increased by not less than 80 persons; and

(B) a substantial portion of the increased cohort is stationed outside the United States.

(2) ENHANCED FOCUS ON UNITED STATES SMALL- AND MEDIUM-SIZED BUSINESSES.—In carrying out this subsection, the Secretary shall take such action as may be necessary to ensure that the activities of the Department of Commerce relating to promoting and facilitating participation by United States businesses in the global marketplace include promoting and facilitating such participation by small and medium-sized businesses in the United States.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2011 and 2012 such sums as may be necessary to carry out this section.

(b) ADDITIONAL FUNDING FOR GLOBAL BUSINESS DEVELOPMENT AND PROMOTION ACTIVITIES OF THE DEPARTMENT OF COMMERCE.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, $30,000,000 to promote or facilitate participation by United States businesses in the global marketplace and facilitating the entry into, or expansion of, such participation by United States businesses.

(2) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by paragraph (1), the Secretary of Commerce shall give preference to activities that—

(A) assist small- and medium-sized businesses in the United States; and

(B) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4223. ADDITIONAL FUNDING TO IMPROVE ACCESS TO GLOBAL MARKETS FOR RURAL BUSINESSES.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of the fiscal years 2011 and 2012 for improving access to the global marketplace for goods and services provided by rural businesses in the United States.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4224. ADDITIONAL FUNDING FOR THE EXPORTECH PROGRAM.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce $11,000,000 for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, to expand ExporTech, a joint program of the Hollings Manufacturing Partnership Program and the Export Assistance Centers of the Department of Commerce.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4225. ADDITIONAL FUNDING FOR THE MARKET DEVELOPMENT COOPERATOR PROGRAM OF THE DEPARTMENT OF COMMERCE.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce for the period beginning on the date of the enactment of this Act and ending 18 months thereafter, $15,000,000 for the Manufacturing and Services unit of the International Trade Administration—

(1) to establish public-private partnerships under the Market Development Cooperator Program of the International Trade Administration; and

(2) to underwrite a portion of the start-up costs for new projects carried out under that Program to strengthen the competitiveness and market share of United States industry, not to exceed, for each such project, the lesser of—

(A) ⅓ of the total start-up costs for the project; or

(B) $500,000.

(b) REQUIREMENTS.—In obligating and expending the funds authorized to be appropriated by subsection (a), the Secretary of Commerce shall give preference to activities that—

(1) assist small- and medium-sized businesses in the United States; and

(2) the Secretary determines will create or sustain the greatest number of jobs in the United States and obtain the maximum return on investment.

SEC. 4226. HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM; TECHNOLOGY INNOVATION PROGRAM.

(a) HOLLINGS MANUFACTURING PARTNERSHIP PROGRAM.—Section 25(f) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(f)) is amended by adding at the end the following:

''(7) GLOBAL MARKETPLACE PROJECTS.—In making awards under this subsection, the Director, in consultation with the Manufacturing Extension Partnership Advisory Board and the Secretary of Commerce, may—

''(A) take into consideration whether an application has significant potential for enhancing the competitiveness of small and medium-sized United States manufacturers in the global marketplace; and

''(B) give a preference to applications for such projects to the extent the Director deems appropriate, taking into account the broader purposes of this subsection.''.

(b) TECHNOLOGY INNOVATION PROGRAM.—In awarding grants, cooperative agreements, or contracts under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), in addition to the award criteria set forth in subsection (c) of that section, the Director of the National Institute of Standards and Technology may take into consideration whether an application has significant potential for enhancing the competitiveness of small- and medium-sized businesses in the United States in the global marketplace. The Director shall consult with the Technology Innovation Program Advisory Board and the Secretary of Commerce in implementing this subsection.

SEC. 4227. SENSE OF THE SENATE CONCERNING FEDERAL COLLABORATION WITH STATES ON EXPORT PROMOTION ISSUES.

It is the sense of the Senate that the Secretary of Commerce should enhance Federal collaboration with the States on export promotion issues by—

(1) providing the necessary training to the staff at State international trade agencies to enable them to assist the United States and Foreign Commercial Service (established by section 2301 of the Export Enhancement Act of 1988 (15 U.S.C. 4721)) in providing counseling and other export services to businesses in their communities; and

(2) entering into agreements with State international trade agencies for those agencies to deliver export promotion services in their local communities in order to extend the outreach of United States and Foreign Commercial Service programs.

SEC. 4228. REPORT ON TARIFF AND NONTARIFF BARRIERS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the United States Trade Representative and other appropriate entities, shall report to Congress on the tariff and nontariff barriers imposed by Colombia, the Republic of Korea, and Panama with respect to exports of articles from the United States, including articles exported or produced by small- and medium-sized businesses in the United States.

PART II—MEDICARE FRAUD

SEC. 4241. USE OF PREDICTIVE MODELING AND OTHER ANALYTICS TECHNOLOGIES TO IDENTIFY AND PREVENT WASTE, FRAUD, AND ABUSE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.

(a) USE IN THE MEDICARE FEE-FOR-SERVICE PROGRAM.—The Secretary shall use predictive modeling and other analytics technologies (in this section referred to as ''predictive analytics technologies'') to identify improper claims for reimbursement and to prevent the payment of such claims under the Medicare fee-for-service program.

(b) PREDICTIVE ANALYTICS TECHNOLOGIES REQUIREMENTS.—The predictive analytics technologies used by the Secretary shall—

(1) capture Medicare provider and Medicare beneficiary activities across the Medicare fee-for-service program to provide a comprehensive view across all providers, beneficiaries, and geographies within such program in order to—

(A) identify and analyze Medicare provider networks, provider billing patterns, and beneficiary utilization patterns; and

(B) identify and detect any such patterns and networks that represent a high risk of fraudulent activity;

(2) be integrated into the existing Medicare fee-for-service program claims flow with minimal effort and maximum efficiency;

(3) be able to—

(A) analyze large data sets for unusual or suspicious patterns or anomalies or contain other factors that are linked to the occurrence of waste, fraud, or abuse;

(B) undertake such analysis before payment is made; and

(C) prioritize such identified transactions for additional review before payment is made in terms of the likelihood of potential waste, fraud, and abuse to more efficiently utilize investigative resources;

(4) capture outcome information on adjudicated claims for reimbursement to allow for refinement and enhancement of the predictive analytics technologies on the basis of such outcome information, including post-payment information about the eventual status of a claim; and

(5) prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until such time as the claims have been verified as valid.

(c) IMPLEMENTATION REQUIREMENTS.—

(1) REQUEST FOR PROPOSALS.—Not later than January 1, 2011, the Secretary shall issue a request for proposals to carry out this section during the first year of implementation. To the extent the Secretary determines appropriate—

(A) the initial request for proposals may include subsequent implementation years; and

(B) the Secretary may issue additional requests for proposals with respect to subsequent implementation years.

(2) FIRST IMPLEMENTATION YEAR.—The initial request for proposals issued under paragraph (1) shall require the contractors selected to commence using predictive analytics technologies on July 1, 2011, in the 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program.

(3) SECOND IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(1)(B), the Secretary shall expand the use of predictive analytics technologies on October 1, 2012, to apply to an additional 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program, after the States identified under paragraph (2).

(4) THIRD IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(2), the Secretary shall expand the use of predictive analytics technologies on January 1, 2014, to apply to the Medicare fee-for-service program in any State not identified under paragraph (2) or (3) and the commonwealths and territories.

(5) FOURTH IMPLEMENTATION YEAR.—Based on the results of the report and recommendation required under subsection (e)(3), the Secretary shall expand the use of predictive analytics technologies, beginning April 1, 2015, to apply to Medicaid and CHIP. To the extent the Secretary determines appropriate, such expansion may be made on a phased-in basis.

(6) OPTION FOR REFINEMENT AND EVALUATION.—If, with respect to the first, second, or third implementation year, the Inspector General of the Department of Health and Human Services certifies as part of the report required under subsection (e) for that year no or only nominal actual savings to the Medicare fee-for-service program, the Secretary may impose a moratorium, not to exceed 12 months, on the expansion of the use of predictive analytics technologies under this section for the succeeding year in order to refine the use of predictive analytics technologies to achieve more than nominal savings before further expansion. If a moratorium is imposed in accordance with this paragraph, the implementation dates applicable for the succeeding year or years shall be adjusted to reflect the length of the moratorium period.

(d) CONTRACTOR SELECTION, QUALIFICATIONS, AND DATA ACCESS REQUIREMENTS.—

(1) SELECTION.—

(A) IN GENERAL.—The Secretary shall select contractors to carry out this section using competitive procedures as provided for in the Federal Acquisition Regulation.

(B) NUMBER OF CONTRACTORS.—The Secretary shall select at least 2 contractors to carry out this section with respect to any year.

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The Secretary shall enter into a contract under this section with an entity only if the entity—

(i) has leadership and staff who—

(I) have the appropriate clinical knowledge of, and experience with, the payment rules and regulations under the Medicare fee-for-service program; and

(II) have direct management experience and proficiency utilizing predictive analytics technologies necessary to carry out the requirements under subsection (b); or

(ii) has a contract, or will enter into a contract, with another entity that has leadership and staff meeting the criteria described in clause (i).

(B) CONFLICT OF INTEREST.—The Secretary may only enter into a contract under this section with an entity to the extent that the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(3) DATA ACCESS.—The Secretary shall provide entities with a contract under this section with appropriate access to data necessary for the entity to use predictive analytics technologies in accordance with the contract.

(e) REPORTING REQUIREMENTS.—

(1) FIRST IMPLEMENTATION YEAR REPORT.—Not later than 3 months after the completion of the first implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A description of the implementation of the use of predictive analytics technologies during the year.

(B) A certification of the Inspector General of the Department of Health and Human Services that—

(i) specifies the actual and projected savings to the Medicare fee-for-service program as a result of the use of predictive analytics technologies, including estimates of the amounts of such savings with respect to both improper payments recovered and improper payments avoided;

(ii) the actual and projected savings to the Medicare fee-for-service program as a result of such use of predictive analytics technologies relative to the return on investment for the use of such technologies and in comparison to other strategies or technologies used to prevent and detect fraud, waste, and abuse in the Medicare fee-for-service program; and

(iii) includes recommendations regarding—

(I) whether the Secretary should continue to use predictive analytics technologies;

(II) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(III) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) An analysis of the extent to which the use of predictive analytics technologies successfully prevented and detected waste, fraud, or abuse in the Medicare fee-for-service program.

(D) A review of whether the predictive analytics technologies affected access to, or the quality of, items and services furnished to Medicare beneficiaries.

(E) A review of what effect, if any, the use of predictive analytics technologies had on Medicare providers.

(F) Any other items determined appropriate by the Secretary.

(2) SECOND YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the second implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes, with respect to such year, the items required under paragraph (1) as well as any other additional items determined appropriate by the Secretary with respect to the report for such year.

(3) THIRD YEAR IMPLEMENTATION REPORT.—Not later than 3 months after the completion of the third implementation year under this section, the Secretary shall submit to the appropriate committees of Congress, and make available to the public, a report that includes with respect to such year, the items required under paragraph (1), as well as any other additional items determined appropriate by the Secretary with respect to the report for such year, and the following:

(A) An analysis of the cost-effectiveness and feasibility of expanding the use of predictive analytics technologies to Medicaid and CHIP.

(B) An analysis of the effect, if any, the application of predictive analytics technologies to claims under Medicaid and CHIP would have on States and the commonwealths and territories.

(C) Recommendations regarding the extent to which technical assistance may be necessary to expand the application of predictive analytics technologies to claims under Medicaid and CHIP, and the type of any such assistance.

(f) INDEPENDENT EVALUATION AND REPORT.—

(1) EVALUATION.—Upon completion of the first year in which predictive analytics technologies are used with respect to claims under Medicaid and CHIP, the Secretary shall, by grant, contract, or interagency agreement, conduct an independent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

(2) REPORT.—Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Congress on the evaluation that shall include the results of the evaluation, the Secretary's response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) WAIVER AUTHORITY.—The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act, including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) FUNDING.—

(1) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, $100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) RESERVATIONS.—

(A) INDEPENDENT EVALUATION.—The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) APPLICATION TO MEDICAID AND CHIP.—The Secretary shall reserve such portion of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) DEFINITIONS.—In this section:

(1) COMMONWEALTHS AND TERRITORIES.—The term ''commonwealth and territories'' includes the Commonwealth of Puerto Rico,

the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP.—The term ''CHIP'' means the Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) MEDICAID.—The term ''Medicaid'' means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) MEDICARE BENEFICIARY.—The term ''Medicare beneficiary'' means an individual enrolled in the Medicare fee-for-service program.

(5) MEDICARE FEE-FOR-SERVICE PROGRAM.—The term ''Medicare fee-for-service program'' means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) MEDICARE PROVIDER.—The term ''Medicare provider'' means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) STATE.—The term ''State'' means each of the 50 States and the District of Columbia.

TITLE V—BUDGETARY PROVISIONS

SEC. 5001. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SA 4595. Mr. REID (for Mr. NELSON of Florida) proposed an amendment to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

At the end of subtitle B of title II, add the following:

PART V—ADDITIONAL PROVISIONS

SEC. _____. CERTAIN EXCEPTIONS TO INFORMATION REPORTING PROVISIONS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006 of the Patient Protection and Affordable Care Act and section 2101 of this Act, is amended by redesignating subsection (j) as subsection (k) and inserting after subsection (i) the following new subsection:

''(j) COORDINATION WITH RETURNS RELATING TO PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.—This section shall not apply to any amount with respect to which a return is required to be made under section 6050W.''.

(b) INCREASE IN THRESHOLD AMOUNT AND EXEMPTION FOR SMALL EMPLOYERS FOR REPORTING OF PAYMENTS RELATING TO PROPERTY.—Subsection (a) of section 6041 of the Internal Revenue Code of 1986, as amended by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new sentences: ''In the case of payments in consideration of property, this subsection shall be applied by substituting '$5,000' for '$600' and this subsection shall not apply in the case of any person employing not more than 25 employees at any time during the taxable year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.''.

(c) REGULATORY AUTHORITY.—Subsection (k) of section 6041 of the Internal Revenue Code of 1986, as redesignated by subsection (a), is amended by striking ''including'' and all that follows and inserting ''including—

''(1) rules to prevent duplicative reporting of transactions, and

''(2) rules which identify, and provide exceptions for, payments which bear minimal risk of noncompliance.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts with respect to which a return is required to be made in calendar years beginning after December 31, 2010.

(2) PROPERTY THRESHOLD.—The amendment made by subsection (b) shall apply as if included in the amendments made by section 9006 of the Patient Protection and Affordable Care Act.

(e) PUBLIC COMMENTS AND SUGGESTIONS.—In order to minimize the burden on small businesses and to avoid duplicative information reporting by small businesses, the Secretary of the Treasury or the Secretary's designee is directed to request and consider comments and suggestions from the public concerning implementation and administration of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, including—

(1) the appropriate scope of the terms ''gross proceeds'' and ''amounts in consideration for property'' in section 6041(a) of the Internal Revenue Code of 1986, as amended by such section 9006,

(2) whether or how the reporting requirements should apply to payments between affiliated corporations, including payments related to intercompany transactions within the same consolidated group,

(3) the appropriate time and manner of reporting to the Internal Revenue Service, and whether, and what, changes to existing procedures, forms, and software for filing information returns are needed, including electronic filing of information returns to the Internal Revenue Service,

(4) whether, and what, changes to existing procedures and forms to acquire taxpayer identification numbers are needed, and

(5) how back-up withholding requirements should apply.

(f) TIMELY GUIDANCE.—The Secretary of the Treasury is directed to issue timely guidance that will implement and administer the amendments made by section 9006 of the Patient Protection and Affordable Care Act in a manner that minimizes the burden on small businesses and avoids duplicative reporting by small businesses.

(g) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Prior to the effective date of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, the Secretary of the Treasury shall report quarterly to Congress concerning the steps taken to implement such amendments, including ways to limit compliance burdens and to avoid duplicative reporting. Such reports shall include—

(A) a description of actions taken to minimize, reduce or eliminate burdens associated with information reporting by small businesses, and

(B) a description of business transactions exempted from reporting requirements to avoid duplicative reporting or because such transactions represent minimal compliance risk.

(2) COMPARISON.—Not later than 6 months prior to the effective date of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, the Secretary of the Treasury shall report to Congress a comparison of the expected compliance requirements after the implementation of such amendments to the compliance requirements under section 6041 of the Internal Revenue Code of 1986 prior to the effective date of such amendments.

SEC. _____. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED OIL COMPANIES FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY PRODUCTS THEREOF.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', or'', and by inserting after clause (iii) the following new clause:

''(iv) in the case of a taxpayer which is a major integrated oil company (as defined in section 167(h)(5)(B)), oil related qualified production activities (within the meaning of subsection (d)(9)(B)).''.

(b) CONFORMING AMENDMENT.—Section 199(d)(9)(A) of the Internal Revenue Code of 1986 is amended by inserting ''(other than a major integrated oil company (as defined in section 167(h)(5)(B))'' after ''taxpayer''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

SA 4596. Mr. REID (for Mr. JOHANNS) proposed an amendment to amendment SA 4595 proposed by Mr. REID (for Mr. NELSON of Florida) to the amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

At the appropriate place, insert the following:

PART IV—ADDITIONAL PROVISIONS

SEC. 4271. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

Section 9006 of the Patient Protection and Affordable Care Act, and the amendments made thereby, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such section, and amendments, had never been enacted.

SEC. 4272. EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.

Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ''8 percent'' and inserting ''5 percent''.

SEC. 4273. USE OF PREVENTION AND PUBLIC HEALTH FUND.

(a) USE OF FUNDS AS OFFSET THROUGH FISCAL YEAR 2017.—Section 4002(b) of the Patient Protection and Affordable Care Act is

amended by striking ''appropriated—'' and all that follows and inserting ''appropriated, for fiscal year 2018, and each fiscal year thereafter, $2,000,000,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 4002 of the Patient Protection and Affordable Care Act.

SEC. 4274. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 4.25 percentage points.

SA 4597. Mr. REID proposed an amendment to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

At the end of the language proposed to be stricken, insert the following:

This section shall become effective 6 days after enactment.

SA 4598. Mr. REID proposed an amendment to amendment SA 4597 proposed by Mr. REID to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

In the amendment, strike ''6'' and insert ''4''.

SA 4599. Mr. REID proposed an amendment to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other puropses; as follows:

At the end, insert the following:

The Finance Committee is requested to study the impact of changes to the system whereby small business entities are provided with all opportunities for access to capital.

SA 4600. Mr. REID proposed an amendment to amendment SA 4599 proposed by Mr. REID to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

At the end insert the following:

''and the economic impact on local communities served by small businesses.

SA 4601. Mr. REID proposed an amendment to amendment SA 4600 proposed by Mr. REID to the amendment SA 4599 proposed by Mr. REID to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; as follows:

At the end, insert the following:

''and its impact on state and local governments.

SA 4602. Mr. REID (for Mr. ROCKEFELLER) proposed an amendment to the bill S. 3729, to authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes; as follows:

On page 2, after the item relating to section 504, insert the following:

Sec. 505. Scientific access to the International Space Station.

On page 4, before line 1, after the item relating to section 1210, insert the following:

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

Sec. 1301. Compliance provision.

On page 36, after line 25, insert the following:

SEC. 309. REPORT REQUIREMENT.—Within 90 days after the date of enactment of this Act, or upon completion of reference designs for the Space Launch System and Multi-Purpose Crew Vehicle authorized by this Act, whichever occurs first, the Administrator shall provide a detailed report to the appropriate committees of Congress that provides an overall description of the reference vehicle design, the assumptions, description, data, and analysis of the systems trades and resolution process, justification of trade decisions, the design factors which implement the essential system and vehicle capability requirements established by this Act, the explanation and justification of any deviations from those requirements, the plan for utilization of existing contracts, civil service and contract workforce, supporting infrastructure utilization and modifications, and procurement strategy to expedite development activities through modification of existing contract vehicles, and the schedule of design and development milestones and related schedules leading to the accomplishment of operational goals established by this Act. The Administrator shall provide an update of this report as part of the President's annual Budget Request.

On page 32, line 4, strike ''measures'' and insert ''measures, including investments to improve launch infrastructure at NASA flight facilities scheduled to launch cargo to the ISS under the commercial orbital transportation services program,''.

On page 33, after line 25, insert the following:

(2) The extent to which the United States is reliant on non-United States systems, including foreign rocket motors and foreign launch vehicles.

On page 34, line 1, strike ''(2)'' and insert ''(3)''.

On page 38, strike lines 10 through 14 and insert the following:

(a) FY 2011 CONTRACTS AND PROCUREMENT AGREEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator may not execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Administrator may execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011 if—

(A) the requirements of paragraphs (1), (2), and (3) of subsection (b) are met; and

(B) the total amount involved for all such contracts and procurement agreements executed during fiscal year 2011 does not exceed $50,000,000 for fiscal year 2011.

On page 88, beginning with ''Upon'' in line 4, strike through ''centers.'' in line 9 and insert ''Upon completion of the study required by Section 1102, the Administrator shall establish an independent panel to examine alternative management models for NASA's workforce, centers, and related facilities in order to improve efficiency and productivity, while nonetheless maintaining core Federal competencies and keeping appropriately governmental functions internal to NASA.''.

On page 89, beginning with ''involuntary'' in line 24, strike through line 2 on page 90 and insert ''involuntary separations of permanent, non-Senior-Executive-Service, civil servant employees before September 30, 2013, except for cause on charges of misconduct, delinquency, or inefficiency.

On page 103, after line 9, insert the following:

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

SEC. 1301. COMPLIANCE PROVISION.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

On page 61, line 23, after ''—ers'' insert ''or the retrieval of NASA manned space vehicles, or significant contributions to human space flight.''

SA 4603. Mr. REID (for Mr. PRYOR (for himself, Mr. ENSIGN, Mr. KERRY, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 3304, to increase the access of persons with disabilities to modern communications, and for other purposes; as follows:

On page 46, after line 16, after the item relating to section 2 insert the following:

Sec. 3. Proprietary technology.

On page 48, between lines 3 and 4, insert the following:

SEC. 3. PROPRIETARY TECHNOLOGY.

No action taken by the Federal Communications Commission to implement this Act or any amendment made by this Act shall mandate the use or incorporation of proprietary technology.

On page 48, beginning in line 21, strike ''sites and venues'' and insert ''websites and services''.

On page 49, line 6, strike ''persons'' and insert ''individuals''

On page 56, beginning with line 22, strike through line 12 on page 57, and insert the following:

''(a) MANUFACTURING.—

''(1) IN GENERAL.—With respect to equipment manufactured after the effective date of the regulations established pursuant to

subsection (e), and subject to those regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

''(2) INDUSTRY FLEXIBILITY.—A manufacturer of equipment may satisfy the requirements of paragraph (1) with respect to such equipment by—

''(A) ensuring that the equipment that such manufacturer offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

''(B) if such manufacturer chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

''(b) SERVICE PROVIDERS.—

''(1) IN GENERAL.—With respect to services provided after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a provider of advanced communications services shall ensure that such services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

''(2) INDUSTRY FLEXIBILITY.—A provider of services may satisfy the requirements of paragraph (1) with respect to such services by—

''(A) ensuring that the services that such provider offers are accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

''(B) if such provider chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

On page 58, beginning with line 1, strike through line 7 on page 59, and insert the following:

''(e) REGULATIONS.—

''(1) IN GENERAL.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—

''(A) include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;

''(B) provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services;

''(C) determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks; and

''(D) not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilities the manufacturers' and service providers' compliance with sections (a) through (c).

''(2) PROSPECTIVE GUIDELINES.—The Commission shall issue prospective guidelines for a manufacturer or provider regarding the requirements of this section.

On page 59, beginning in line 16, strike ''section,'' and insert ''section and section 718,''.

On page 60, strike lines 11 through 21, and insert the following:

''(h) COMMISSION FLEXIBILITY.—

''(1) WAIVER.—The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider of advanced communications services or any interested party, to waive the requirements of this section for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that—

''(A) is capable of accessing an advanced communications service; and

''(B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

''(2) SMALL ENTITY EXEMPTION.—The Commission may exempt small entities from the requirements of this section.

''(i) CUSTOMIZED EQUIPMENT OR SERVICES.—The provisions of this section shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

''(j) RULE OF CONSTRUCTION.—This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.

On page 61, line 4, strike ''section 255 or 716,'' and insert ''section 255, 716, or 718,''.

On page 61, line 12, strike ''section 255 or 716.'' and insert ''section 255, 716, or 718.''.

On page 61, line 16, strike ''section 255 or 716.'' and insert ''section 255, 716, or 718.''.

On page 61, line 19, strike ''section 255 or 716'' and insert ''section 255, 716, or 718''.

On page 62, strike lines 7 through 14 and insert the following:

(i) If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with requirements of those sections within a reasonable time established by the Commission in its order.

On page 63, line 4, after the period insert ''Before issuing a final order under paragraph (3)(B)(i), the Commission shall provide such party a reasonable opportunity to comment on any proposed remedial action.''.

On page 63, line 8, strike ''sections 255 and 716'' and insert ''sections 255, 716, and 718''.

On page 63, beginning in line 11, strike ''sections 255 and 716,'' and insert ''sections 255, 716, and 718,''.

On page 64, line 21, strike ''section 255 or 716.'' and insert ''section 255, 716, or 718.''.

On page 65, line 20, strike ''section 255 and 716.'' and insert ''sections 255, 716, and 718.''.

On page 68, line 15, strike ''sections 255 and 716.'' and insert ''sections 255, 716, and 718.''.

On page 69, line 2, strike ''sections 255 and 716.'', the closing quotation marks, and the second period and insert ''sections 255, 716, and 718.''.

On page 69, between lines 2 and 3, insert the following:

''SEC. 718. INTERNET BROWSERS BUILT INTO TELEPHONES USED WITH PUBLIC MOBILE SERVICES.

''(a) ACCESSIBILITY.—If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B)) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subsection shall not impose any requirement on such manufacturer or provider—

''(1) to make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

''(2) to make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

''(b) INDUSTRY FLEXIBILITY.—A manufacturer or provider may satisfy the requirements of subsection (a) with respect to such telephone or services by—

''(1) ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

''(2) using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.''.

(b) EFFECTIVE DATE FOR SECTION 718.—Section 718 of the Communications Act of 1934, as added by subsection (a), shall take effect 3 years after the date of enactment of this Act.

On page 69, line 3, strike ''(b)'' and insert ''(c)''.

On page 69, line 9, strike ''255 or 716,'' and insert ''255, 716, or 718,''.

On page 69, line 18, strike ''(c)'' and insert ''(d)''.

On page 70, line 5, strike ''**SEC. 718.**'' and insert ''**SEC. 719.**''.

On page 79, line 20, strike ''performance requirements'' and insert ''performance objectives''.

On page 79, line 23, strike ''performance requirements'' and insert ''performance objectives''.

On page 81, line 12, strike ''performance requirements'' and insert ''performance objectives''.

On page 81, line 15, strike ''performance requirements'' and insert ''performance objectives''.

On page 87, strike line 12–25 and on page 85, strike lines 1–24.

On page 86, line 16, after ''(2000)),'' insert ''recon. granted in part and denied in part, (16 F.C.C.R. 1251 (2001)),''.

On page 86, line 22, strike ''that'' and insert ''insofar as such programming''.

On page 87, line 1, after ''networks'' insert ''that at least 50 hours per quarter of prime time programming that is not exempt under this paragraph.''

On page 88, between line 22 and 23, insert the following:

''(4) CONTINUING COMMISSION AUTHORITY.—

''(A) IN GENERAL.—The Commission may not issue additional regulations unless the Commission determines, at least 2 years after completing the reports required in

paragraph (3), that the need for and benefits of providing video description for video programming, insofar as such programming is transmitted for display on television, are greater than the technical and economic costs of providing such additional programming.

''(B) LIMITATION.—If the Commission makes the determination under subparagraph (A) and issues additional regulations, the Commission may not increase, in total, the hour requirement for additional described programming by more than 75 percent of the requirement in the regulations reinstated under paragraph (1).

''(C) APPLICATION TO DESIGNATED MARKET AREAS.—

''(i) IN GENERAL.—After the Commission completes the reports on video description required in paragraph (3), the Commission shall phase in the video description regulations for the top 60 designated market areas, except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate.

''(ii) PHASE-IN DEADLINE.—The phase-in described in clause (i) shall be completed not later than 6 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010.

''(iii) REPORT.—Nine years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Energy of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report assessing—

''(I) the types of described video programming that is available to consumers;

''(II) consumer use of such programming;

''(III) the costs to program owners, providers, and distributors of creating such programming;

''(IV) the potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming;

''(IV) the benefits to consumers of such programming;

''(V) the amount of such programming currently available; and

''(VI) the need for additional described programming in designated market areas outside the top 60.

(iv) ADDITIONAL MARKET AREAS.—Ten years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall have the authority, based upon the findings, conclusions, and recommendations contained in the report under clause (iii), to phase in the video description regulations for up to an additional 10 designated market areas each year—

''(I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and

''(II) except that the Commission may grant waivers to entities in specific designated market areas where it deems appropriate.

Beginning with line 15 on page 89, strike through line 3 on page 90.

On page 90, line 4, strike ''(i)'' and insert ''(h)''.

On page 92, line 24, strike the closing quotation marks and the second period.

On page 92, after line 24, insert the following:

''(3) ALTERNATE MEANS OF COMPLIANCE.—An entity may meet the requirements of this section through alternate means than those prescribed by regulations pursuant to subsection (b), as revised pursuant to paragraph (2)(A) of this subsection, if the requirements of this section are met, as determined by the Commission.''.

On page 93, line 23, strike ''that—'' and insert ''that, if technically feasible—''.

On page 98, between lines 7 and 8, insert the following:

(e) ALTERNATE MEANS OF COMPLIANCE.—An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission.

On page 100, between lines 2 and 3, insert the following:

(c) ALTERNATE MEANS OF COMPLIANCE.—An entity may meet the requirements of section 303(aa) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (b) if the requirements of those sections are met, as determined by the Commission.

On page 100, line 3, strike ''(c)'' and insert ''(d)''.

On page 92, line 19, strike ''and'' and on page 92, after line 19, insert ''(iii) shall clarify that, for the purposes of implementation, of this subsection, the terms ''video programming distribution'' and ''video programming providers'' include an entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol; and''

On page 92, line 20, strike (iii) and insert (vii)''

On page 92, between line 19 and 20, insert ''(v) and describe the responsibilities of video programming providers or distributors and video programming owners. (vi) shall establish a mechanism to make available to video programming providers and distributors information on video programming subject to the Act on an ongoing basis. (vii) shall consider that the video programming provider or distributor shall be deemed in compliance if such entity enables the rendering or pass through of closed captions and video description signals and make a good faith effort to identify video programming subject to the Act using the mechanism created in (vi).

SA 4604. Mr. REID (for Mr. LEVIN (for himself and Mr. LUGAR)) proposed an amendment to the resolution S. Res. 322, expressing the sense of the Senate on religious minorities in Iraq; as follows:

Strike all after the resolving clause and insert the following: That it is the sense of the Senate that—

(1) the United States remains deeply concerned about the plight of vulnerable religious minorities of Iraq;

(2) the United States Government and the United Nations Assistance Mission for Iraq should urge the Government of Iraq to enhance security at places of worship in Iraq, particularly where religious minorities are known to be at risk;

(3) the United States Government should continue to work with the Government of Iraq to ensure that members of ethnic and religious minorities communities in Iraq—

(A) suffer no discrimination in recruitment, employment, or advancement in the Iraqi police and security forces; and

(B) while employed in the Iraqi police and security forces, where appropriate, be assigned to their locations of origin, rather than being transferred to other areas;

(4) the Government of Iraq and the Kurdistan regional government should work towards a peaceful and timely resolution of disputes over territories, particularly those where many religious communities reside;

(5) the United States Government and the United Nations Assistance Mission for Iraq should urge the Government of Iraq to—

(A) implement in full those provisions of the Constitution of Iraq that provide protections for the individual rights to freedom of thought, conscience, religion, and belief and protections for religious minorities to enjoy their culture and language and practice their religion; and

(B) reduce onerous registration requirements so that smaller religious groups are not disadvantaged in registering;

(6) the Government of Iraq should take affirmative measures to reverse the legal, political, and economic marginalization of religious minorities in Iraq;

(7) the United States Government should assist, consistent with local aspirations and developmental needs, ethnic and religious minorities in Iraq to organize themselves civically and politically to effectively convey their concerns to government;

(8) the United States Government should continue to fund capacity-building programs for the Iraqi Ministry of Human Rights and the independent national Human Rights Commission, and should continue to help reconstitute the minorities committee to make it an effective voice for Iraqi minorities;

(9) the Government of Iraq should direct the Iraqi Ministry of Human Rights to investigate and issue a public report on abuses against and the marginalization of minority communities in Iraq and make recommendations to address such abuses; and

(10) the United States Government should encourage the Government of Iraq and the Kurdistan Regional Government to protect the linguistic and cultural heritage, religious beliefs, and ethnic and religious identities of minority groups, in particular those living in the Nineveh Plain.

SA 4605. Mr. REID (for Mr. LEVIN (for himself and Mr. LUGAR)) proposed an amendment to the resolution S. Res. 322, expressing the sense of the Senate on religious minorities in Iraq; as follows:

Strike the preamble and insert the following:

Whereas the territory of Iraq, the land of Mesopotamia, has millennia of rich cultural and religious history;

Whereas the Sumerians, Babylonians, and Assyrians thrived within what are now the borders of Iraq;

Whereas the biblical patriarch Abraham was born in Ur, King Hammurabi ruled from Babylon, and Imam Ali, the founder of Shiite Islam, died in Kufa;

Whereas during the 35-year rule of the Baath Party and Saddam Hussein, and despite the Provisional Constitution of 1968 that provided for individual religious freedom in Iraq, the Government of Iraq severely limited freedom of religion, especially for religious minorities, and sought to exploit religious differences for political purposes, leading the United States Government to designate Iraq as a ''country of particular concern'' under the International Religious Freedom Act of 1998 (Public Law 105–292) because of systematic, ongoing, egregious violations of religious freedom;

Whereas members of religious minority communities of Iraq, both those who have been forced to flee the homeland in which their ancestors have lived for thousands of years and those who remain in Iraq, are committed to maintaining their presence in Iraq and keeping alive their communities' cultures, heritage, and religions, but threats against them jeopardize the future of Iraq as a diverse, pluralistic, and free society;

Whereas despite the reduction in violence in Iraq in recent years, serious threats to religious freedom remain, including religiously motivated violence directed at vulnerable religious minorities, their leaders, and their holy sites, including Chaldeans, Syriacs, Assyrians, Armenians and other Christians, Sabean Mandeans, Yeazidis, Baha'is, Kaka'is, Jews, and Shi'a Shabak;

Whereas the March 2010 Report on Human Rights issued by the Department of State identifies ''insurgent and extremist violence, coupled with weak government performance in upholding the rule of law'' resulting in ''widespread and severe human rights abuses'' as among the significant and continuing human rights problems in Iraq;

Whereas although violence has impacted all aspects of society in Iraq, there have been alarming levels of religiously motivated violence in Iraq in recent years;

Whereas the United States Commission on International Religious Freedom continues to recommend that the Secretary of State designate Iraq as a ''country of particular concern'' under the International Religious Freedom Act of 1998, because of the systematic, ongoing, egregious violations of religious freedom in Iraq;

Whereas scores of holy sites in Iraq have been bombed since 2004;

Whereas members of small religious minority communities in Iraq do not have militia or tribal structures to defend them, often receive inadequate official protection, and are legally, politically, and economically marginalized;

Whereas in the Nineveh and Kirkuk governorates, where control is disputed between the Government of Iraq and the Kurdistan regional government, religious minorities have been targeted for abuse, violence, and discrimination;

Whereas before 1951, non-Muslims comprised some 6 percent of the population of Iraq, with Jews as the oldest and largest of these communities, tracing back to the Babylonian captivity of the sixth century BCE, but today the Jewish community in Iraq numbers in the single digits and essentially lives in hiding;

Whereas religious minorities in Iraq, who made up about 3 percent of the population of Iraq in 2003, make up a disproportionately high percentage of registered Iraqi refugees;

Whereas the number of Christians in Iraq was approximately 1,400,000 according to the 1987 Iraqi census but, according to the 2009 Report on International Religious Freedom issued by the Department of State, may now number only 500,000 to 600,000;

Whereas the United States is gravely concerned about the viability of the indigenous Christian communities of Iraq and other religious minority communities, and the possible disappearance of their ancient languages, culture, and heritage;

Whereas the Sabean Mandean community in Iraq reports that almost 90 percent of its members have fled Iraq, leaving only about 3,500 to 5,000 Mandeans in Iraq as of 2009;

Whereas the Baha'i faith, estimated to have fewer than 2,000 adherents in Iraq, remains prohibited in Iraq under a 1970 law;

Whereas although hundreds of thousands of Iraqi refugees and internally displaced persons have returned to their areas of origin, the numbers of religious minority returnees to Iraq are disproportionately low; and

Whereas members of religious minority communities of Iraq in diaspora have organized to support their communities in Iraq in ways that also benefit the whole of Iraq society by encouraging the rule of law, enhanced security, employment, education and health services: Now therefore be it

NOTICE OF HEARING

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR.

Mrs. MCCASKILL. Mr. President, I wish to announce that the Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteous, Jr. will meet each day from September 13–17, at 8 a.m., to conduct a hearing.

For further information regarding this meeting, please contact Erin Johnson at 202–228–4133.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on August 5, 2010, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on August 5, 2010, at 10:30 a.m., to conduct a hearing entitled ''The Obama Administration Manufacturing Agenda.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on August 5, 2010, immediately following the 11:20 a.m. vote on the Senate floor, in the President's Room, S–216 of the Capitol.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on August 5, 2010, at 10:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a business meeting on August 5, 2010 at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on August 5, 2010, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on August 5, 2010, at 9:30 a.m. to conduct a markup on pending legislation. The Committee will meet in room 418 of the Russell Senate Office Building beginning at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. KAUFMAN. Mr. President, I ask unanimous consent that Jacqueline Hyatt, Jordan Franklin, and Lara Christensen from Senator BINGAMAN's office be granted floor privileges for today, August 5, 2010.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I ask unanimous consent that Liz Saxe, Katharine McFarland, David Zayas, and Miles Clark, law clerks on the Jucidiary Committee staff of Senator LEAHY, and Avi Zevin and Jacquelyn Stanley, law clerks on my Judiciary Committee staff, be granted the privileges of the floor for the remainder of the debate on the nomination of Elena Kagan to be Associate Justice for the U.S. Supreme Court.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider en bloc Calendar Nos. 959, 960, 1003, 1004, 1005, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1094, 1095, 1096, 1097, 1098, 1099, 1100 and 1101; that the nominations be confirmed en bloc; that the motions to reconsider be considered made and laid upon the table en bloc; that any statements relating to the nominations be printed in the RECORD; and that the President of the United States be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF JUSTICE

Cathy Jo Jones, of Ohio, to be United States Marshall for the Southern District of Ohio.

Edward L. Stanton, III, of Tennessee, to be United States Attorney for the Western District of Tennessee for the term of four years.

Stephen R. Wigginton, of Illinois, to be United States Attorney for the Southern District of Illinois for the term of four years.

DEPARTMENT OF JUSTICE

Timothy Q. Purdon, of North Dakota, to be United States Attorney for the District of North Dakota for the term of four years.

Willie Ransome Stafford III, of North Carolina, to be United States Marshal for the Middle District of North Carolina for the term of four years.

Arthur Darrow Baylor, of Alabama, to be United States Marshal for the Middle District of Alabama for the term of four years.

DEPARTMENT OF JUSTICE

John F. Walsh, of Colorado, to be United States Attorney for the District of Colorado for the term of four years.

William J. Ihlenfeld, II, of West Virginia, to be United States Attorney for the Northern District of West Virginia for the term of four years.

John William Vaudreuil, of Wisconsin, to be United States Attorney for the Western District of Wisconsin for the term of four year.

Mark Lloyd Ericks, of Washington, to be United States Marshal for the Western District of Washington for the term of four years.

Joseph Patrick Faughnan, Sr., of Connecticut, to be United States Marshal for the District of Connecticut for the term of four years.

Harold Michael Oglesby, of Arkansas, to be United States Marshal for the Western District of Arkansas for the term of four years.

Conrad Ernest Candelaria, of New Mexico, to be United States Marshal for the District of New Mexico for the term of four years.

DEPARTMENT OF JUSTICE

Melinda L. Haag, of California, to be United States Attorney for the Northern District of California for the term of four years.

Barry R. Grissom, of Kansas, to be United States Attorney for the District of Kansas for the term of four years.

David J. Hickton, of Pennsylvania, to be United States Attorney for the Western District of Pennsylvania for the term of four years.

Donald Martin O'Keefe, of California, to be United States Marshal for the Northern District of California for the term of four years.

James Thomas Fowler, of Tennessee, to be United States Marshal for the Eastern District of Tennessee for the term of four years.

Craig Ellis Thayer, of Washington, to be United States Marshal for the Eastern District of Washington for the term of four years.

Joseph Anthony Papili, of Delaware, to be United States Marshal for the District of Delaware for the term of four years.

James Alfred Thompson, of Utah, to be United States Marshal for the District of Utah for the term of four years.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consider en bloc Executive Calendar Nos. 809, 1019, 1027, 1028, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1053, 1055 to and including 1057, 1059 to and including 1081, and all nominations on the Secretary's desk in the Air Force, Army, Foreign Service, and Navy; that the nominations be confirmed en bloc; that the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that any statements relating to the nominations be printed in the RECORD; and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF STATE

Bisa Williams, of New Jersey, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Niger.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

James R. Clapper, of Virginia, to be Director of National Intelligence.

DEPARTMENT OF STATE

Philip Carter III, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cote d'Ivoire.

Gerald M. Feierstein, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Yemen.

Helen Patricia Reed-Rowe, of Maryland, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Palau.

Patrick S. Moon, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Bosnia and Herzegovina.

Christopher W. Murray, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Congo.

Mark Charles Storella, of Maryland, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

J. Thomas Dougherty, of Wyoming, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

Eric D. Benjaminson, of Oregon, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Gabonese Republic, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Sao Tome and Principe.

Maura Connelly, of New Jersey, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon.

Daniel Bennett Smith, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece.

James Frederick Entwistle, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of the Congo.

Laurence D. Wohlers, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

Judith R. Fergin, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Timor-Leste.

Michael S. Owen, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Sierra Leone.

Robert Porter Jackson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cameroon.

James Franklin Jeffrey, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iraq.

Alejandro Daniel Wolff, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

Scot Alan Marciel, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Indonesia.

Terence Patrick McCulley, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

Pamela E. Bridgewater Awkard, of Virginia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Jamaica.

Michele Thoren Bond, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

Paul W. Jones, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Malaysia.

Phyllis Marie Powers, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Panama.

DEPARTMENT OF ENERGY

Neile L. Miller, of Maryland, to be Principal Deputy Administrator, National Nuclear Security Administration.

IN THE AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Paul H. McGillicuddy

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Scott A. Vander Hamm

The following named officer for appointment in the United States Air Force to the

grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Stephen P. Mueller

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Douglas H. Owens

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Michael R. Moeller

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., sections 12203 and 12212:

To be major general

Brigadier General Hugh T. Broomall
Brigadier General Paul D. Brown, Jr.
Brigadier General James E. Daniel, Jr.
Brigadier General Michael J. Dornbush
Brigadier General Matthew J. Dzialo
Brigadier General Gregory A. Fick
Brigadier General Robert H. Johnston
Brigadier General Joseph L. Lengyel
Brigadier General William N. Reddel, III
Brigadier General James R. Wilson

To be brigadier general

Colonel Donald A. Ahern
Colonel James C. Balserak
Colonel Frank W. Barnett, Jr.
Colonel Mark E. Bartman
Colonel Robert M. Branyon
Colonel Richard J. Dennee
Colonel Richard J. Evans, III
Colonel Lawrence P. Gallogly
Colonel Michael D. Hepner
Colonel Worthe S. Holt, Jr.
Colonel Bradley S. Link
Colonel Donald L. McCormack
Colonel Brian G. Neal
Colonel Roy V. Qualls
Colonel Marc H. Sasseville
Colonel Mark L. Stephens
Colonel Alphonse J. Stephenson
Colonel Kendall S. Switzer
Colonel Daniel C. VanWyk

IN THE ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Joseph F. Fil, Jr.

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. William J. Troy

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Sanford E. Holman

The following named officer for appointment as the Dean of the Academic Board, United States Military Academy and for appointment to the grade indicated under title 10, U.S.C., section 4335:

To be brigadier general

Col. Timothy E. Trainor

The following named officer for appointment to the grade indicated in the United States Army under title 10, U.S.C., section 624:

To be brigadier general

Col. David G. Fox

The following Army National Guard of the United States officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., sections 12203 and 12211:

To be major general

Brig. Gen. Hugo E. Salazar

To be brigadier general

Col. William L. Glasgow

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., sections 12203 and 12211:

To be brigadier general

Col. Steven W. Duff

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., sections 12203 and 12211:

To be major general

Brig. Gen. James A. Hoyer

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., sections 12203 and 12211:

To be brigadier general

Col. Walter T. Lord

The following Army National Guard of the United States officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., sections 12203 and 12211:

To be major general

Brigadier General Frank E. Batts
Brigadier General Melvin L. Burch
Brigadier General John E. Davoren
Brigadier General Lester D. Eisner
Brigadier General Allen M. Harrell
Brigadier General Robert A. Harris
Brigadier General Alberto J. Jimenez
Brigadier General Thomas H. Katkus
Brigadier General James D. Tyre

To be brigadier general

Colonel Steven W. Altman
Colonel David B. Anderson
Colonel David N. Aycock
Colonel David S. Baldwin
Colonel Jonathan T. Ball
Colonel Craig E. Bennett
Colonel Julie A. Bentz
Colonel Victoria A. Betterton
Colonel Victor A. Braden
Colonel David R. Brown
Colonel Felix T. Castagnola
Colonel Peter L. Corey
Colonel Donald S. Cotney
Colonel Stephanie E. Dawson
Colonel Carol A. Eggert
Colonel Alfred C. Faber
Colonel William A. Hall
Colonel Richard J. Hayes
Colonel Timothy E. Hill
Colonel Timothy J. Hilty
Colonel Jeffrey H. Holmes
Colonel Janice G. Igou
Colonel James C. Lettko
Colonel Tom C. Loomis
Colonel Wesley L. McClellan
Colonel John K. McGrew
Colonel Johnny R. Miller
Colonel Steven R. Mount
Colonel Eric C. Peck
Colonel Charles E. Petrarca
Colonel Andrew P. Schafer
Colonel Raymond F. Shields
Colonel Lester Simpson
Colonel Philip A. Stemple
Colonel Randy H. Warm
Colonel Charles W. Whittington

IN THE MARINE CORPS

The following named officer for appointment to the grade of lieutenant general in the United States Marine Corps while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Robert E. Schmidle, Jr.

The following named officer for appointment to the grade of lieutenant general in the United States Marine Corps while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. John E. Wissler

The following named officer for appointment to the grade of general in the United States Marine Corps while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Gen. James N. Mattis

The following named officers for appointment in the United States Marine Corps Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. William T. Collins
Col. James S. Hartsell
Col. Roger R. Machut
Col. Marcela J. Monahan

IN THE NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Charles J. Leidig, Jr.

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. William E. Landay, III

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Vice Adm. John M. Bird

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Daniel P. Holloway

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Walter M. Skinner

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be admiral

Vice Adm. Samuel J. Locklear, III

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE

PN1663 AIR FORCE nominations (52) beginning LORI A. ADAMS, and ending SHANNON G. WOMBLE, which nominations were received by the Senate and appeared in the Congressional Record of April 21, 2010.

PN1665 AIR FORCE nominations (541) beginning WILLARD B. AKINS II, and ending MICHAEL J. ZUBER, which nominations were received by the Senate and appeared in the Congressional Record of April 21, 2010.

PN1906 AIR FORCE nomination of Zennon A. Bochnak, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1907–1 AIR FORCE nominations (74) beginning FREDERICK D. ALDRIDGE, and ending SCOTT D. YACKLEY, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

IN THE ARMY

PN1677 ARMY nomination of Ralph L. Kauzlarich, which was received by the Senate and appeared in the Congressional Record of April 26, 2010.

PN1908 ARMY nomination of Edward B. McKee, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1909 ARMY nomination of John D. Via, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1910 ARMY nomination of Kyu Lund, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1911 ARMY nomination of Matthew L.Y. Okuda, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1912 ARMY nomination of Alexander K. Brenner, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1913 ARMY nomination of Richard J. Gray, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1914 ARMY nominations (7) beginning JOSEPH B. DORE, and ending COURTNEY T. TRIPP, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1915 ARMY nominations (13) beginning EDWARD C. CAMACHO, and ending JON B. TIPTON, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1916 ARMY nominations (2) beginning DAVID GONZALEZ, and ending PAMELA H. REYNOLDS, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1917 ARMY nominations (2) beginning GREGORY C. RISK, and ending VICTOR Y. YU, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1918 ARMY nominations (4) beginning MARK M. JACKSON, and ending AVINASH JADHAV, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1960 ARMY nominations (15) beginning SUSAN M. CEBULA, and ending D070757, which nominations were received by the Senate and appeared in the Congressional Record of July 12, 2010.

PN1961 ARMY nominations (148) beginning JOHN S. AITA, and ending D010009, which nominations were received by the Senate and appeared in the Congressional Record of July 12, 2010.

PN1979 ARMY nominations (69) beginning ILSE K. ALUMBAUGH, and ending PAMELA M. WULF, which nominations were received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN1980 ARMY nominations (16) beginning DERRON A. ALVES, and ending SAMUEl L. YINGST, which nominations were received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN1981 ARMY nominations (94) beginning JENNIFER L. ANDERSON, and ending D006711, which nominations were received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN1982 ARMY nomination of Edward J. Benz III, which was received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN1983 ARMY nominations (10) beginning PAUL W. CARDEN, and ending SHERRY L. WOMACK, which nominations were received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN2010 ARMY nominations (48) beginning JOHN P. BATSON, and ending TONY K. YOON, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2011 ARMY nominations (329) beginning CHRISTOPHER W. ABBOTT, and ending D00587, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2012 ARMY nominations (336) beginning MATTHEW C. ABOUDARA, and ending DAVID J. YOO, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2013 ARMY nominations (437) beginning PETER M. ABBRUZZESE, and ending G001388, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2014 ARMY nominations (784) beginning JOSE C. ACOSTAJAVIERRE, and ending G010027, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

FOREIGN SERVICE

PN1889 FOREIGN SERVICE nominations (2) beginning Karen S. Sliter, and ending Elia P. Vanechanos, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2010.

PN1890 FOREIGN SERVICE nominations (153) beginning James K. Chambers, and ending Cameron Munter, which nominations were received by the Senate and appeared in the Congressional Record of June 28, 2010.

IN THE NAVY

PN1919 NAVY nomination of Paul J. Joyce, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1920 NAVY nomination of Kerry J. Krause, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1921 NAVY nomination of Matthew D. Barker, which was received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1922 NAVY nominations (4) beginning CHRISTOPHER J. KLUGEWICZ, and ending BRIGHAM C. WILLIS, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1923 NAVY nominations (2) beginning EDGARDO MONTERO, and ending BECKY J. WATSON, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1924 NAVY nominations (2) beginning DAVID B. RODRIGUEZ, and ending BRADLEY J. THOM, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1925 NAVY nominations (5) beginning ROBERT C. BURTON, and ending ROBERT A. OLIVER JR., which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1926 NAVY nominations (8) beginning JERRY D. BINGHAM, and ending AMIN MOURAD, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1927 NAVY nominations (9) beginning RUBY O. ANDERSON, and ending LYNN C. OMALLEY, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1928 NAVY nominations (6) beginning JOHN R. CAPRA, and ending DILLON L. ROSS, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1929 NAVY nominations (4) beginning PATRICIA A. FREDRICKSON, and ending JAMES M. SMITH, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1930 NAVY nominations (4) beginning FRANK M. GUPTON, and ending JAIME A. QUEJADA, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1931 NAVY nominations (17) beginning MICHAEL J. BATTAGLIA II, and ending KATHLEEN G. WILSON, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1932 NAVY nominations (5) beginning ROBERTO J. ATHA JR., and ending JAMES A. MCMULLIN III, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1933 NAVY nominations (8) beginning THOMAS H. COTTON, and ending KEVIN R. STEPHENS, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1934 NAVY nominations (11) beginning MARIANIE O. BALOLONG, and ending JONATHAN J. VORRATH, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1935 NAVY nominations (15) beginning FRANKLIN W. BENNETT, and ending EDWIN SANTANA, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1936 NAVY nominations (16) beginning RICHARD M. ARCHER, and ending NAGEL B. SULLIVAN, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1937 NAVY nominations (19) beginning WILLIAM ARIAS, and ending JAMES V. WALSH, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1938 NAVY nominations (20) beginning NICHOLAS E. ANDREWS, and ending WILLIAM E. WREN JR., which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1939 NAVY nominations (23) beginning JAMIE W. ACHEE, and ending DARYK E. ZIRKLE, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1940 NAVY nominations (25) beginning KEVIN L. ANDERSEN, and ending PAUL W. WILKES, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1941 NAVY nominations (32) beginning PATRICK L. BENNETT, and ending TIMOTHY L. ZANE, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1942 NAVY nominations (42) beginning BRIAN M. AKER, and ending BRETT A. WISE, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1943 NAVY nominations (441) beginning DAVID L. AAMODT, and ending CHRISTOPHER M. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of June 29, 2010.

PN1962 NAVY nominations (2) beginning JASON L. RICH, and ending BRUNO A. SCHMITZ, which nominations were received by the Senate and appeared in the Congressional Record of July 12, 2010.

PN1963 NAVY nominations (4) beginning WENDY C. GAZA, and ending PATRICIA A. LIMPERT, which nominations were received by the Senate and appeared in the Congressional Record of July 12, 2010.

PN1984 NAVY nominations (26) beginning JARED A. BATTANI, and ending ROBERT D. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN1985 NAVY nomination of Virginia Skiba, which was received by the Senate and appeared in the Congressional Record of July 14, 2010.

PN2015 NAVY nomination of Barbara A. Munro, which was received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2016 NAVY nominations (4) beginning LISA M. BECOAT, and ending ROSCOE C. PORTER JR., which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2017 NAVY nominations (20) beginning STEVEN R. BARSTOW, and ending MARK S. WINWARD, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2018 NAVY nominations (22) beginning MICHAEL J. ADAMS, and ending HEATHER A. WATTS, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2019 NAVY nominations (29) beginning RICHARD S. ADCOOK, and ending JEFFREY G. ZELLER, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2020 NAVY nominations (33) beginning CHRISTOPHER F. BEAUBIEN, and ending JEFFREY D. THOMAS, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2021 NAVY nominations (59) beginning DOMINGO B. ALINIO, and ending MARK A. ZIEGLER, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2022 NAVY nominations (69) beginning KAREN L. ALEXANDER, and ending MARC T. YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2023 NAVY nominations (93) beginning CRISTINA ALBERTO, and ending KIM T. ZABLAN, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

PN2024 NAVY nominations (121) beginning PHILLIP M. ADRIANO, and ending ROBERT A. ZALEWSKIZARAGOZA, which nominations were received by the Senate and appeared in the Congressional Record of July 21, 2010.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the President's nominee to be the next Director of National Intelligence, DNI—GEN James Clapper, U.S. Air Force, Lieutenant General retired.

I am pleased his confirmation will be approved by unanimous consent.

General Clapper is well qualified to be the Director of National Intelligence. He has as much experience in the intelligence profession as anyone serving in the government today.

He has held a wide range of positions that have prepared him for this position, in the U.S. military, as the head of two intelligence agencies, and in the private sector. General Clapper is currently the highest ranking intelligence official in the Department of Defense, serving as the Under Secretary of Defense for Intelligence.

He has clearly expressed his views on the position of the DNI and described how he intends to carry out those views.

Last week, the Senate Intelligence Committee reported out his nomination on a rollcall vote of 15–0.

Not a single objection that was raised in the Senate following the committee's unanimous vote was related to the nominee, his background, his views, or how he intends to serve.

And now I am pleased to report that those objections have been worked out and General Clapper will be approved by unanimous consent.

Let me take a few minutes and describe the position to which General Clapper has been nominated, the Director of National Intelligence, or DNI.

The DNI position was first seriously considered by the so-called ''Joint Inquiry'' into the attacks of September 11, 2001—a joint panel of the Senate and House Intelligence Committees that studied the events leading to the attacks of 9/11 and the structural problems in the U.S. Government that led to our failure to prevent them.

The Joint Inquiry concluded that the Intelligence Community—the collection of intelligence agencies and offices across the Federal Government—could not be led by the same person who was simultaneously serving as the Director of the CIA.

This congressional panel recommended, in December 2002, that the National Security Act be amended ''to create and sufficiently staff a statutory Director of National Intelligence who shall be the President's principal advisor on intelligence and shall have the full range of management, budgetary and personnel responsibilities needed to make the entire U.S. Intelligence Community operate as a coherent whole.''

Two years later, the 9/11 Commission, led by former Governor Tom Kean and former Congressman Lee Hamilton, came to the same conclusion and recommended the creation of a National Intelligence Director to ''manage the national intelligence program and oversee the agencies that contribute to it.''

A few months later, in December 2004, the Congress passed the Intelligence Reform and Terrorism Prevention Act, IRTPA, that created the position of DNI.

By statute, the position of the Director of National Intelligence is the senior-most intelligence position in the U.S. Government. The DNI is, under the law:

The head of the 16 different offices and agencies that make up the U.S. intelligence community;

The principal advisor to the President on intelligence matters; and

The official in charge of developing the intelligence budget.

Despite that expansive charge, the first 5 years with a Director of National Intelligence at the helm of the intelligence community have been unsteady times. There have been three Directors in 5 years: Ambassador John Negroponte, ADM Mike McConnell, and ADM Dennis Blair.

It is the strong hope of the Senate Intelligence Committee that General Clapper will provide some stability to the office and set it on a more stable path.

He was asked about this in the committee's confirmation hearing. Senator WHITEHOUSE asked General Clapper if he intended to stick around. General Clapper responded ''Yes, sir, I will. I wouldn't take this on without thinking about that. And I do think my experience has been, it does take time to bring these changes about.''

And certainly changes are needed. I have discussed with General Clapper my concern that the position of DNI could be considered the job of a coordinator someone—who makes sure the 16 agencies are carrying out their roles and working harmoniously.

But that was not what the job was designed to be, and that isn't going to be sufficient to put in place the changes we need. The Director needs to set priorities, develop the budget accordingly, oversee agencies' implementation, and make changes when problems or gaps arise. These include:

Making sure the systems and personnel are in place to make sure the dots are connected before a terrorist attack;

Ensuring there is sufficient intelligence collected by human and technical means so that decisionmakers have an accurate and full set of facts before setting policies—for example, on sending troops to war;

Reviewing intelligence programs and activities to make sure they fit squarely within the Constitution and the law, and that Congress is provided with the information it requires to conduct independent oversight; and

Managing the intelligence budget to make sure it is spent without waste, abuse, or inappropriate duplication.

These are not the jobs of a coordinator; they are the jobs of a Director. General Clapper recognizes these as the obligations of the DNI.

The last thing I would like to note on the position of the DNI is its statutory authorities, and the limits placed on them.

In particular, the DNI is constrained from directing 15 of the 16 agencies and offices of the intelligence community, because they reside in various Federal departments. The Intelligence Reform and Terrorism Prevention Act of 2004, IRTPA, states that in carrying out his responsibilities, the DNI may not ''abrogate'' the statutory responsibilities

of Cabinet Secretaries. This is often interpreted to prevent centralized direction.

The 16th agency, the CIA, is not housed within a department, but it, too, has demonstrated its ability to thwart the DNI's directives it dislikes by importuning the White House.

We understand from former officials in the DNI's office that both problems have greatly frustrated past DNIs' ability to lead.

General Clapper has served on the DNI's executive committee under Directors McConnell and Blair. He has seen firsthand how this tension between the DNI's direction and the views of a Cabinet Secretary has played out.

Indeed, General Clapper has been very forthright that as the Under Secretary of Defense for Intelligence since 2007, part of his responsibility has been to uphold and support the interests of the Secretary of Defense.

But he has also assured the Intelligence Committee that, if confirmed, this would change. During his confirmation hearing, General Clapper said, ''I have been, for the last three years, the Undersecretary of Defense for Intelligence. And I considered it my responsibility and my obligation to defend and protect the secretary's authorities and prerogatives to the maximum extent I could. If I were confirmed as the DNI, I will be equally assiduous in ensuring that the DNI's prerogatives and authorities are protected and advanced.''

Even so, General Clapper has a track record of taking concrete steps to ensure that the interests of the Department of Defense and the intelligence community are synchronized, and both are enhanced to improve our national security.

What is more, General Clapper is perhaps unique in that he has strong relationships with the President and the national security team at the White House, the Secretary of Defense, and the CIA Director—the three most important relationships for a DNI to be successful.

So in short, I believe that General Clapper will bring to the position of the DNI the right approach, skills, and gravitas to make this work.

I will continue to work with him, like the committee has worked with past Directors, to make changes in the law to give him the authorities and flexibility that he needs.

The Senate has just passed unanimously a revised version of the fiscal year 2010 Intelligence Authorization Act. That bill includes 10 provisions to strengthen the DNI's ability to run his office and direct the intelligence community. Eight of those ten provisions were requested by this administration or the last one, and I will continue to push to get this important bill signed into law soon.

Let me say a few words now about General Clapper himself.

General Clapper has served in the intelligence field for 46 years, almost all of which was in military and government service.

His 32 years of military service in the U.S. Air Force included wartime operations, flying 72 combat support missions over Laos and Cambodia and being a wing commander.

He has served as the Director of Intelligence, the J–2, for three warfighting commands—at U.S. Forces Korea, the Pacific Command, and the Strategic Air Command.

In the 1990s, Lieutenant General Clapper led the Defense Intelligence Agency, DIA, one of the biggest and most complex of the agencies in the intelligence community.

He retired from active duty in 1995 after this position and worked in the private sector until he was asked to return to government service and lead the National Imagery and Mapping Agency, NIMA—since renamed the National Geospatial Intelligence Agency, NGA. He led NGA for 5 years—an unusually long tenure heading an intelligence agency—until a difference of opinion with Secretary Rumsfeld cost him his job in 2006—and provided a notable example of General Clapper's willingness to ''speak truth to power.''

In 2007, General Clapper once again put aside the benefits of a private life and agreed to serve under Secretary Gates as the Under Secretary of Defense for Intelligence.

As he said in his confirmation hearing, the nomination to be DNI ''was an unexpected turn of events. I'm in my third tour back in the government, and my plan was to walk out of the Pentagon about a millisecond after Secretary Gates. I had no plan or inkling to take on another position.''

Nonetheless, he has agreed to take on this challenging and somewhat thankless position.

General Clapper was nominated by the President on June 7, 2010. He answered more than 150 tailored pre-hearing questions in addition to our standard questionnaire and appeared before a lengthy confirmation hearing on July 20.

After the hearing, he answered another 79 questions for the record and appeared in a subsequent closed session meeting with four members of the committee who had additional questions.

If there were questions or doubts about his nomination, they have been answered. In fact, when General Clapper was nominated, I had my doubts about having another person in this position with a military background and whether he viewed the position of DNI as a coordinator or a director.

My concerns have been allayed. I am confident that he will be mindful of the important intelligence needs of the military and the Department of Defense, but he will be independent of Pentagon interests. He understands that the responsibility of the DNI is to provide strategic intelligence to policymakers and that the job requires more than simple coordination.

On July 29, the Intelligence Committee voted out General Clapper's nomination on a roll call vote of 15 to 0.

The committee has expressed its full support of General Clapper. He has excellent credentials, support from the White House and other key intelligence officials, and will be a strong Director of the Intelligence Community.

I congratulate General Clapper on his confirmation.

Mr. FEINGOLD. Mr. President, as a member of the Senate Select Committee on Intelligence, I voted in support of the confirmation of General Clapper to be Director of National Intelligence. He is clearly qualified for the position and his extensive experience at various intelligence agencies and at the Pentagon should give him a clear sense of the challenges ahead.

Over the course of the confirmation process, General Clapper provided encouraging responses on a number of issues. He expressed clear support for the declassification of the top-line intelligence budget, which would allow for the establishment of a separate intelligence budget. This reform, which was recommended by the 9/11 Commission and passed by the Senate, would improve transparency, accountability and oversight. He also agreed with the principle that the public should be made aware of secret interpretations of law. Finally, in a welcome shift from the previous DNI, General Clapper expressed openness to recommendations provided by an independent commission related to the integration of the intelligence community and those in the U.S. Government who collect information openly. Legislation to create this commission has also passed the Senate.

On other issues, General Clapper's responses were less encouraging. He indicated that he would be a ''zealous advocate'' for full notification of the committee, and I have no reason to doubt that. But, when asked about statutory reporting requirements under the National Security Act, he cited an incorrect interpretation of the law, specifically the assertion that the ''Gang of Eight'' provision that appears only in the covert action section could apply to other intelligence activities. As DNI, General Clapper will be responsible for adhering to the law, regardless of the views of counsel.

I am also concerned about his responses to questions on the PATRIOT Act, in which he described proposed safeguards on National Security Letter authorities as ''crippling.'' As he becomes familiar with these and other surveillance authorities, and the abuses associated with them, I hope that he will become more open to efforts to protect the privacy and civil liberties of Americans.

General Clapper has testified that the DNI already has sufficient authorities, and I agree that the ODNI should not be expanded for its own sake. But there are specific, identifiable problems with how the intelligence community spends taxpayer dollars which are

addressed in provisions of the intelligence authorization bill and my Control Spending Now legislation. While I will continue to fight for those provisions, I have asked General Clapper to tackle these issues with or without new statutory authorities. I will also continue to seek greater access by the GAO to the intelligence community, an issue on which General Clapper has expressed some flexibility.

Finally, General Clapper is in a unique position to address one of the great failings of intelligence reform thus far—the extent to which intelligence and intelligence-related activities are conducted by the military, away from the oversight of the congressional intelligence committees. In some cases, such as cybersecurity operations, I remain concerned about the division of authorities but have been kept reasonably informed. In other cases, specifically the Department of Defense's use of ''Section 1208'' authorities to assist foreign forces and irregular groups supporting counterterrorism operations around the world, I have generally been stonewalled. General Clapper has stated that, as DNI, these activities will not be his responsibility. But the DNI, particularly one with General Clapper's background, should be assertive in ensuring that the intelligence community and the military are operating in a coordinated fashion under coherent and consistent policies, and that the congressional intelligence committees are kept fully informed of all relevant programs and operations.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to consider en bloc the following nominations on the Executive Calendar: No. 883, J. Michelle Childs to be a United States District Judge;

No. 884, Richard Gergel to be a United States District Judge—both of these judges are from the State of South Carolina—No. 893, Leonard Stark to be a United States District Judge for the District of Delaware; and No. 657, James Wynn, to be a United States Circuit Judge; that the Senate proceed to vote en bloc on the nominations; that upon confirmation, the motions to reconsider be made and laid upon the table; that any statements relating to the nominations be printed in the RECORD, and that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

J. Michelle Childs, of South Carolina, to be United States District Judge for the District of South Carolina.

Richard Mark Gergel, of South Carolina, to be United States District Judge for the District of South Carolina.

Leonard Philip Stark, of Delaware, to be United States District Judge for the District of Delaware.

James A. Wynn, Jr., of North Carolina, to be United States Circuit Judge for the Fourth Circuit.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that at 3:30 p.m., Monday, September 13, the Senate proceed to executive session to consider Calendar No. 552, the nomination of Jane Stranch to be a United States Circuit Judge for the Sixth Circuit; that there be 2 hours of debate with respect to the nomination, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that at 5:30 p.m. on that date, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table; that any statements related to the nomination be printed in the RECORD; that the President of the United States be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST—NOMINATIONS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding an adjournment/recess of the Senate, that all nominations currently in committee or on the calendar remain in status quo, notwithstanding the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, except the following: Calendar Nos. 404, 591, 688, 696, 697, 698, 891; 933, 958, 1008; and the following in committee: PN797, PN1644, PN1024, PN1651, PN1631, and PN1987.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to executive session and consider Calendar No. 886, Kimberly Mueller to be a United States District Judge for the Eastern District of California; that there be 1 hour of debate with respect to the nomination, with the time equally divided and controlled between Senators LEAHY and SESSIONS or their designees; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table; the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. I object.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. MCCONNELL. Mr. President, we just confirmed 47 nominations plus 3 district court judges, a circuit court judge, and we will continue to work on the balance of these when we return.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I understand there has just been an agreement reached and entered into the RECORD regarding a number of appointments that were on the Executive Calendar. I understand further that—in fact, I discovered just recently—there is a rule anybody who is pending on the Executive Calendar when there is a recess of longer than 30 days needs to be resubmitted.

There are a number of judges who, applying that rule and the order, would need to be resubmitted by the President. Two of them, as I understand it, are district judges. What I would like to do is ask unanimous consent regarding those two. I know there is nobody from the minority party on the floor of the Senate right now, so I am not going to ask that unanimous consent and take advantage of the lack of their presence on the floor. But I would like to ask that someone come to the floor so I may ask unanimous consent, as to district court judges who are pending on the Executive Calendar, that the application of that rule be waived for this recess.

These are names that are going to be resubmitted anyway. It adds nothing to the process other than just an extra, sort of deliberate and unnecessary hassle to require those submission and committee procedures to be replayed.

It is also my understanding there has been a tradition in this body that while circuit court nominees are considered what one might call, for better or worse, political fair game, there has been a tradition of courtesy and comity regarding district court judges who sit in the Senator's home State when both of the home State Senators have agreed to and accepted the President's recommendations and supported it, given their blue slip to the committee and so forth.

So I guess I will put the Senate back into a quorum call so that I can discuss this with my colleagues on the other side. But I hope very much that as a personal courtesy they would accept that amendment to the order that was just entered, which I believe is consistent with the traditions and practices of the Senate.

For now I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I am in an interesting predicament. I am informed there is no one from the minority party in town; this being the end of session, everybody has headed home. Therefore, there is no one around to respond to my unanimous consent request.

I will confess, I am inclined to take advantage of this moment by propounding the unanimous consent, which I would obviously win. The Presiding Officer would grant the order, since there would be no objection.

But I also believe that to do so would be inconsistent with the courtesies and the traditions of the Senate, and so I will not take that step at this time. But it is frustrating to be in this position of holding myself back out of respect for the traditions and courtesies of the Senate, when I feel that, at the moment, I am on the losing end of a violation of the courtesies and the traditions of the Senate.

So by the rule of what is good for the goose, my inclination to take advantage of this moment is reinforced. But I have great respect for this body, and I think the tradition that one does not propound unanimous consent requests without a member of the minority party present to object or otherwise respond or vice versa is one that merits respect.

Notwithstanding the predicament I find myself in, let me just say, in that absence of courtesy that has brought me here, I will yield the floor and we can return to this question when the Senate resumes. But for any who are listening, I think we are taking a step that some may regret, when the tradition of respect for the judgment of the home State Senators regarding a district court judge in their home State is disregarded in this way.

I will say no more. I will follow up when we return to session.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS LENDING FUND ACT OF 2010—Resumed

Mr. REID. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 5297) to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for otherpurposes.

Pending:

Reid (for Baucus/Landrieu) amendment No. 4519, in the nature of a substitute.

Reid amendment No. 4520 (to amendment No. 4519), to change the enactment date.

Reid amendment No. 4521 (to amendment No. 4520), of a perfecting nature.

Reid amendment No. 4522 (to the language proposed to be stricken by amendment No. 4519), to change the enactment date.

Reid amendment No. 4523 (to amendment No. 4522), of a perfecting nature.

Reid motion to commit the bill to the Committee on Finance with instructions,

Reid amendment No. 4524 (the instructions on the motion to commit), to provide for a study.

Reid amendment No. 4525 (to the instructions (amendment No. 4524) of the motion to commit), of a perfecting nature.

Reid amendment No. 4526 (to amendment No. 4525), of a perfecting nature.

Mr. REID. Mr. President, I ask unanimous consent that all pending amendments and the motion be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4594

Mr. REID. Mr. President, I call up the Baucus-Landrieu-Reid substitute amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. BAUCUS and Ms. LANDRIEU, proposes an amendment numbered 4594.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4595 TO AMENDMENT NO. 4594

Mr. REID. I now ask to be reported the Bill Nelson first-degree amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. NELSON of Florida, proposes an amendment numbered 4595 to amendment No. 4594.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To exempt certain amounts subject to other information reporting from the information reporting provisions of the Patient Protection and Affordable Care Act, and for other purposes)

At the end of subtitle B of title II, add the following:

PART V—ADDITIONAL PROVISIONS

SEC. _____. CERTAIN EXCEPTIONS TO INFORMATION REPORTING PROVISIONS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006 of the Patient Protection and Affordable Care Act and section 2101 of this Act, is amended by redesignating subsection (j) as subsection (k) and inserting after subsection (i) the following new subsection:

''(j) COORDINATION WITH RETURNS RELATING TO PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.—This section shall not apply to any amount with respect to which a return is required to be made under section 6050W.''.

(b) INCREASE IN THRESHOLD AMOUNT AND EXEMPTION FOR SMALL EMPLOYERS FOR REPORTING OF PAYMENTS RELATING TO PROPERTY.—Subsection (a) of section 6041 of the Internal Revenue Code of 1986, as amended by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new sentences: ''In the case of payments in consideration of property, this subsection shall be applied by substituting '$5,000' for '$600' and this subsection shall not apply in the case of any person employing not more than 25 employees at any time during the taxable year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.''.

(c) REGULATORY AUTHORITY.—Subsection (k) of section 6041 of the Internal Revenue Code of 1986, as redesignated by subsection (a), is amended by striking ''including'' and all that follows and inserting ''including—

''(1) rules to prevent duplicative reporting of transactions, and

''(2) rules which identify, and provide exceptions for, payments which bear minimal risk of noncompliance.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts with respect to which a return is required to be made in calendar years beginning after December 31, 2010.

(2) PROPERTY THRESHOLD.—The amendment made by subsection (b) shall apply as if included in the amendments made by section 9006 of the Patient Protection and Affordable Care Act.

(e) PUBLIC COMMENTS AND SUGGESTIONS.—In order to minimize the burden on small businesses and to avoid duplicative information reporting by small businesses, the Secretary of the Treasury or the Secretary's designee is directed to request and consider comments and suggestions from the public concerning implementation and administration of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, including—

(1) the appropriate scope of the terms ''gross proceeds'' and ''amounts in consideration for property'' in section 6041(a) of the Internal Revenue Code of 1986, as amended by such section 9006,

(2) whether or how the reporting requirements should apply to payments between affiliated corporations, including payments related to intercompany transactions within the same consolidated group,

(3) the appropriate time and manner of reporting to the Internal Revenue Service, and

whether, and what, changes to existing procedures, forms, and software for filing information returns are needed, including electronic filing of information returns to the Internal Revenue Service,

(4) whether, and what, changes to existing procedures and forms to acquire taxpayer identification numbers are needed, and

(5) how back-up withholding requirements should apply.

(f) TIMELY GUIDANCE.—The Secretary of the Treasury is directed to issue timely guidance that will implement and administer the amendments made by section 9006 of the Patient Protection and Affordable Care Act in a manner that minimizes the burden on small businesses and avoids duplicative reporting by small businesses.

(g) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Prior to the effective date of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, the Secretary of the Treasury shall report quarterly to Congress concerning the steps taken to implement such amendments, including ways to limit compliance burdens and to avoid duplicative reporting. Such reports shall include—

(A) a description of actions taken to minimize, reduce or eliminate burdens associated with information reporting by small businesses, and

(B) a description of business transactions exempted from reporting requirements to avoid duplicative reporting or because such transactions represent minimal compliance risk.

(2) COMPARISON.—Not later than 6 months prior to the effective date of the amendments made by section 9006 of the Patient Protection and Affordable Care Act, the Secretary of the Treasury shall report to Congress a comparison of the expected compliance requirements after the implementation of such amendments to the compliance requirements under section 6041 of the Internal Revenue Code of 1986 prior to the effective date of such amendments.

SEC. _____. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED OIL COMPANIES FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY PRODUCTS THEREOF.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', or'', and by inserting after clause (iii) the following new clause:

''(iv) in the case of a taxpayer which is a major integrated oil company (as defined in section 167(h)(5)(B)), oil related qualified production activities (within the meaning of subsection (d)(9)(B)).''.

(b) CONFORMING AMENDMENT.—Section 199(d)(9)(A) of the Internal Revenue Code of 1986 is amended by inserting ''(other than a major integrated oil company (as defined in section 167(h)(5)(B))'' after ''taxpayer''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4596 TO AMENDMENT NO. 4595

Mr. REID. I now call up the Johanns amendment No. 4596.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. JOHANNS, proposes an amendment numbered 4596 to amendment No. 4595.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To repeal the expansion of information reporting requirements for payments of $600 or more to corporations, and for other purposes)

At the appropriate place insert the following:

PART IV—ADDITIONAL PROVISIONS

SEC. 4271. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

Section 9006 of the Patient Protection and Affordable Care Act, and the amendments made thereby, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such section, and amendments, had never been enacted.

SEC. 4272. EXPANSION OF AFFORDABILITY EXCEPTION TO INDIVIDUAL MANDATE.

Section 5000A(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ''8 percent'' and inserting ''5 percent''.

SEC. 4273. USE OF PREVENTION AND PUBLIC HEALTH FUND.

(a) USE OF FUNDS AS OFFSET THROUGH FISCAL YEAR 2017.—Section 4002(b) of the Patient Protection and Affordable Care Act is amended by striking ''appropriated—'' and all that follows and inserting ''appropriated, for fiscal year 2018, and each fiscal year thereafter, $2,000,000,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 4002 of the Patient Protection and Affordable Care Act.

SEC. 4274. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act in effect on the date of the enactment of this Act is increased by 4.25 percentage points.

AMENDMENT NO. 4597

Mr. REID. I have an amendment to the language proposed to be stricken and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4597 to the language proposed to be stricken by amendment No. 4594.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the language proposed to be stricken, insert the following:

This section shall become effective 6 days after enactment.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4598 TO AMENDMENT NO. 4597

Mr. REID. I now have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4598 to amendment No. 4597.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the amendment, strike ''6'' and insert ''4''.

CLOTURE MOTIONS

Mr. REID. I have four cloture motions at the desk: on the Johanns second-degree amendment, the Nelson first-degree amendment, the substitute, and the bill.

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Johanns amendment No. 4596.

Harry Reid, Patrick J. Leahy, Dianne Feinstein, Charles E. Schumer, Herb Kohl, Joseph I. Lieberman, Jeff Bingaman, Barbara A. Mikulski, Richard J. Durbin, Al Franken, Byron L. Dorgan, Mark Begich, Benjamin L. Cardin, Amy Klobuchar, Kirsten E. Gillibrand, Jeanne Shaheen, Kay R. Hagan.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on amendment No. 4595.

Harry Reid, Tim Johnson, Richard J. Durbin, Barbara Boxer, Al Franken, Byron L. Dorgan, Patty Murray, Robert P. Casey, Jr., Jon Tester, Jack Reed, Kay R. Hagan, Jeanne Shaheen, Patrick J. Leahy, Christopher J. Dodd, Bill Nelson, Tom Harkin.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Reid substitute amendment No. 4594.

Mary L. Landrieu, Max Baucus, Dianne Feinstein, Patty Murray, Charles E. Schumer, Christopher J. Dodd, Al Franken, Robert P. Casey, Jr., Maria Cantwell, Sheldon Whitehouse, Byron L. Dorgan, Benjamin L. Cardin, Ron Wyden, Kent Conrad, Roland W. Burris, Jeff Merkley, Debbie Stabenow.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 5297, the Small Business Lending Fund Act of 2010.

Mary L. Landrieu, Max Baucus, Dianne Feinstein, Patty Murray, Charles E. Schumer, Christopher J. Dodd, Al Franken, Robert P. Casey, Jr., Maria Cantwell, Sheldon Whitehouse, Byron L. Dorgan, Benjamin L. Cardin, Ron Wyden, Kent Conrad, Roland W. Burris, Jeff Merkley, Debbie Stabenow.

Mr. REID. I ask unanimous consent that the mandatory quorum calls be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO COMMIT WITH AMENDMENT NO. 4599

Mr. REID. Mr. President, I have a motion to commit with instructions at the desk, and I ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to commit the bill to the Finance Committee with instructions to report back forthwith with an amendment numbered 4599.

The amendment is as follows:

At the end, insert the following:

The Finance Committee is requested to study the impact of changes to the system whereby small business entities are provided with all opportunities for access to capital.

Mr. REID. Mr. President, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4600

Mr. REID. Mr. President, I have an amendment to the instructions at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4600 to the instructions (amendment No. 4599) of the motion to commit.

The amendment is as follows:

At the end, insert the following:

''and the economic impact on local communities served by small businesses.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4601 TO AMENDMENT NO. 4600

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4601 to amendment No. 4600.

The amendment is as follows:

At the end, insert the following:

''and its impact on state and local governments.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

FILING DATE

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding an adjournment or recess of the Senate, Senate committees may file reported legislative and Executive Calendar business on Thursday, September 2, 2010, from 11 a.m. to 1 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT AUTHORITY

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the recess or adjournment of the Senate, the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the majority leader, pursuant to the provisions of S. Res. 105, adopted April 13, 1989, as amended by S. Res. 149, adopted October 5, 1993, as amended by Public Law 105–275, adopted October 21, 1998, amended by S. Res. 75, adopted March 25, 1999, amended by S. Res. 383, adopted October 27, 2000, and amended by S. Res. 355, adopted November 13, 2002, and amended by S. Res. 480, adopted November 20, 2004, further amended by S. Res. 625, adopted December 6, 2006, and further amended by S. Res. 715, adopted November 20, 2008, the designation of members of the Senate National Security Working Group for the remainder of the 111th Congress: Senator DANIEL K. INOUYE, who serves in his capacity as President pro tempore of the Senate, and Senator JOHN F. KERRY to be majority administrative cochairman, while continuing in his already-designated position of Democratic cochairman.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider en bloc Calendar Nos. 1025, 1026, and 1029; that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table en bloc, the President be immediately notified of the Senate's action; further, that the action under rule XXXI reflect that Calendar No. 948 should be included, not 958; and that the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Rose M. Likins, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Peru.

Luis E. Arreaga-Rodas, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iceland.

Peter Michael McKinley, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Colombia.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

AUTHORIZING TERMINATION OF CERTAIN EASEMENTS ON LAND OWNED BY THE VILLAGE OF CASEYVILLE, ILLINOIS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 232, H.R. 511.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 511) to authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements on this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 511) was ordered to a third reading, was read the third time, and passed.

JOHN C. GODBOLD FEDERAL BUILDING

Mr. REID. Mr. President, I ask unanimous consent to proceed to Calendar No. 429.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4275) to designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building.''

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed; a motion to reconsider be laid upon the table; there be no intervening action or debate; and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4275) was ordered to a third reading, was read the third time, and passed.

FIREARMS EXCISE TAX IMPROVEMENT ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent to proceed to Calendar No. 456.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5552) to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly and to provide for the assessment by the Secretary of the Treasury of certain criminal restitution.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, a motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5552) was ordered to a third reading, was read the third time, and passed.

''JAMES CHANEY, ANDREW GOODMAN, AND MICHAEL SCHWERNER FEDERAL BUILDING''

Mr. REID. Mr. President, I ask unanimous consent to proceed to Calendar No. 485.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3562) to designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the ''James Cheney, Andrew Goodman, and Michael Schwerner Federal Building''.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert the part printed in italic.

H.R. 3562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BUILDING DESIGNATION.

The Administrator of General Services shall ensure that the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, is known and designated as the ''James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building''.

SEC. 2. REFERENCES.

With respect to the period in which the building referred to in section 1 is federally occupied, any reference in a law, map, regulation, document, paper, or other record of the United States to that building shall be deemed to be a reference to the ''James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building''.

Amend the title so as to read: ''An Act to designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the 'James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building'.''.

Mr. REID. Mr. President, before we move forward with this matter, there is a stunningly powerful new book out, the name of which is ''Freedom Summer.'' This book is so very vivid in talking about the summer that the young men and women from around the United States went to Mississippi to get the African Americans to be able to vote. These three young men were killed—two Caucasians and one African American—for the work they were doing to try to bring the ability of African Americans to vote in Mississippi. It is a wonderful book. I recommend it to everyone, a brandnew book that is out.

Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to; the bill, as amended, be read the third time and passed; the committee-reported title amendment be agreed to; the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 3562), as amended, was read the third time and passed.

The title was amended so as to read: ''An Act to designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the 'James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building'.''.

FIRST RESPONDER ANTI-TERRORISM TRAINING RESOURCES ACT

Mr. REID. Mr. President, I ask unanimous consent to proceed to Calendar No. 498.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3978) to amend the Implementing Recommendations of the 9/11 Commission Act of 2007 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for and response to terrorism, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''First Responder Anti-Terrorism Training Resources Act''.

SEC. 2. ACCEPTANCE OF GIFTS FOR FIRST RESPONDER TERRORISM PREPAREDNESS AND RESPONSE TRAINING.

(a) IN GENERAL.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended—

(1) in title V (6 U.S.C. 311 et seq.), by adding at the end the following:

''SEC. 525. ACCEPTANCE OF GIFTS.

''(a) AUTHORITY.—The Secretary may accept and use gifts of property, both real and personal, and may accept gifts of services, including from guest lecturers, for otherwise authorized activities of the Center for Domestic Preparedness that are related to efforts to prevent, prepare for, protect against, or respond to a natural disaster, act of terrorism, or other man-made disaster, including the use of a weapon of mass destruction.

''(b) PROHIBITION.—The Secretary may not accept a gift under this section if the Secretary determines that the use of the property or services would compromise the integrity or appearance of integrity of—

''(1) a program of the Department; or

''(2) an individual involved in a program of the Department.

''(c) REPORT.—

''(1) IN GENERAL.—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report disclosing—

''(A) any gifts that were accepted under this section during the year covered by the report;

''(B) how the gifts contribute to the mission of the Center for Domestic Preparedness; and

''(C) the amount of Federal savings that were generated from the acceptance of the gifts.

''(2) PUBLICATION.—Each report required under paragraph (1) shall be made publically available.'';

(2) in section 873(b) (6 U.S.C. 453(b)), by striking ''and by section 93'' and all that follows through ''or donations'' and inserting ''by section 93 of title 14, United States Code, or by section 525 or 884 of this Act, gifts or donations''; and

(3) in section 884 (6 U.S.C. 464), by adding at the end the following:

''(c) ACCEPTANCE AND USE OF GIFTS.—The Federal Law Enforcement Training Center may accept and use gifts of property, both real and personal, and accept services, for authorized purposes.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) THE HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended in the table of contents by inserting after the item relating to section 524 the following:

''Sec. 525. Acceptance of gifts.''.

(2) REPEAL.—The matter under the heading ''SALARIES AND EXPENSES'' under the heading ''FEDERAL LAW ENFORCEMENT TRAINING CENTER'' under title IV of the Department of Homeland Security Appropriations Act, 2004 (6 U.S.C. 464a) is amended by striking ''Provided, That in fiscal year 2004 and thereafter, the Center is authorized to accept and use gifts of property, both real and personal, and to accept services, for authorized purposes: Provided further,'' and inserting ''Provided,''.

Amend the title so as to read: ''An Act to amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for a response to terrorism, and for other purposes.''.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to; the bill, as amended, be read the third time and passed; the title amendment be agreed to; the motion to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The amendment was orderd to be engrossed and the bill to be read a third time.

The bill, (H.R. 3978), as amended, was read the third time and passed.

The title was amended so as to read:

''An Act to amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to accept and use gifts for otherwise authorized activities of the Center for Domestic Preparedness that are related to preparedness for a response to terrorism, and for other purposes.''.

ROSA'S LAW

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 506.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2781) to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committees on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as ''Rosa's Law''.

SEC. 2. INDIVIDUALS WITH INTELLECTUAL DISABILITIES.

(a) HIGHER EDUCATION ACT OF 1965.—Section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1140(2)(A)) is amended by striking ''mental retardation or''.

(b) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—

(1) Section 601(c)(12)(C) of the Individuals with Disabilities Education Act (20 U.S.C. 1400(c)(12)(C)) is amended by striking ''having mental retardation'' and inserting ''having intellectual disabilities''.

(2) Section 602 of such Act (20 U.S.C. 1401) is amended—

(A) in paragraph (3)(A)(i), by striking ''with mental retardation'' and inserting ''with intellectual disabilities''; and

(B) in paragraph (30)(C), by striking ''of mental retardation'' and inserting ''of intellectual disabilities''.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7512(16)(E)) is amended by striking ''mild mental retardation,'' and inserting ''mild intellectual disabilities,''.

(d) REHABILITATION ACT OF 1973.—

(1) Section 7(21)(A)(iii) of the Rehabilitation Act of 1973 (29 U.S.C. 705(21)(A)(iii)) is amended by striking ''mental retardation,'' and inserting ''intellectual disability,''.

(2) Section 204(b)(2)(C)(vi) of such Act (29 U.S.C. 764(b)(2)(C)(vi)) is amended by striking ''mental retardation and other developmental disabilities'' and inserting ''intellectual disabilities and other developmental disabilities''.

(3) Section 501(a) of such Act (29 U.S.C. 791(a)) is amended, in the third sentence, by striking ''President's Committees on Employment of People With Disabilities and on Mental Retardation'' and inserting ''President's Disability Employment Partnership Board and the President's Committee for People with Intellectual Disabilities''.

(e) HEALTH RESEARCH AND HEALTH SERVICES AMENDMENTS OF 1976.—Section 1001 of the Health Research and Health Services Amendments of 1976 (42 U.S.C. 217a–1) is amended by striking ''the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,''.

(f) PUBLIC HEALTH SERVICE ACT.—

(1) Section 317C(a)(4)(B)(i) of the Public Health Service Act (42 U.S.C. 247b–4(a)(4)(B)(i)) is amended by striking ''mental retardation;'' and inserting ''intellectual disabilities;''.

(2) Section 448 of such Act (42 U.S.C. 285g) is amended by striking ''mental retardation,'' and inserting ''intellectual disabilities,''.

(3) Section 450 of such Act (42 U.S.C. 285g–2) is amended to read as follows:

''SEC. 450. RESEARCH ON INTELLECTUAL DISABILITIES.

''The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of intellectual disabilities.''.

(4) Section 641(a) of such Act (42 U.S.C. 291k(a)) is amended by striking ''matters relating to the mentally retarded'' and inserting ''matters relating to individuals with intellectual disabilities''.

(5) Section 753(b)(2)(E) of such Act (42 U.S.C. 294c(b)(2)(E)) is amended by striking ''elderly mentally retarded individuals'' and inserting ''elderly individuals with intellectual disabilities''.

(6) Section 1252(f)(3)(E) of such Act (42 U.S.C. 300d–52(f)(3)(E)) is amended by striking ''mental retardation/developmental disorders,'' and inserting ''intellectual disabilities or developmental disorders,''.

(g) HEALTH PROFESSIONS EDUCATION PARTNERSHIPS ACT OF 1998.—Section 419(b)(1) of the Health Professions Education Partnerships Act of 1998 (42 U.S.C. 280f note) is amended by striking ''mental retardation'' and inserting ''intellectual disabilities''.

(h) PUBLIC LAW 110–154.—Section 1(a)(2)(B) of Public Law 110–154 (42 U.S.C. 285g note) is amended by striking ''mental retardation'' and inserting ''intellectual disabilities''.

(i) NATIONAL SICKLE CELL ANEMIA, COOLEY'S ANEMIA, TAY-SACHS, AND GENETIC DISEASES ACT.—Section 402 of the National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act (42 U.S.C. 300b–1 note) is amended by striking ''leading to mental retardation'' and inserting ''leading to intellectual disabilities''.

(j) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 2(2) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff note) is amended by striking ''mental retardation,'' and inserting ''intellectual disabilities,''.

(k) REFERENCES.—For purposes of each provision amended by this section—

(1) a reference to ''an intellectual disability'' shall mean a condition previously referred to as ''mental retardation'', or a variation of this term, and shall have the same meaning with respect to programs, or qualifications for programs, for individuals with such a condition; and

(2) a reference to individuals with intellectual disabilities shall mean individuals who were previously referred to as individuals who are ''individuals with mental retardation'' or ''the mentally retarded'', or variations of those terms.

SEC. 3. REGULATIONS.

For purposes of regulations issued to carry out a provision amended by this Act—

(1) before the regulations are amended to carry out this Act—

(A) a reference in the regulations to mental retardation shall be considered to be a reference to an intellectual disability; and

(B) a reference in the regulations to the mentally retarded, or individuals who are mentally retarded, shall be considered to be a reference to individuals with intellectual disabilities; and

(2) in amending the regulations to carry out this Act, a Federal agency shall ensure that the regulations clearly state—

(A) that an intellectual disability was formerly termed mental retardation; and

(B) that individuals with intellectual disabilities were formerly termed individuals who are mentally retarded.

SEC. 4. RULE OF CONSTRUCTION.

This Act shall be construed to make amendments to provisions of Federal law to substitute the term ''an intellectual disability'' for ''mental retardation'', and ''individuals with intellectual disabilities'' for ''the mentally retarded'' or ''individuals who are mentally retarded'', without any intent to—

(1) change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions; or

(2) compel States to change terminology in State laws for individuals covered by a provision amended by this Act.

Mr. ENZI. Mr. President, I am pleased to be here today to speak about the passage of a bill that is a top priority for the disability community—Rosa's Law. As always, I have greatly appreciated the opportunity to work with Senator MIKULSKI on this bill. I would like to thank her for her leadership and her commitment to this issue.

The bill is simple in nature but profound in what it will do when it is enacted. Rosa's Law will change the phrase ''mentally retarded'' to ''an individual with an intellectual disability'' in all of the laws that fall

under the jurisdiction of the Committee on Health, Education, Labor, and Pensions, HELP, without negatively impinging or expanding upon the rights, services, benefits, or educational opportunities that people with this diagnosis are entitled to. It will make a greatly needed change that should have been made well before today.

Some people will ask why this bill is so important and why it is needed. They will wonder if Congress has more important work to do than to change a few words in our laws for the sake of being politically correct. In response, I would share what Rosa's brother Nick said to the Maryland General Assembly. ''What you call people is how you treat them. What you call my sister is how you will treat her. If you believe she's 'retarded' it invites taunting, stigma. It invites bullying and it also invites the slammed doors of being treated with respect and dignity.''

For far too long we have used hurtful words like ''mental retardation'' or ''MR'' in our Federal statutes to refer to those who are living with intellectual disabilities. While the way people feel is important, the way people are treated is equally important. When words such as ''MR'' are used to describe a person, it dehumanizes them, and as Nick said, it leads to a situation in which some people are not treated with the dignity and respect they deserve.

This is not the first time Congress has taken similar action. Our laws once referred to people with intellectual disabilities with terms like ''feeble minded'' and other language that I cannot bear to say. Back then we thought that was the appropriate language to use until we switched to using the term ''MR.'' Forty years later, we are taking another big step and replacing ''MR'' with ''intellectual disability.''

This change is already taking place across the country with organizations like the American Association on Intellectual and Developmental Disabilities which dropped the term ''MR'' from its name. Likewise, The Arc of the United States has stopped using this archaic terminology and dropped the term from their agency name. The American Psychiatric Association, which publishes the Diagnostic and Statistical Manual of Mental Disorders, has already voted to use the term ''Intellectual Disability'' in the next publication of their manual. Internationally, the World Health Organization uses the term ''intellectual disability.''

This bill will start the process of change in the Federal Government and make such terminology consistent. The President's Committee on Mental Retardation was changed by executive order so it is now the Committee on Individuals with Intellectual Disabilities. The Centers for Disease Control and Prevention also uses the term ''intellectual disability.'' After the House passes this bill it will become law and begin a chain of events that I hope will lead to the Finance Committee's action on this matter so we can see similar changes in Medicaid and Social Security programs.

In 1963, the Reverend Dr. Martin Luther King, Jr. said, ''I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.'' That same concept rings true for people with intellectual disabilities—that they will also be judged by who they are and not by a label that has been forced upon them. That's the beauty and simplicity of this bill—and why it is so important.

Finally, there are a number of people I would like to thank for their assistance with passing this bill out of the Senate. First, on my staff I would like to thank Frank Macchiarola, HELP Committee staff director, Greg Dean, HELP Committee general counsel, Beth Buehlmann, education office staff director, and Aaron Bishop, professional staff member on disability policy for their determination and hard work on this bill. I always say that I have the best staff in Congress and I couldn't have done it without them. I would also like to thank Mario Cardona with Senator MIKULSKI's office and Lee Perselay and Michael Gamel-McCormick, with Senator HARKIN's office, for their leadership and effort to get this bill through the Senate, and for working with us in a true bipartisan fashion. I would also like to thank Pattie DeLoatche and Karen LaMontagne from Senator HATCH's office, Karen McCarthy from Senator MURKOWSKI's office, and David Cleary from Senator ALEXANDER's office for their assistance with putting this bill together, Liz King with Legislative Counsel for drafting the bill, and Cassandra Foley from the Congressional Research Service for her work.

Next, the bill would not have been a success without the work of so many families and groups. We all need to thank Rosa Marcellino, her brother Nick and the entire Marcellino family for their strength, determination, and willingness to lead, teach and for not being afraid to voice their opinion and say that this just hasn't been right.

While this bill may not change the whole world, it will make the world a little better, more hospitable place for us and for the entire disability community.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2781), as amended, was ordered to be engrossed for a third reading, but read the third time, and passed.

MANDATORY PRICE REPORTING ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 512.

The PRESIDING OFFICER. The clerk will state the bill by title.

A bill (S. 3656) to amend the Agricultural Marketing Act of 1946 to improve the reporting on sales of livestock and dairy products, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate; that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3656) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3656

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Mandatory Price Reporting Act of 2010''.

SEC. 2. LIVESTOCK MANDATORY REPORTING.

(a) EXTENSION OF AUTHORITY.—

(1) IN GENERAL.—Section 260 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636i) is amended by striking ''September 30, 2010'' and inserting ''September 30, 2015''.

(2) CONFORMING AMENDMENT AND EXTENSION.—Section 942 of the Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635 note; Public Law 106–78) is amended by striking ''September 30, 2010'' and inserting ''September 30, 2015''.

(b) WHOLESALE PORK CUTS.—

(1) REPORTING.—Chapter 3 of subtitle B of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635i et seq.) is amended by adding at the end the following new section:

''SEC. 233. MANDATORY REPORTING OF WHOLESALE PORK CUTS.

''(a) REPORTING.—The corporate officers or officially designated representatives of each packer shall report to the Secretary information concerning the price and volume of wholesale pork cuts, as the Secretary determines is necessary and appropriate.

''(b) PUBLICATION.—The Secretary shall publish information reported under subsection (a) as the Secretary determines necessary and appropriate.''.

(2) NEGOTIATED RULEMAKING.—The Secretary of Agriculture shall establish a negotiated rulemaking process pursuant to subchapter III of chapter 5 of title 5, United States Code, to negotiate and develop a proposed rule to implement the amendment made by paragraph (1).

(3) NEGOTIATED RULEMAKING COMMITTEE.—

(A) REPRESENTATION.—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall include representatives from—

(i) organizations representing swine producers;

(ii) organizations representing packers of pork, processors of pork, retailers of pork, and buyers of wholesale pork;

(iii) the Department of Agriculture; and

(iv) among interested parties that participate in swine or pork production.

(B) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any negotiated rulemaking committee established by the Secretary of Agriculture pursuant to paragraph (2) shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(4) TIMING OF PROPOSED AND FINAL RULES.—In carrying out the negotiated rulemaking process under paragraph (2), the Secretary of Agriculture shall ensure that—

(A) any recommendation for a proposed rule or report is provided to the Secretary of Agriculture not later than 180 days after the date of the enactment of this Act; and

(B) a final rule is promulgated not later than one and a half years after the date of the enactment of this Act.

(c) PORK EXPORT REPORTING.—Section 602(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5712(a)(1)) is amended by striking ''cotton,'' and inserting ''cotton, pork,''.

SEC. 3. DAIRY MANDATORY REPORTING.

(a) ELECTRONIC REPORTING REQUIRED.—Subsection (d) of section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b) is amended to read as follows:

''(d) ELECTRONIC REPORTING.—

''(1) ELECTRONIC REPORTING SYSTEM REQUIRED.—The Secretary shall establish an electronic reporting system to carry out this section.

''(2) PUBLICATION.—Not later than 3:00 p.m. Eastern Time on the Wednesday of each week, the Secretary shall publish a report containing the information obtained under this section for the preceding week.''.

(b) IMPLEMENTATION.—Not later than one year after the date of enactment of this Act, the Secretary of Agriculture shall implement the electronic reporting system required by subsection (d) of section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b), as amended by subsection (a). Until the electronic reporting system is implemented, the Secretary shall continue to conduct mandatory dairy product information reporting under the authority of such section, as in effect on the day before the date of enactment of this Act.

BORDER PROTECTION APPOINTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 516.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1517) to allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

H.R. 1517

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

For purposes of this Act—

(1) the term ''Commissioner'' means the Commissioner of U.S. Customs and Border Protection;

(2) the term ''U.S. Customs and Border Protection'' means U.S. Customs and Border Protection of the Department of Homeland Security;

(3) the term ''competitive service'' has the meaning given such term by section 2102 of title 5, United States Code; and

(4) the term ''overseas limited appointment'' means an appointment under—

(A) subpart B of part 301 of title 5 of the Code of Federal Regulations, as in effect on January 1, 2008; or

(B) any similar antecedent or succeeding authority, as determined by the Commissioner.

SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS.

(a) IN GENERAL.—Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Commissioner may convert an employee serving under an overseas limited appointment within U.S. Customs and Border Protection to a permanent appointment in the competitive service within U.S. Customs and Border Protection, if—

(1) as of the time of conversion, the employee has completed at least 2 years of current continuous service under 1 or more overseas limited appointments; and

(2) the employee's performance has, throughout the period of continuous service referred to in paragraph (1), been rated at least fully successful or the equivalent.

An employee whose appointment is converted under the preceding sentence acquires competitive status upon conversion.

(b) INDEMNIFICATION AND PRIVILEGES.—

(1) INDEMNIFICATION.—The United States shall, in the case of any individual whose appointment is converted under subsection (a), indemnify and hold such individual harmless from any claim arising from any event, act, or omission—

(A) that arises from the exercise of such individual's official duties, including by reason of such individual's residency status, in the foreign country in which such individual resides at the time of conversion;

(B) for which the individual would not have been liable had the individual enjoyed the same privileges and immunities in the foreign country as an individual who either was a permanent employee, or was not a permanent resident, in the foreign country at the time of the event, act, or omission involved; and

(C) that occurs before, on, or after the date of the enactment of this Act,

including any claim for taxes owed to the foreign country or a subdivision thereof.

(2) SERVICES AND PAYMENTS.—

(A) IN GENERAL.—In the case of any individual whose appointment is converted under subsection (a), the United States shall provide to such individual (including any dependents) services and monetary payments—

(i) equivalent to the services and monetary payments provided to other U.S. Customs and Border Protection employees in similar positions (and their dependents) in the same country of assignment by international agreement, an exchange of notes, or other diplomatic policy; and

(ii) for which such individual (including any dependents) was not eligible by reason of such individual's overseas limited appointment.

(B) APPLICABILITY.—Services and payments under this paragraph shall be provided to an individual (including any dependents) to the same extent and in the same manner as if such individual had held a permanent appointment in the competitive service throughout the period described in subsection (a)(1).

(c) GUIDANCE ON IMPLEMENTATION.—The Commissioner shall implement the conversion of an employee serving under an overseas limited appointment to a permanent appointment in the competitive service in a manner that—

(1) meets the operational needs of the U.S. Customs and Border Protection; and

(2) to the greatest extent practicable, is not disruptive to the employees affected under this Act.

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to affect the pay of any individual for services performed by such individual before the date of the conversion of such individual.

SEC. 4. TERMINATION.

The authority of the Commissioner to convert an employee serving under an overseas limited appointment within U.S. Customs and Border Protection to a permanent appointment in the competitive service within U.S. Customs and Border Protection shall terminate on the date that is 2 years after the date of the enactment of this Act.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD, as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 1517), as amended, was read the third time and passed.

REDESIGNATING THE NORTH MISSISSIPPI NATIONAL WILDLIFE REFUGES COMPLEX

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 519.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3354) to redesignate the North Mississippi National Wild Life Refuges Complex as the Sam D. Hamilton North Mississippi National Wildlife Refuges Complex.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3354) was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 3354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION OF THE NORTH MISSISSIPPI NATIONAL WILDLIFE REFUGES COMPLEX.

(a) IN GENERAL.—The North Mississippi National Wildlife Refuges Complex, located in

the State of Mississippi and consisting of the Dahomey National Wildlife Refuge, the Tallahatchie National Wildlife Refuge, the Coldwater National Wildlife Refuge, and the Bear Lake Unit, is redesignated as the ''Sam D. Hamilton North Mississippi National Wildlife Refuges Complex.''

(b) BOUNDARY REVISION.—Nothing in this Act prevents the Secretary of the Interior from making adjustments to the boundaries of the Sam D. Hamilton North Mississippi National Wildlife Refuges Complex (referred to in this section as the ''Refuges Complex''), as the Secretary determines to be appropriate, to carry out the mission of the National Wildlife Refuge System in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and any other applicable authority.

(c) ADDITION OF LAND.—Nothing in this Act prevents the Secretary of the Interior from adding to the Refuges Complex new land or parcels of the National Wildlife Refuge System, as the Secretary determines to be appropriate, to carry out the mission of the National Wildlife Refuge System in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and any other applicable authority.

(d) REFERENCES.—Any reference in any statute, rule, regulation, executive order, publication, map, paper, or other document of the United States to the North Mississippi National Wildlife Refuges Complex is deemed to refer to the Sam D. Hamilton North Mississippi National Wildlife Refuges Complex.

AGRICULTURAL CREDIT ACT OF 2009

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 3509, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3509) to reauthorize State agricultural mediation programs under title V of the Agricultural Credit Act of 1987.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, there be no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3509) was ordered to a third reading, was read the third time, and passed.

IMPROVING ACCESS TO CLINICAL TRIALS ACT OF 2009

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be discharged from further consideration of S. 1674, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1674) to provide for an exclusion under the supplemental Security Income program and the Medicaid program for compensation provided to individuals who participate in clinical trials for rare diseases or conditions.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, there be no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1674) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1674

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Improving Access to Clinical Trials Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Advances in medicine depend on clinical trial research conducted at public and private research institutions across the United States.

(2) The challenges associated with enrolling participants in clinical research studies are especially difficult for studies that evaluate treatments for rare diseases and conditions (defined by the Orphan Drug Act as a disease or condition affecting fewer than 200,000 Americans), where the available number of willing and able research participants may be very small.

(3) In accordance with ethical standards established by the National Institutes of Health, sponsors of clinical research may provide payments to trial participants for out-of-pocket costs associated with trial enrollment and for the time and commitment demanded by those who participate in a study. When offering compensation, clinical trial sponsors are required to provide such payments to all participants.

(4) The offer of payment for research participation may pose a barrier to trial enrollment when such payments threaten the eligibility of clinical trial participants for Supplemental Security Income and Medicaid benefits.

(5) With a small number of potential trial participants and the possible loss of Supplemental Security Income and Medicaid benefits for many who wish to participate, clinical trial research for rare diseases and conditions becomes exceptionally difficult and may hinder research on new treatments and potential cures for these rare diseases and conditions.

SEC. 3. EXCLUSION FOR COMPENSATION FOR PARTICIPATION IN CLINICAL TRIALS FOR RARE DISEASES OR CONDITIONS.

(a) EXCLUSION FROM INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) by striking ''and'' at the end of paragraph (24);

(2) by striking the period at the end of paragraph (25) and inserting ''; and''; and

(3) by adding at the end the following:

''(26) the first $2,000 received during a calendar year by such individual (or such spouse) as compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition (as defined in section 5(b)(2) of the Orphan Drug Act), but only if the clinical trial—

''(A) has been reviewed and approved by an institutional review board that is established—

''(i) to protect the rights and welfare of human subjects participating in scientific research; and

''(ii) in accord with the requirements under part 46 of title 45, Code of Federal Regulations; and

''(B) meets the standards for protection of human subjects as provided under part 46 of title 45, Code of Federal Regulations.''.

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) is amended—

(1) by striking ''and'' at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting ''; and''; and

(3) by inserting after paragraph (16) the following:

''(17) any amount received by such individual (or such spouse) which is excluded from income under section 1612(b)(26) (relating to compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition).''.

(c) MEDICAID EXCLUSION.—

(1) IN GENERAL.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)), is amended by adding at the end the following:

''(14) EXCLUSION OF COMPENSATION FOR PARTICIPATION IN A CLINICAL TRIAL FOR TESTING OF TREATMENTS FOR A RARE DISEASE OR CONDITION.—The first $2,000 received by an individual (who has attained 19 years of age) as compensation for participation in a clinical trial meeting the requirements of section 1612(b)(26) shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.''.

(2) CONFORMING AMENDMENT.—Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by inserting ''(e)(14),'' before ''(l)(3)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is the earlier of—

(1) the effective date of final regulations promulgated by the Commissioner of Social Security to carry out this section and such amendments; or

(2) 180 days after the date of enactment of this Act.

(e) SUNSET PROVISION.—This Act and the amendments made by this Act are repealed on the date that is 5 years after the date of the enactment of this Act.

SEC. 4. STUDY AND REPORT.

(a) STUDY.—Not later than 36 months after the effective date of this Act, the Comptroller General of the United States shall conduct a study to evaluate the impact of this Act on enrollment of individuals who receive Supplemental Security Income benefits under title XVI of the Social Security Act (referred to in this section as ''SSI beneficiaries'') in clinical trials for rare diseases or conditions. Such study shall include an analysis of the following:

(1) The percentage of enrollees in clinical trials for rare diseases or conditions who were SSI beneficiaries during the 3-year period prior to the effective date of this Act as compared to such percentage during the 3-year period after the effective date of this Act.

(2) The range and average amount of compensation provided to SSI beneficiaries who participated in clinical trials for rare diseases or conditions.

(3) The overall ability of SSI beneficiaries to participate in clinical trials.

(4) Any additional related matters that the Comptroller General determines appropriate.

(b) REPORT.—Not later than 12 months after completion of the study conducted under subsection (a), the Comptroller General shall submit to Congress a report containing the results of such study, together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

SPIRIT OF '45 DAY

Mr. REID. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of H. Con. Res. 226, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 226) supporting the observance of ''Spirit of '45 Day.''

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, there be no intervening action or debate, and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 226) was agreed to.

The preamble was agreed to.

UNITED STATES HARDWOODS INDUSTRY

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. Res. 411, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 411) recognizing the importance and sustainability of the United States hardwoods industry and urging that United States hardwoods and the products derived from United States hardwoods be given full consideration in any program to promote construction of environmentally preferable commercial, public, or private buildings.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, there be no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 411) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 411

Whereas hardwood trees grown in the United States are an abundant, sustainable, and legal resource, as documented annually by the Forest Inventory and Analysis Program of the Forest Service;

Whereas, despite development pressure and cropland needs, Department of Agriculture data show that the inventory of United States hardwood has more than doubled over the past 50 years;

Whereas the Department of Agriculture reports that annual United States hardwood growth exceeds hardwood removals by a significant margin of 1.9 to 1, and net annual growth has exceeded removals continuously since 1952;

Whereas the World Bank ranks the United States in the top 10 percent of all countries for government effectiveness, regulatory quality, and rule of law with respect to hardwood resources;

Whereas United States hardwoods have been awarded the highest conservation crop rating available under the Department of Agriculture Environmental Benefits Index;

Whereas United States hardwoods are net absorbers of carbon and are widely recognized to be critical to reducing the United States carbon footprint;

Whereas United States hardwoods are a valuable raw material that, when used properly, provide an incentive for landowners to maintain their land in a forested condition rather than clearing the land for development or other alternative land use;

Whereas United States hardwoods are a renewable resource and bio-based material;

Whereas United States hardwoods are recyclable, and hardwoods used in construction can often be restored and reused in later construction;

Whereas United States hardwoods are grown primarily in those States located along or east of the Mississippi River and in the Pacific Northwest, but, with a presence in every State, the hardwood industry is 1 of the major sources of economic activity and sustenance in many rural communities;

Whereas United States hardwoods are grown by thousands of small family landowners who may harvest trees only once or twice in a generation; and

Whereas United States hardwoods and the products derived from United States hardwoods are prized throughout the world as a superior and long-lasting building material: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that United States hardwoods are an abundant, sustainable, and legal resource under United States law; and

(2) urges that United States hardwoods and products derived from United States hardwoods should be given full consideration in any program to promote construction of environmentally preferable commercial, public, or private buildings.

HONORING THE LIFE OF MANUTE BOL

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration and the Senate now proceed to S. Res. 579.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 579) honoring the life of Manute Bol and expressing the condolences of the Senate on his passing.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 579) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 579

Whereas Manute Bol was born the son of a Dinka tribal chief in Sudan, and was given the name ''Manute'', which means ''special blessing'';

Whereas Manute Bol traveled to the United States in 1983 and played college basketball at the University of Bridgeport during the 1984–1985 season;

Whereas Manute Bol began his National Basketball Assocation (NBA) career with the Washington Bullets in 1985, setting the rookie shot-blocking record;

Whereas Manute Bol played in the NBA for 10 years, setting numerous shot-blocking records;

Whereas, after beginning his career in the NBA, Manute Bol used his fame and fortune to raise funding and awareness for the people of Sudan;

Whereas Manute Bol was admitted to the United States as a religious refugee and lost over 250 members of his extended family to a civil war rife with religious tensions, but nevertheless spent his life working for reconciliation between Christians and Muslims in Sudan;

Whereas Manute Bol's last project to foster reconciliation was to build 41 schools for Christians and Muslims to learn and live together in the spirit of reconciliation;

Whereas Manute Bol constantly put himself in danger to bring peace and stability to Sudan, including by flying into war zones and visiting refugee camps that were targeted for aerial attack;

Whereas, on Manute Bol's last humanitarian visit to Sudan, the President of Southern Sudan, Salva Kiir, requested that Manute Bol extend his visit to make appearances at Sudan's national election and use his influence to counter corruption, which ultimately led to the deterioration of his health and his sudden death;

Whereas Manute Bol advocated for human rights in Sudan by appearing before Congress and lobbying Members of Congress, thus positively influencing United States foreign policy on Sudan;

Whereas, after Manute Bol retired, he resided in West Hartford, Connecticut, and Olathe, Kansas;

Whereas Manute Bol died at the age of 47 on June 19, 2010; and

Whereas Manute Bol's perseverance in his advocacy for Sudan affected the lives of thousands, and possibly millions, of people in Sudan: Now, therefore, be it

Resolved, That the Senate—

(1) expresses profound sorrow at the death of Manute Bol;

(2) conveys its condolences to the family, friends, and colleagues of Manute Bol;

(3) expresses gratitude to Manute Bol for his passion and determination in raising awareness of human rights abuses, and his dedication to bringing peace to Sudan; and

(4) encourages the National Collegiate Athletic Association (NCAA) and the National Basketball Association (NBA) to pursue exhibition games with a Sudanese basketball team to increase awareness of the political and humanitarian situation in Sudan, with proceeds from these games donated toward the construction of reconciliation schools in Sudan, as proposed by Manute Bol.

NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY

RECOGNIZING 63RD ANNIVERSARY OF INDIA'S INDEPENDENCE

COMMEMORATING 50TH ANNIVERSARY OF PUBLICATION OF ''TO KILL A MOCKINGBIRD''

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed en bloc to the consideration of the following Senate resolutions: S. 612, S. 613, and S. 614.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the resolutions be agreed to, the preambles be agreed to, and the motions to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolutions were agreed to.

The preambles were agreed to.

The resolutions, with their preambles, read as follows:

S. RES. 612

Whereas the term ''fetal alcohol spectrum disorders'' includes a broader range of conditions than the term ''fetal alcohol syndrome'' and therefore has replaced the term ''fetal alcohol syndrome'' as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was $6,000,000,000 in 2007, and it is estimated that each individual with fetal alcohol syndrome will cost taxpayers of the United States between $860,000 and $4,000,000 during the lifetime of each such individual;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked ''What if . . . a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol . . . would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2010, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize further effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection on the ninth hour of September 9, 2010, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

S. RES. 613

Whereas on August 15, 1947, India gained independence from Great Britain and became a sovereign nation;

Whereas August 15 is celebrated in India as Independence Day;

Whereas India is the largest democracy in the world;

Whereas India has one of the largest and most dynamic economies in the world;

Whereas, in recent years, the United States and India have pursued a strategic partnership based on common interests and shared commitments to freedom, democracy, pluralism, human rights, and the rule of law;

Whereas President Barack Obama referred to the relationship between the United States and India as ''one of the defining partnerships of the 21st century'' at the first State dinner hosted by President Obama, which was held in honor of Indian Prime Minister Manmohan Singh in November 2009;

Whereas the United States and India completed the inaugural round of the United States-India Strategic Dialogue in June 2010;

Whereas the United States and India have undertaken a cooperative effort in the area of civilian nuclear power, which Congress approved through the enactment of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110–369; 122 Stat. 4028);

Whereas the strong relationship between the United States and India, based on mutual trust and respect, enables close collaboration across a broad spectrum of strategic interests, including counterterrorism, democracy promotion, regional economic development, human rights, and scientific research;

Whereas the United States and India have balanced, growing, and mutually beneficial trade and investment ties that create jobs in both countries;

Whereas, since 2001, Indians have comprised the largest foreign student population on college campuses in the United States, accounting for approximately 15 percent of all foreign students in the United States;

Whereas there are more than 2,000,000 Americans of Indian descent in the United States;

Whereas Americans of Indian descent have made lasting contributions to the social and economic fabric of the United States; and

Whereas Americans of Indian descent continue to enrich all sectors of public life in the United States, including as government, military, and law enforcement officials working to uphold the Constitution of the United States and to protect all people in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the 63rd anniversary of India's independence;

(2) celebrates the contributions of Americans of Indian descent to society in the United States; and

(3) remains committed to fostering and advancing the strategic partnership between the United States and India in the future.

S. RES. 614

Whereas Nelle Harper Lee was born on April 28, 1926, to Amasa Coleman Lee and Frances Finch in Monroeville, Alabama;

Whereas Nelle Harper Lee wrote the novel ''To Kill a Mockingbird'' portraying life in the 1930s in the fictional small southern town of Maycomb, Alabama, which was modeled on Monroeville, Alabama, the hometown of Ms. Lee;

Whereas ''To Kill a Mockingbird'' addressed the issue of racial inequality in the United States by revealing the humanity of a community grappling with moral conflict;

Whereas ''To Kill a Mockingbird'' was first published in 1960 and was awarded the Pulitzer Prize in 1961;

Whereas ''To Kill a Mockingbird'' was the basis for the 1962 Academy Award-winning film of the same name starring Gregory Peck;

Whereas ''To Kill a Mockingbird'' is one of the great American novels of the 20th century, having been published in more than 40 languages and having sold more than 30,000,000 copies;

Whereas, in 2007, Nelle Harper Lee was inducted into the American Academy of Arts and Letters;

Whereas, in 2007, President George W. Bush awarded the Presidential Medal of Freedom to Nelle Harper Lee for her great contributions to literature and observed, '' 'To Kill a Mockingbird' has influenced the character of our country for the better'', and ''As a model of good writing and humane sensibility, this book will be read and studied forever''; and

Whereas ''To Kill a Mockingbird'' is celebrated each year in Monroeville, Alabama through public performances featuring local amateur actors: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the historic milestone of the 50th anniversary of the publication of ''To Kill a Mockingbird''; and

(2) honors the outstanding achievement of Nelle Harper Lee in the field of American literature in authoring ''To Kill a Mockingbird''.

ADJOURNMENT OR RECESS OF THE SENATE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H. Con. Res. 307, the adjournment resolution, which we received from the House and is now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 307) providing for a conditional recess or adjournment of the Senate.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 307) was agreed to, as follows:

H. CON. RES. 307

Resolved by the House of Representatives (the Senate concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the Senate recesses or adjourns on any day from Thursday, August 5, 2010, through Saturday, August 14, 2010, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, September 13, 2010, or such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. (a) The Majority Leader of the Senate or his designee, after consultation with the Minority Leader of the Senate, shall notify the Members of the Senate to reassemble at such place and time as he may designate if, in his opinion, the public interest shall warrant it.

(b) After reassembling pursuant to subsection (a), when the Senate recesses or adjourns on a motion offered pursuant to this subsection by its Majority Leader or his designee, the Senate shall again stand recessed or adjourned pursuant to the first section of this concurrent resolution.

MEASURES READ THE FIRST TIME—S. 3762 AND H.R. 5827

Mr. REID. Mr. President, I am told there are two bills at the desk and I ask unanimous consent for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title en bloc.

The assistant legislative clerk read as follows:

A bill (S. 3762) to reinstate funds to the Federal Land Disposal Account.

A bill (H.R. 5827) to amend title 11 of the United States Code to include firearms in the types of property allowable under the alternative provision for exempting property from the estate.

Mr. REID. I now ask for a second reading en bloc and object to my own request for both of them.

The PRESIDING OFFICER. Objection is heard.

The bills will be read for the second time on the next legislative day.

AUTHORIZING DOCUMENT PRODUCTION

Mr. REID. I ask unanimous consent that the Senate proceed to S. Res. 615.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 615) to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs has received a request from a Federal law enforcement agency seeking access to records that the Subcommittee obtained during its 1999 investigation into private banking and money laundering.

This resolution would authorize the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations, acting jointly, to provide records, obtained by the Subcommittee in the course of its investigation, in response to the request and to other government entities and officials with a legitimate need for the records.

I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid on the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 615) was agreed to.

The preamble was agreed to.

The resolution, with its preamble reads as follows:

S. RES. 615

Whereas, the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs conducted an investigation in 1999 into private banking and money laundering;

Whereas, the Subcommittee has received a request from a federal law enforcement agency for access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, acting jointly, are authorized to provide to law enforcement officials, regulatory agencies, and other entities or individuals duly authorized by federal, state, or foreign governments, records of the Subcommittee's investigation in 1999 into private banking and money laundering.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, are we now in morning business?

The PRESIDING OFFICER. We are.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. REID. I ask unanimous consent to proceed to Calendar No. 548.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3729) to authorize the programs of the National Aeronautics and Space Administration for fiscal years 2011 through 2013, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask that the Rockefeller amendment, which is at the desk, be agreed to, the bill as amended be read three times, passed, the motion to reconsider be laid on the table, with no intervening action or debate, and that any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4602) was agreed to, as follows:

(Purpose: To modify the bill as reported)

On page 2, after the item relating to section 504, insert the following:

Sec. 505. Scientific access to the International Space Station.

On page 4, before line 1, after the item relating to section 1210, insert the following:

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

Sec. 1301. Compliance provision.

On page 36, after line 25, insert the following:

SEC. 309. REPORT REQUIREMENT.—Within 90 days after the date of enactment of this Act, or upon completion of reference designs for the Space Launch System and multi-purpose crew vehicle authorized by this Act, whichever occurs first, the Administrator shall provide a detailed report to the appropriate committees of Congress that provides an overall description of the reference vehicle design, the assumptions, description, data, and analysis of the systems trades and resolution process, justification of trade decisions, the design factors which implement the essential system and vehicle capability requirements established by this Act, the explanation and justification of any deviations from those requirements, the plan for utilization of existing contracts, civil service and contract workforce, supporting infrastructure utilization and modifications, and procurement strategy to expedite development activities through modification of existing contract vehicles, and the schedule of design and development milestones and related schedules leading to the accomplishment of operational goals established by this Act. The Administrator shall provide an update of this report as part of the President's annual Budget Request.

On page 32, line 4, strike ''measures'' and insert ''measures, including investments to improve launch infrastructure at NASA flight facilities scheduled to launch cargo to

the ISS under the commercial orbital transportation services program''.

On page 33, after line 25, insert the following:

(2) The extent to which the United States is reliant on non-United States systems, including foreign rocket motors and foreign launch vehicles.

On page 34, line 1, strike ''(2)'' and insert ''(3)''.

On page 38, strike lines 10 through 14 and insert the following:

(a) FY 2011 CONTRACTS AND PROCUREMENT AGREEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator may not execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Administrator may execute a contract or procurement agreement with respect to follow-on commercial crew services during fiscal year 2011 if—

(A) the requirements of paragraphs (1), (2), and (3) of subsection (b) are met; and

(B) the total amount involved for all such contracts and procurement agreements executed during fiscal year 2011 does not exceed $50,000,000 for fiscal year 2011.

On page 88, beginning with ''Upon'' in line 4, strike through ''centers.'' in line 9 and insert ''Upon completion of the study required by Section 1102, the Administrator shall establish an independent panel to examine alternative management models for NASA's workforce, centers, and related facilities in order to improve efficiency and productivity, while nonetheless maintaining core Federal competencies and keeping appropriately governmental functions internal to NASA.''.

On page 89, beginning with ''involuntary'' in line 24, strike through line 2 on page 90 and insert ''involuntary separations of permanent, non-Senior-Executive-Service, civil servant employees before September 30, 2013, except for cause on charges of misconduct, delinquency, or inefficiency.

On page 103, after line 9, insert the following:

TITLE XIII—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT OF 2010

SEC. 1301. COMPLIANCE PROVISION.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

On page 61, line 23—after ''-ers'' insert ''or the retrieval of NASA manned space vehicles, or significant contributions to human space flight.''

The bill (S. 3729), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

The bill will be printed in a future edition of the RECORD.

EQUAL ACCESS TO 21ST CENTURY COMMUNICATIONS ACT

Mr. REID. I now ask unanimous consent that we move to Calendar No. 509.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3304) to increase the access of persons with disabilities to modern communications, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Twenty-First Century Communications and Video Accessibility Act of 2010''.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Limitation on liability.

TITLE I—COMMUNICATIONS ACCESS

Sec. 101. Definitions.
Sec. 102. Hearing aid compatibility.
Sec. 103. Relay services.
Sec. 104. Access to advanced communications services and equipment.
Sec. 105. Universal service.
Sec. 106. Emergency Access Advisory Committee.

TITLE II—VIDEO PROGRAMMING

Sec. 201. Video Programming and Emergency Access Advisory Committee.
Sec. 202. Video description and closed captioning.
Sec. 203. Closed captioning decoder and video description capability.
Sec. 204. User interfaces on digital apparatus.
Sec. 205. Access to video programming guides and menus provided on navigation devices.
Sec. 206. Definitions.

SEC. 2. LIMITATION ON LIABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), no person shall be liable for a violation of the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services to the extent such person—

(1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or

(2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

(b) EXCEPTION.—The limitation on liability under subsection (a) shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

TITLE I—COMMUNICATIONS ACCESS

SEC. 101. DEFINITIONS.

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by adding at the end the following new paragraphs:

''(53) ADVANCED COMMUNICATIONS SERVICES.—The term 'advanced communications services' means—

''(A) interconnected VoIP service;

''(B) non-interconnected VoIP service;

''(C) electronic messaging service; and

''(D) interoperable video conferencing service.

''(54) CONSUMER GENERATED MEDIA.—The term 'consumer generated media' means content created and made available by consumers to online sites and venues on the Internet, including video, audio, and multimedia content.

''(55) DISABILITY.—The term 'disability' has the meaning given such term under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

''(56) ELECTRONIC MESSAGING SERVICE.—The term 'electronic messaging service' means a service that provides real-time or near real-time non-voice messages in text form between persons over communications networks.

''(57) INTERCONNECTED VOIP SERVICE.—The term 'interconnected VoIP service' has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

''(58) NON-INTERCONNECTED VOIP SERVICE.—The term 'non-interconnected VoIP service'—

''(A) means a service that—

''(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

''(ii) requires Internet protocol compatible customer premises equipment; and

''(B) does not include any service that is an interconnected VoIP service.

''(59) INTEROPERABLE VIDEO CONFERENCING SERVICE.—The term 'interoperable video conferencing service' means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.''; and

(2) by reordering paragraphs (1) through (52) and the paragraphs added by paragraph (1) of this section in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

SEC. 102. HEARING AID COMPATIBILITY.

(a) COMPATIBILITY REQUIREMENTS.—

(1) TELEPHONE SERVICE FOR THE DISABLED.—Section 710(b)(1) of the Communications Act of 1934 (47 U.S.C. 610(b)(1)) is amended to read as follows:

''(b)(1) Except as provided in paragraphs (2) and (3) and subsection (c), the Commission shall require that customer premises equipment described in this paragraph provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility. Customer premises equipment described in this paragraph are the following:

''(A) All essential telephones.

''(B) All telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date.

''(C) All customer premises equipment used with advanced communications services that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, subject to the regulations prescribed by the Commission under subsection (e).''.

(2) ADDITIONAL AMENDMENTS.—Section 710(b) of the Communications Act of 1934 (47 U.S.C. 610(b)) is further amended—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i)—

(aa) by striking ''initial'';

(bb) by striking ''of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988''; and

(cc) by striking ''paragraph (1)(B) of this subsection'' and inserting ''subparagraphs (B) and (C) of paragraph (1)'';

(II) by inserting ''and'' at the end of clause (ii);

(III) by striking clause (iii); and

(IV) by redesignating clause (iv) as clause (iii);

(ii) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(iii) in subparagraph (B) (as so redesignated)—

(I) by striking the first sentence and inserting ''The Commission shall periodically assess the appropriateness of continuing in effect the exemptions for telephones and other customer premises equipment described in subparagraph (A) of this paragraph.''; and

(II) in each of clauses (iii) and (iv), by striking ''paragraph (1)(B)'' and inserting ''subparagraph (B) or (C) of paragraph (1)'';

(B) in paragraph (4)(B)—

(i) by striking ''public mobile'' and inserting ''telephones used with public mobile'';

(ii) by inserting ''telephones and other customer premises equipment used in whole or in part with'' after ''means'';

(iii) by striking ''and'' after ''public land mobile telephone service,'' and inserting ''or'';

(iv) by striking ''part 22 of''; and

(v) by inserting after ''Regulations'' the following: '', or any functionally equivalent unlicensed wireless services''; and

(C) in paragraph (4)(C)—

(i) by striking ''term 'private radio services' '' and inserting ''term 'telephones used with private radio services' ''; and

(ii) by inserting ''telephones and other customer premises equipment used in whole or in part with'' after ''means''.

(b) TECHNICAL STANDARDS.—Section 710(c) of the Communications Act of 1934 (47 U.S.C. 610(c)) is amended by adding at the end the following: ''A telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise. The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 5(c). The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.''.

(c) RULEMAKING.—Section 710(e) of the Communications Act of 1934 (47 U.S.C. 610(e)) is amended—

(1) by striking ''impairments'' and inserting ''loss''; and

(2) by adding at the end the following sentence: ''In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.''.

(d) RULE OF CONSTRUCTION.—Section 710(h) of the Communications Act of 1934 (47 U.S.C. 610(h)) is amended to read as follows:

''(h) RULE OF CONSTRUCTION.—Nothing in the Twenty-First Century Communications and Video Accessibility Act of 2010 shall be construed to modify the Commission's regulations set forth in section 20.19 of title 47 of the Code of Federal Regulations, as in effect on the date of enactment of such Act.''.

SEC. 103. RELAY SERVICES.

(a) DEFINITION.—Paragraph (3) of section 225(a) of the Communications Act of 1934 (47 U.S.C. 225(a)(3)) is amended to read as follows:

''(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.''.

(b) INTERNET PROTOCOL-BASED RELAY SERVICES.—Title VII of such Act (47 U.S.C. 601 et seq.) is amended by adding at the end the following new section:

''SEC. 715. INTERNET PROTOCOL-BASED RELAY SERVICES.

''Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on the date of enactment of such Act, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.''.

SEC. 104. ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT.

(a) TITLE VII AMENDMENT.—Title VII of the Communications Act of 1934 (47 U.S.C. 601 et seq.), as amended by section 103, is further amended by adding at the end the following new sections:

''SEC. 716. ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT.

''(a) MANUFACTURING.—With respect to equipment manufactured after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall ensure that the equipment and software that such manufacturer designs, develops, and fabricates shall be accessible to and usable by individuals with disabilities, unless the requirement of this subsection is not achievable.

''(b) SERVICE PROVIDERS.—With respect to services provided after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a provider of advanced communications services shall ensure that such services offered by such provider are accessible to and usable by individuals with disabilities, unless the requirement of this subsection is not achievable.

''(c) COMPATIBILITY.—Whenever the requirements of subsections (a) or (b) are not achievable, a manufacturer or provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable.

''(d) NETWORK FEATURES, FUNCTIONS, AND CAPABILITIES.—Each provider of advanced communications services has the duty not to install network features, functions, or capabilities that do not impede accessibility or usability.

''(e) REGULATIONS.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—

''(1) include performance requirements to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;

''(2) provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services;

''(3) determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks;

''(4) not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilities the manufacturers' and service providers' compliance with sections (a) through (c); and

''(5) not mandate the use or incorporation of specific proprietary technology.

''(f) SERVICES AND EQUIPMENT SUBJECT TO SECTION 255.—The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010. Such services and equipment shall remain subject to the requirements of section 255.

''(g) ACHIEVABLE DEFINED.—For purposes of this section, the term 'achievable' means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

''(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.

''(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.

''(3) The type of operations of the manufacturer or provider.

''(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

''(h) COMMISSION FLEXIBILITY.—The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider, to waive the requirements of this section for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, that—

''(1) is capable of accessing an advanced communications service; and

''(2) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

''SEC. 717. ENFORCEMENT AND RECORDKEEPING OBLIGATIONS.

''(a) COMPLAINT AND ENFORCEMENT PROCEDURES.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255 or 716, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections. Such regulations shall include the following provisions:

''(1) NO FEE.—The Commission shall not charge any fee to an individual who files a complaint alleging a violation of section 255 or 716.

''(2) RECEIPT OF COMPLAINTS.—The Commission shall establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255 or 716.

''(3) COMPLAINTS TO THE COMMISSION.—

''(A) IN GENERAL.—Any person alleging a violation of section 255 or 716 by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission.

''(B) INVESTIGATION OF INFORMAL COMPLAINT.—The Commission shall investigate the

allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation, unless such complaint is resolved before such time. The order shall include a determination whether any violation occurred.

''(i) VIOLATION.—If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, require the manufacturer or service provider to take such remedial action as is necessary to comply with the requirements of this section.

''(ii) NO VIOLATION.—If a determination is made that a violation has not occurred, the Commission shall provide the basis for such determination.

''(C) CONSOLIDATION OF COMPLAINTS.—The Commission may consolidate for investigation and resolution complaints alleging substantially the same violation.

''(4) OPPORTUNITY TO RESPOND.—Before the Commission makes a determination pursuant to paragraph (3), the party that is the subject of the complaint shall have a reasonable opportunity to respond to such complaint, and may include in such response any factors that are relevant to such determination.

''(5) RECORDKEEPING.—(A) Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255 and 716 shall maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such manufacturer or provider to implement sections 255 and 716, including the following:

''(i) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities.

''(ii) Descriptions of the accessibility features of its products and services.

''(iii) Information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

''(B) An officer of a manufacturer or provider shall submit to the Commission an annual certification that records are being kept in accordance with subparagraph (A).

''(C) After the filing of a formal or informal complaint against a manufacturer or provider in the manner prescribed in paragraph (3), the Commission may request, and shall keep confidential, a copy of the records maintained by such manufacturer or provider pursuant to subparagraph (A) of this paragraph that are directly relevant to the equipment or service that is the subject of such complaint.

''(6) FAILURE TO ACT.—If the Commission fails to carry out any of its responsibilities to act upon a complaint in the manner prescribed in paragraph (3), the person that filed such complaint may bring an action in the nature of mandamus in the United States Court of Appeals for the District of Columbia to compel the Commission to carry out any such responsibility.

''(7) COMMISSION JURISDICTION.—The limitations of section 255(f) shall apply to any claim that alleges a violation of section 255 or 716. Nothing in this paragraph affects or limits any action for mandamus under paragraph (6) or any appeal pursuant to section 402(b)(10).

''(8) PRIVATE RESOLUTIONS OF COMPLAINTS.—Nothing in the Commission's rules or this Act shall be construed to preclude a person who files a complaint and a manufacturer or provider from resolving a formal or informal complaint prior to the Commission's final determination in a complaint proceeding. In the event of such a resolution, the parties shall jointly request dismissal of the complaint and the Commission shall grant such request.

''(b) REPORTS TO CONGRESS.—

''(1) IN GENERAL.—Every two years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes the following:

''(A) An assessment of the level of compliance with section 255 and 716.

''(B) An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies.

''(C) The number and nature of complaints received pursuant to subsection (a) during the two years that are the subject of the report.

''(D) A description of the actions taken to resolve such complaints under this section, including forfeiture penalties assessed.

''(E) The length of time that was taken by the Commission to resolve each such complaint.

''(F) The number, status, nature, and outcome of any actions for mandamus filed pursuant to subsection (a)(6) and the number, status, nature, and outcome of any appeals filed pursuant to section 402(b)(10).

''(G) An assessment of the effect of the requirements of this section on the development and deployment of new communications technologies.

''(2) PUBLIC COMMENT REQUIRED.—The Commission shall seek public comment on its tentative findings prior to submission to the Committees of the report under this subsection.

''(c) COMPTROLLER GENERAL ENFORCEMENT STUDY.—

''(1) IN GENERAL.—The Comptroller General shall conduct a study to consider and evaluate the following:

''(A) The Commission's compliance with the requirements of this section, including the Commission's level of compliance with the deadlines established under and pursuant to this section and deadlines for acting on complaints pursuant to subsection (a).

''(B) Whether the enforcement actions taken by the Commission pursuant to this section have been appropriate and effective in ensuring compliance with this section.

''(C) Whether the enforcement provisions under this section are adequate to ensure compliance with this section.

''(D) Whether, and to what extent (if any), the requirements of this section have an effect on the development and deployment of new communications technologies.

''(2) REPORT.—Not later than 5 years after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Comptroller General shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study required by paragraph (1), with recommendations for how the enforcement process and measures under this section may be modified or improved.

''(d) CLEARINGHOUSE.—Within one year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, in consultation with the Architectural and Transportation Barriers Compliance Board, the National Telecommunications and Information Administration, trade associations, and organizations representing individuals with disabilities, establish a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255 and 716. Such information shall be made publicly available on the Commission's website and by other means, and shall include an annually updated list of products and services with access features.

''(e) OUTREACH AND EDUCATION.—Upon establishment of the clearinghouse of information required under subsection (d), the Commission, in coordination with the National Telecommunications and Information Administration, shall conduct an informational and educational program designed to inform the public about the availability of the clearinghouse and the protections and remedies available under sections 255 and 716.''.

(b) TITLE V AMENDMENTS.—Section 503(b)(2) of such Act (47 U.S.C. 503(b)(2)) is amended by adding after subparagraph (E) the following:

''(F) Subject to paragraph (5) of this section, if the violator is a manufacturer or service provider subject to the requirements of section 255 or 716, and is determined by the Commission to have violated any such requirement, the manufacturer or provider shall be liable to the United States for a forfeiture penalty of not more than $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.''.

(c) REVIEW OF COMMISSION DETERMINATIONS.—Section 402(b) of such Act (47 U.S.C. 402(b)) is amended by adding the following new paragraph:

''(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 717(a)(3).''.

SEC. 105. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.

Title VII of the Communications Act of 1934, as amended by section 104, is further amended by adding at the end the following:

''SEC. 718. RELAY SERVICES FOR DEAF-BLIND INDIVIDUALS.

''(a) IN GENERAL.—Within 6 months after the date of enactment of the Equal Access to 21st Century Communications Act, the Commission shall establish rules that define as eligible for relay service support those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by individuals who are deaf-blind.

''(b) INDIVIDUALS WHO ARE DEAF-BLIND DEFINED.—For purposes of this subsection, the term 'individuals who are deaf-blind' has the same meaning given such term in the Helen Keller National Center Act, as amended by the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)).

''(c) ANNUAL AMOUNT.—The total amount of support the Commission may provide from its interstate relay fund for any fiscal year may not exceed $10,000,000.''.

SEC. 106. EMERGENCY ACCESS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—For the purpose of achieving equal access to emergency services by individuals with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network, not later than 60 days after the date of enactment of this Act, the Chairman of the Commission shall establish an advisory committee, to be known as the Emergency AccessAdvisory Committee (referred to in this section as the ''Advisory Committee'').

(b) MEMBERSHIP.—As soon as practicable after the date of enactment of this Act, the Chairman of the Commission shall appoint the members of the Advisory Committee, ensuring a balance between individuals with disabilities and other stakeholders, and shall designate two such members as the co-chairs of the Committee. Members of the Advisory Committee shall be selected from the following groups:

(1) STATE AND LOCAL GOVERNMENT AND EMERGENCY RESPONDER REPRESENTATIVES.—Representatives of State and local governments and representatives of emergency response providers, selected from among individuals nominated by national organizations representing such governments and representatives.

(2) SUBJECT MATTER EXPERTS.—Individuals who have the technical knowledge and expertise

to serve on the Advisory Committee in the fulfillment of its duties, including representatives of—

(A) providers of interconnected and non-interconnected VoIP services;

(B) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of interconnected and non-interconnected VoIP services;

(C) national organizations representing individuals with disabilities and senior citizens;

(D) Federal agencies or departments responsible for the implementation of the Next Generation E 9-1-1 system;

(E) the National Institute of Standards and Technology; and

(F) other individuals with such technical knowledge and expertise.

(3) REPRESENTATIVES OF OTHER STAKEHOLDERS AND INTERESTED PARTIES.—Representatives of such other stakeholders and interested and affected parties as the Chairman of the Commission determines appropriate.

(c) DEVELOPMENT OF RECOMMENDATIONS.—Within 1 year after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b), the Advisory Committee shall conduct a national survey of individuals with disabilities, seeking input from the groups described in subsection (b)(2), to determine the most effective and efficient technologies and methods by which to enable access to emergency services by individuals with disabilities and shall develop and submit to the Commission recommendations to implement such technologies and methods, including recommendations—

(1) with respect to what actions are necessary as a part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities;

(2) for protocols, technical capabilities, and technical requirements to ensure the reliability and interoperability necessary to ensure access to emergency services by individuals with disabilities;

(3) for the establishment of technical standards for use by public safety answering points, designated default answering points, and local emergency authorities;

(4) for relevant technical standards and requirements for communication devices and equipment and technologies to enable the use of reliable emergency access;

(5) for procedures to be followed by IP-enabled network providers to ensure that such providers do not install features, functions, or capabilities that would conflict with technical standards;

(6) for deadlines by which providers of interconnected and non-interconnected VoIP services and manufacturers of equipment used for such services shall achieve the actions required in paragraphs (1) through (5), where achievable, and for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficient technologies and methods to enable access to emergency services by individuals with disabilities;

(7) for the establishment of rules to update the Commission's rules with respect to 9-1-1 services and E-911 services (as defined in section 158(e)(4) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)(4))), for users of telecommunications relay services as new technologies and methods for providing such relay services are adopted by providers of such relay services; and

(8) that take into account what is technically and economically feasible.

(d) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 45 days after the completion of the member appointment process by the Chairman of the Commission pursuant to subsection (b).

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the chairs, but no less than monthly until the recommendations required pursuant to subsection (c) are completed and submitted.

(3) NOTICE; OPEN MEETINGS.—Any meetings held by the Advisory Committee shall be duly noticed at least 14 days in advance and shall be open to the public.

(e) RULES.—

(1) QUORUM.—One-third of the members of the Advisory Committee shall constitute a quorum for conducting business of the Advisory Committee.

(2) SUBCOMMITTEES.—To assist the Advisory Committee in carrying out its functions, the chair may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts as determined to be necessary.

(3) ADDITIONAL RULES.—The Advisory Committee may adopt other rules as needed.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(g) IMPLEMENTING RECOMMENDATIONS.—The Commission shall have the authority to promulgate regulations to implement the recommendations proposed by the Advisory Committee, as well as any other regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.

(h) DEFINITIONS.—In this section—

(1) the term ''Commission'' means the Federal Communications Commission;

(2) the term ''Chairman'' means the Chairman of the Federal Communications Commission; and

(3) except as otherwise expressly provided, other terms have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

TITLE II—VIDEO PROGRAMMING

SEC. 201. VIDEO PROGRAMMING AND EMERGENCY ACCESS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, the Chairman shall establish an advisory committee to be known as the Video Programming and Emergency Access Advisory Committee.

(b) MEMBERSHIP.—As soon as practicable after the date of enactment of this Act, the Chairman shall appoint individuals who have the technical knowledge and engineering expertise to serve on the Advisory Committee in the fulfillment of its duties, including the following:

(1) Representatives of distributors and providers of video programming or a national organization representing such distributors.

(2) Representatives of vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of video programming delivered using Internet protocol or a national organization representing such vendors, developers, or manufacturers.

(3) Representatives of manufacturers of consumer electronics or information technology equipment or a national organization representing such manufacturers.

(4) Representatives of video programming producers or a national organization representing such producers.

(5) Representatives of national organizations representing accessibility advocates, including individuals with disabilities and the elderly.

(6) Representatives of the broadcast television industry or a national organization representing such industry.

(7) Other individuals with technical and engineering expertise, as the Chairman determines appropriate.

(c) COMMISSION OVERSIGHT.—The Chairman shall appoint a member of the Commission's staff to moderate and direct the work of the Advisory Committee.

(d) TECHNICAL STAFF.—The Commission shall appoint a member of the Commission's technical staff to provide technical assistance to the Advisory Committee.

(e) DEVELOPMENT OF RECOMMENDATIONS.—

(1) CLOSED CAPTIONING REPORT.—Within 6 months after the date of the first meeting of the Advisory Committee, the Advisory Committee shall develop and submit to the Commission a report that includes the following:

(A) A recommended schedule of deadlines for the provision of closed captioning service.

(B) An identification of the performance requirement for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render closed captions of video programming, except for consumer generated media, delivered using Internet protocol.

(C) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010 for the delivery of closed captions of video programming, except for consumer generated media, delivered using Internet protocol that are necessary to meet the performance requirements identified under subparagraph (B).

(D) A recommendation for technical standards to address the performance requirements identified in subparagraph (B).

(E) A recommendation for any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to closed captions.

(2) VIDEO DESCRIPTION, EMERGENCY INFORMATION, USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS.—Within 18 months after the date of enactment of this Act, the Advisory Committee shall develop and submit to the Commission a report that includes the following:

(A) A recommended schedule of deadlines for the provision of video description and emergency information.

(B) An identification of the performance requirement for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television.

(C) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010 for the delivery of video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol that are necessary to meet the performance requirements identified under subparagraph (B).

(D) A recommendation for technical standards to address the performance requirements identified in subparagraph (B).

(E) A recommendation for any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol and devices capable of receiving and displaying such programming, except for consumer generated media, in order to facilitate access to video descriptions and emergency information.

(F) With respect to user interfaces, a recommendation for the standards, protocols, and

procedures used to enable the functions of apparatus designed to receive or display video programming transmitted simultaneously with sound (including apparatus designed to receive or display video programming transmitted by means of services using Internet protocol) to be accessible to and usable by individuals with disabilities.

(G) With respect to user interfaces, a recommendation for the standards, protocols, and procedures used to enable on-screen text menus and other visual indicators used to access the functions on an apparatus described in subparagraph (F) to be accompanied by audio output so that such menus or indicators are accessible to and usable by individuals with disabilities.

(H) With respect to video programming guides and menus, a recommendation for the standards, protocols, and procedures used to enable video programming information and selection provided by means of a navigation device, guide, or menu to be accessible in real-time by individuals who are blind or visually impaired.

(3) CONSIDERATION OF WORK BY STANDARD-SETTING ORGANIZATIONS.—The recommendations of the advisory committee shall, insofar as possible, incorporate the standards, protocols, and procedures that have been adopted by recognized industry standard-setting organizations for each of the purposes described in paragraphs (1) and (2).

(f) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Advisory Committee shall take place not later than 180 days after the date of the enactment of this Act.

(2) OTHER MEETINGS.—After the initial meeting, the Advisory Committee shall meet at the call of the Chairman.

(3) NOTICE; OPEN MEETINGS.—Any meeting held by the Advisory Committee shall be noticed at least 14 days before such meeting and shall be open to the public.

(g) PROCEDURAL RULES.—

(1) QUORUM.—The presence of one-third of the members of the Advisory Committee shall constitute a quorum for conducting the business of the Advisory Committee.

(2) SUBCOMMITTEES.—To assist the Advisory Committee in carrying out its functions, the Chairman may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts.

(3) ADDITIONAL PROCEDURAL RULES.—The Advisory Committee may adopt other procedural rules as needed.

(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(i) ADOPTION OF STANDARDS, PROTOCOLS, PROCEDURES, AND OTHER TECHNICAL REQUIREMENTS.—

(1) CLOSED CAPTIONING.—Not later than 6 months after the date on which the Advisory Committee transmits its report under subsection (e)(1) to the Commission, the Commission shall take all actions necessary to adopt relevant technical standards, protocols, procedures, and other technical requirements to ensure compatibility between video programming delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to closed captions.

(2) VIDEO DESCRIPTION AND EMERGENCY INFORMATION.—Not later than 18 months after the date on which the Advisory Committee transmits its report under subsection (e)(2) to the Commission, the Commission shall take all actions necessary to adopt relevant technical standards, protocols, procedures, and other technical requirements to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol or digital broadcast television and devices capable of receiving and displaying such programming in order to facilitate access to video descriptions and emergency information.

(j) COMMISSION AUTHORITY.—

(1) IN GENERAL.—The Commission shall adopt the recommendations contained in the reports required under paragraphs (1) and (2) of subsection (e) if the Commissions finds that the recommendations are sufficient to meet the objectives of this Act.

(2) ALTERNATIVE ADOPTION OF REQUIREMENTS.—If the Commission finds that the recommendations are, in whole or in part, insufficient to meet the objectives of this Act, the Commission shall adopt the standards, protocols, procedures, or other technical requirements that it determines are necessary to meet the objectives of this Act.

SEC. 202. VIDEO DESCRIPTION AND CLOSED CAPTIONING.

(a) VIDEO DESCRIPTION.—Section 713 of the Communications Act of 1934 (47 U.S.C. 613) is amended—

(1) by striking subsections (f) and (g);

(2) by redesignating subsection (h) as subsection (j); and

(3) by inserting after subsection (e) the following:

''(f) VIDEO DESCRIPTION.—

''(1) REINSTATEMENT OF REGULATIONS.—On the day that is 1 year after the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall, after a rulemaking, reinstate its video description regulations contained in the Implementation of Video Description of Video Programming Report and Order (15 F.C.C.R. 15,230 (2000)), modified as provided in paragraph (2).

''(2) MODIFICATIONS TO REINSTATED REGULATIONS.—Such regulations shall be modified only as follows:

''(A) The regulations shall apply to video programming, as defined in subsection (h), that is transmitted for display on television in digital format.

''(B) The Commission shall update the list of the top 25 designated market areas, the list of the top 5 national nonbroadcast networks, and the beginning calendar quarter for which compliance shall be calculated.

''(C) The regulations may permit a provider of video programming or a program owner to petition the Commission for an exemption from the requirements of this section upon a showing that the requirements contained in this section be economically burdensome.

''(D) The Commission may exempt from the regulations established pursuant to paragraph (1) a service, class of services, program, class of programs, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment.

''(E) The regulations shall not apply to live or near-live programming.

''(F) The regulations shall provide for an appropriate phased schedule of deadlines for compliance.

''(G) The Commission shall consider extending the exemptions and limitations in the reinstated regulations for technical capability reasons to all providers and owners of video programming.

''(3) INQUIRIES ON FURTHER VIDEO DESCRIPTION REQUIREMENTS.—The Commission shall commence the following inquiries not later than 1 year after the completion of the phase-in of the reinstated regulations and shall report to Congress 1 year thereafter on the findings for each of the following:

''(A) VIDEO DESCRIPTION IN TELEVISION PROGRAMMING.—The availability, use, and benefits of video description on video programming distributed on television, the technical and creative issues associated with providing such video description, and the financial costs of providing such video description for providers of video programming and program owners.

''(B) VIDEO DESCRIPTION IN VIDEO PROGRAMMING DISTRIBUTED ON THE INTERNET.—The technical and operational issues, costs, and benefits of providing video descriptions for video programming that is delivered using Internet protocol.

''(g) EMERGENCY INFORMATION.—Not later than 1 year after the Advisory Committee report under subsection (e)(2) is submitted to the Commission, the Commission shall complete a proceeding to—

''(1) identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired; and

''(2) promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.

''(h) RESPONSIBILITIES.—

''(1) VIDEO PROGRAMMING OWNER.—A video programming owner shall ensure that any closed captioning and video description required pursuant to this section is provided in accordance with the technical standards, protocols and procedures established by the Commission.

''(2) VIDEO PROGRAMMING PROVIDER OR DISTRIBUTOR.—A video programming provider or video programming distributor shall be deemed in compliance with this section and the rules and regulation promulgated thereunder if such entity enables the rendering or the pass through of closed captions and video description signals.

''(i) DEFINITIONS.—For purposes of this section, section 303, and section 330:

''(1) VIDEO DESCRIPTION.—The term 'video description' means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

''(2) VIDEO PROGRAMMING.—The term 'video programming' means programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 3).''.

(b) CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Section 713 of such Act is further amended by striking subsection (c) and inserting the following:

''(c) DEADLINES FOR CAPTIONING.—

''(1) IN GENERAL.—The regulations prescribed pursuant to subsection (b) shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming once published or exhibited on television.

''(2) DEADLINES FOR PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—

''(A) REGULATIONS ON CLOSED CAPTIONING ON VIDEO PROGRAMMING DELIVERED USING INTERNET PROTOCOL.—Not later than 6 months after the submission of the report to the Commission required by subsection (e)(1) of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall revise its regulations to require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations.

''(B) SCHEDULE.—The regulations prescribed under this paragraph shall include an appropriate schedule of deadlines for the provision of closed captioning, taking into account whether such programming is prerecorded and edited for Internet distribution, or whether such programming is live or near-live and not edited for Internet distribution.

''(C) COST.—The Commission may delay or waive the regulation promulgated under subparagraph (A) to the extent the Commission finds that the application of the regulation to live video programming delivered using Internet protocol with captions after the effective date of

such regulations would be economically burdensome to providers of video programming or program owners.

''(D) REQUIREMENTS FOR REGULATIONS.—The regulations prescribed under this paragraph—

''(i) shall contain a definition of 'near-live programming' and 'edited for Internet distribution';

''(ii) may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment; and

''(iii) shall provide that de minimis failure to comply with such regulations by a video programming provider or owner shall not be treated as a violation of the regulations.''.

(c) CONFORMING AMENDMENT.—Section 713(d) of such Act is amended by striking paragraph (3) and inserting the following:

''(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome. During the pendency of such a petition, such provider or owner shall be exempt from the requirements of this section. The Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.''.

SEC. 203. CLOSED CAPTIONING DECODER AND VIDEO DESCRIPTION CAPABILITY.

(a) AUTHORITY TO REGULATE.—Section 303(u) of the Communications Act of 1934 (47 U.S.C. 303(u)) is amended to read as follows:

''(u) Require that—

''(1) apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size—

''(A) be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming;

''(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f); and

''(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of the Commission's regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired; and

''(2) notwithstanding paragraph (1) of this subsection—

''(A) apparatus described in such paragraph that use a picture screen that is less than 13 inches in size meet the requirements of subparagraph (A), (B), or (C) of such paragraph only if the requirements of such subparagraphs are achievable (as defined in section 716);

''(B) any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements of such paragraph; and

''(C) the Commission shall have the authority, on its own motion or in response to a petition by a manufacturer, to waive the requirements of this subsection for any apparatus or class of apparatus—

''(i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

''(ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.''.

(b) OTHER DEVICES.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding at the end the following new subsection:

''(z) Require that—

''(1) if achievable (as defined in section 716), apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, enable the rendering or the pass through of closed captions, video description signals, and emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) such that viewers are able to activate and de-activate the closed captions and video description as the video programming is played back on a picture screen of any size; and

''(2) interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions and to make encoded video description and emergency information audible.''.

(c) SHIPMENT IN COMMERCE.—Section 330(b) of the Communications Act of 1934 (47 U.S.C. 330(b)) is amended—

(1) by striking ''303(u)'' in the first sentence and inserting ''303(u) and (z)'';

(2) by striking the second sentence and inserting the following: ''Such rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming, the transmission and delivery of video description services, and the conveyance of emergency information as required by section 303 of this Act.''; and

(3) in the fourth sentence, by striking ''closed-captioning service continues'' and inserting ''closed-captioning service and video description service continue''.

(d) IMPLEMENTING REGULATIONS.—The Federal Communications Commission shall prescribe such regulations as are necessary to implement the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934, as amended by this section, including any technical standards, protocols, and procedures needed for the transmission of—

(1) closed captioning within 6 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(1); and

(2) video description and emergency information within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2).

SEC. 204. USER INTERFACES ON DIGITAL APPARATUS.

(a) AMENDMENT.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (z), as added by section 203 of this Act, the following new subsection:

''(aa) Require—

''(1) if achievable (as defined in section 716) that digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement;

''(2) that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus described in paragraph (1), such functions shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time;

''(3) that for such apparatus equipped with the functions described in paragraphs (1) and (2) built in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated by activating the closed captioning or accessibility features; and

''(4) that in applying this subsection the term 'apparatus' does not include a navigation device, as such term is defined in section 76.1200 of the Commission's rules (47 CFR 76.1200).''.

(b) IMPLEMENTING REGULATIONS.—Within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendments made by subsection (a).

(c) DEFERRAL OF COMPLIANCE WITH ATSC MOBILE DTV STANDARD A/153.—A digital apparatus designed and manufactured to receive or play back the Advanced Television Systems Committee's Mobile DTV Standards A/153 shall not be required to meet the requirements of the regulations prescribed under subsection (b) for a period of not less than 24 months after the date on which the final regulations are published in the Federal Register.

SEC. 205. ACCESS TO VIDEO PROGRAMMING GUIDES AND MENUS PROVIDED ON NAVIGATION DEVICES.

(a) AMENDMENT.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is further amended by adding after subsection (aa), as added by section 204 of this Act, the following new subsection:

''(bb) Require—

''(1) if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement; and

''(2) for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.

With respect to apparatus features and functions delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software. With respect to apparatus features and functions delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.''.

(b) IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—Within 18 months after the submission to the Commission of the Advisory Committee report required by section 201(e)(2), the Commission shall prescribe such regulations as are necessary to implement the amendment made by subsection (a).

(2) EXEMPTION.—Such regulations may provide an exemption from the regulations for cable systems serving 20,000 or fewer subscribers.

(3) RESPONSIBILITY.—An entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices that it provides to a requesting blind or visually impaired individual.

(3) SEPARATE EQUIPMENT OR SOFTWARE.—

(A) IN GENERAL.—Such regulations shall permit but not require the entity providing the navigation device to the requesting blind or visually impaired individual to comply with section 303(bb)(1) of the Communications Act of 1934 through that entity's use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution,

and shall provide the maximum flexibility to select the manner of compliance.

(B) REQUIREMENTS.—If an entity complies with section 303(bb)(1) of the Communications Act of 1934 under subparagraph (A), the entity providing the navigation device to the requesting blind or visually impaired individual shall provide any such software, peripheral device, equipment, service, or solution at no additional charge and within a reasonable time to such individual and shall ensure that such software, device, equipment, service, or solution provides the access required by such regulations.

(4) USER CONTROLS FOR CLOSED CAPTIONING.—Such regulations shall permit the entity providing the navigation device maximum flexibility in the selection of means for compliance with section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section).

(5) PHASE-IN.—

(A) IN GENERAL.—The Commission shall provide affected entities with—

(i) not less than 2 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(2) of the Communications Act of 1934 (as added by subsection (a) of this section); and

(ii) not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements of section 303(bb)(1) of the Communications Act of 1934 (as added by subsection (a) of this section).

(B) APPLICATION.—Such regulations shall apply only to devices manufactured or imported on or after the respective effective dates established in subparagraph (A).

SEC. 206. DEFINITIONS.

In this title:

(1) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the advisory committee established in section 201.

(2) CHAIRMAN.—The term ''Chairman'' means the Chairman of the Federal Communications Commission.

(3) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(4) EMERGENCY INFORMATION.—The term ''emergency information'' has the meaning given such term in section 79.2 of title 47, Code of Federal Regulations.

(5) INTERNET PROTOCOL.—The term ''Internet protocol'' includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

(6) NAVIGATION DEVICE.—The term ''navigation device'' has the meaning given such term in section 76.1200 of title 47, Code of Federal Regulations.

(7) VIDEO DESCRIPTION.—The term ''video description'' has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

(8) VIDEO PROGRAMMING.—The term ''video programming'' has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

Mr. REID. I ask unanimous consent that the committee-reported substitute amendment be considered, that a Pryor amendment which is at the desk be agreed to, the substitute amendment, as amended, be agreed to, the bill as amended be read a third time, passed, the motions to reconsider be laid on the table with no intervening action or debate, and any statements be printed in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The amendment (No. 4603) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 3304), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

The bill will be printed in a future edition of the RECORD.

RELIGIOUS MINORITIES IN IRAQ

Mr. REID. Mr. President, I ask unanimous consent the Foreign Relations Committee be discharged from further consideration of S. Res. 322 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 322) expressing the sense of the Senate on religious minorities in Iraq.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that a Levin substitute amendment to the resolution, which is at the desk, be agreed to; the resolution, as amended, be agreed to; that a Levin substitute amendment to the preamble, which is at the desk, be agreed to; the preamble, as amended, be agreed to; the motions to reconsider be laid upon the table, with no intervening action or debate and any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4604) was agreed to, as follows:

AMENDMENT NO. 4604

(Purpose: In the nature of a substitute to the resolution)

Strike all after the resolving clause and insert the following: That it is the sense of the Senate that—

(1) the United States remains deeply concerned about the plight of vulnerable religious minorities of Iraq;

(2) the United States Government and the United Nations Assistance Mission for Iraq should urge the Government of Iraq to enhance security at places of worship in Iraq, particularly where religious minorities are known to be at risk;

(3) the United States Government should continue to work with the Government of Iraq to ensure that members of ethnic and religious minorities communities in Iraq—

(A) suffer no discrimination in recruitment, employment, or advancement in the Iraqi police and security forces; and

(B) while employed in the Iraqi police and security forces, where appropriate, be assigned to their locations of origin, rather than being transferred to other areas;

(4) the Government of Iraq and the Kurdistan regional government should work towards a peaceful and timely resolution of disputes over territories, particularly those where many religious communities reside;

(5) the United States Government and the United Nations Assistance Mission for Iraq should urge the Government of Iraq to—

(A) implement in full those provisions of the Constitution of Iraq that provide protections for the individual rights to freedom of thought, conscience, religion, and belief and protections for religious minorities to enjoy their culture and language and practice their religion; and

(B) reduce onerous registration requirements so that smaller religious groups are not disadvantaged in registering;

(6) the Government of Iraq should take affirmative measures to reverse the legal, political, and economic marginalization of religious minorities in Iraq;

(7) the United States Government should assist, consistent with local aspirations and developmental needs, ethnic and religious minorities in Iraq to organize themselves civically and politically to effectively convey their concerns to government;

(8) the United States Government should continue to fund capacity-building programs for the Iraqi Ministry of Human Rights and the independent national Human Rights Commission, and should continue to help reconstitute the minorities committee to make it an effective voice for Iraqi minorities;

(9) the Government of Iraq should direct the Iraqi Ministry of Human Rights to investigate and issue a public report on abuses against and the marginalization of minority communities in Iraq and make recommendations to address such abuses; and

(10) the United States Government should encourage the Government of Iraq and the Kurdistan Regional Government to protect the linguistic and cultural heritage, religious beliefs, and ethnic and religious identities of minority groups, in particular those living in the Nineveh Plain.

The amendment (No. 4605) was agreed to, as follows:

AMENDMENT NO. 4605

(Purpose: In the nature of a substitute to the preamble)

Strike the preamble and insert the following:

Whereas the territory of Iraq, the land of Mesopotamia, has millennia of rich cultural and religious history;

Whereas the Sumerians, Babylonians, and Assyrians thrived within what are now the borders of Iraq;

Whereas the biblical patriarch Abraham was born in Ur, King Hammurabi ruled from Babylon, and Imam Ali, the founder of Shiite Islam, died in Kufa;

Whereas during the 35-year rule of the Baath Party and Saddam Hussein, and despite the Provisional Constitution of 1968 that provided for individual religious freedom in Iraq, the Government of Iraq severely limited freedom of religion, especially for religious minorities, and sought to exploit religious differences for political purposes, leading the United States Government to designate Iraq as a ''country of particular concern'' under the International Religious Freedom Act of 1998 (Public Law 105–292) because of systematic, ongoing, egregious violations of religious freedom;

Whereas members of religious minority communities of Iraq, both those who have been forced to flee the homeland in which their ancestors have lived for thousands of years and those who remain in Iraq, are committed to maintaining their presence in Iraq and keeping alive their communities' cultures, heritage, and religions, but threats against them jeopardize the future of Iraq as a diverse, pluralistic, and free society;

Whereas despite the reduction in violence in Iraq in recent years, serious threats to religious freedom remain, including religiously motivated violence directed at vulnerable religious minorities, their leaders, and their holy sites, including Chaldeans, Syriacs, Assyrians, Armenians and other Christians, Sabean Mandeans, Yeazidis, Baha'is, Kaka'is, Jews, and Shi'a Shabak;

Whereas the March 2010 Report on Human Rights issued by the Department of State identifies ''insurgent and extremist violence, coupled with weak government performance in upholding the rule of law'' resulting in ''widespread and severe human rights abuses'' as among the significant and continuing human rights problems in Iraq;

Whereas although violence has impacted all aspects of society in Iraq, there have been alarming levels of religiously motivated violence in Iraq in recent years;

Whereas the United States Commission on International Religious Freedom continues to recommend that the Secretary of State designate Iraq as a ''country of particular concern'' under the International Religious Freedom Act of 1998, because of the systematic, ongoing, egregious violations of religious freedom in Iraq;

Whereas scores of holy sites in Iraq have been bombed since 2004;

Whereas members of small religious minority communities in Iraq do not have militia or tribal structures to defend them, often receive inadequate official protection, and are legally, politically, and economically marginalized;

Whereas in the Nineveh and Kirkuk governorates, where control is disputed between the Government of Iraq and the Kurdistan regional government, religious minorities have been targeted for abuse, violence, and discrimination;

Whereas before 1951, non-Muslims comprised some 6 percent of the population of Iraq, with Jews as the oldest and largest of these communities, tracing back to the Babylonian captivity of the sixth century BCE, but today the Jewish community in Iraq numbers in the single digits and essentially lives in hiding;

Whereas religious minorities in Iraq, who made up about 3 percent of the population of Iraq in 2003, make up a disproportionately high percentage of registered Iraqi refugees;

Whereas the number of Christians in Iraq was approximately 1,400,000 according to the 1987 Iraqi census but, according to the 2009 Report on International Religious Freedom issued by the Department of State, may now number only 500,000 to 600,000;

Whereas the United States is gravely concerned about the viability of the indigenous Christian communities of Iraq and other religious minority communities, and the possible disappearance of their ancient languages, culture, and heritage;

Whereas the Sabean Mandean community in Iraq reports that almost 90 percent of its members have fled Iraq, leaving only about 3,500 to 5,000 Mandeans in Iraq as of 2009;

Whereas the Baha'i faith, estimated to have fewer than 2,000 adherents in Iraq, remains prohibited in Iraq under a 1970 law;

Whereas although hundreds of thousands of Iraqi refugees and internally displaced persons have returned to their areas of origin, the numbers of religious minority returnees to Iraq are disproportionately low; and

Whereas members of religious minority communities of Iraq in diaspora have organized to support their communities in Iraq in ways that also benefit the whole of Iraq society by encouraging the rule of law, enhanced security, employment, education and health services: Now therefore be it

The resolution (S. Res. 322), as amended, was agreed to.

The preamble, as amended, was agreed to.

ORDERS FOR MONDAY, SEPTEMBER 13, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn under the provisions of H. Con. Res. 307 until 2:30 p.m on Monday, September 13; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to a period of morning business until 3:30 p.m., with Senators permitted to speak for up to 10 minutes each; following morning business, the Senate proceed to executive session to consider Calendar No. 552, the nomination of Jane Stranch to be a circuit judge for the Sixth Circuit, as provided under a previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Mr. President, on that date; that is, Monday, September 13, the filing deadline on the small business jobs bill would be at 3 p.m. that day, all first-degree amendments, and we, on Tuesday, would convene at 10 o'clock a.m.

ORDER OF PROCEDURE

I ask unanimous consent that the cloture vote on the Johanns amendment vote occur at 11 o'clock a.m. on Tuesday, September 14.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, we will have the judge vote on Monday when we come back; we will have the filing deadline that afternoon at 3 o'clock on the small business jobs bill; that Tuesday we will come in immediately and have no more business, and begin debate on that matter, the small business matter; and the first vote that day would be the cloture vote on the Johanns amendment.

Mr. President, first of all, I express my appreciation to the Presiding Officer. We appreciate his being here. This has been a long day. And for those who may not know this, next Tuesday the Presiding Officer's wife is going to have their baby, and she is anxious for him to get home. I am sorry it took so long for us to finish today.

I appreciate, as I always do, the extremely fine work of all of the staff. We are here and we talk, and people on C–SPAN see us. But we are instruments of our staff. They work very hard to make sure that everything works out very well. I am very proud of the staff, Democrats and Republicans. They work so well together. They set an example for the rest of the Senate, frankly. So I appreciate all of their good work.

ADJOURNMENT UNTIL MONDAY, SEPTEMBER 13, 2010 AT 2:30 P.M.

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

The PRESIDING OFFICER. Under the previous order, and pursuant to the provisions of H. Con. Res 307, the Senate stands adjourned until 2:30 p.m., Monday, September 13, 2010.

Thereupon, the Senate, at 10:02 p.m., adjourned until Monday, September 13, 2010, at 2:30 p.m.

NOMINATIONS

Executive nominations received by the Senate:

EXECUTIVE OFFICE OF THE PRESIDENT

JACOB J. LEW, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, VICE PETER R. ORSZAG, RESIGNED.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SCOTT C. DONEY, OF MASSACHUSETTS, TO BE CHIEF SCIENTIST OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, VICE KATHRYN D. SULLIVAN.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

NANCY E. LINDBORG, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE MICHAEL E. HESS, RESIGNED.

OVERSEAS PRIVATE INVESTMENT CORPORATION

KEVIN GLENN NEALER, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2011, VICE SANFORD GOTTESMAN, TERM EXPIRED.

STATE JUSTICE INSTITUTE

WILFREDO MARTINEZ, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2010, VICE TOMMY EDWARD JEWELL, III, TERM EXPIRED.

WILFREDO MARTINEZ, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2013. (REAPPOINTMENT)

CHASE THEODORA ROGERS, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE ARTHUR A. MCGIVERIN, TERM EXPIRED.

UNITED STATES TAX COURT

JUAN F. VASQUEZ, OF TEXAS, TO BE A JUDGE OF THE UNITED STATES TAX COURT FOR A TERM OF FIFTEEN YEARS. (REAPPOINTMENT)

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

DONALD KENNETH STEINBERG, OF CALIFORNIA, TO BE DEPUTY ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE FREDERICK W. SCHIECK, RESIGNED.

NATIONAL SCIENCE FOUNDATION

CORA B. MARRETT, OF WISCONSIN, TO BE DEPUTY DIRECTOR OF THE NATIONAL SCIENCE FOUNDATION, VICE KATHIE L. OLSEN.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ALLISON BLAKELY, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2016, VICE CRAIG HAFFNER, TERM EXPIRED.

CENTRAL INTELLIGENCE

DAVID B. BUCKLEY, OF VIRGINIA, TO BE INSPECTOR GENERAL, CENTRAL INTELLIGENCE AGENCY, VICE JOHN LEONARD HELGERSON.

NOMINATIONS RETURNED TO THE PRESIDENT

Thursday, August 5, 2010

The following nominations transmitted by the President of the United States to the Senate during the second session of the 111th Congress, and upon which no action was had at the time of the August adjournment of the Senate, failed of confirmation under the provisions of Rule XXXI, paragraph 6, of the Standing Rules of the Senate.

DEPARTMENT OF ENERGY

Warren F. Miller, Jr., of New Mexico, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Donald M. Berwick, of Massachusetts, to be Administrator of the Centers for Medicare and Medicaid Services.

Donald M. Berwick, of Massachusetts, to be Administrator of the Centers for Medicare and Medicaid Services, to which position he was appointed during the last recess of the Senate.

DEPARTMENT OF HOMELAND SECURITY

Alan D. Bersin, of California, to be Commissioner of Customs, Department of Homeland Security.

Alan D. Bersin, of California, to be Commissioner of Customs, Department of Homeland Security, to which position he was appointed during the last recess of the Senate.

DEPARTMENT OF JUSTICE

Mary L. Smith, of Illinois, to be an Assistant Attorney General.

DEPARTMENT OF THE TREASURY

Jeffrey Alan Goldstein, of New York, to be an Under Secretary of the Treasury.

Jeffrey Alan Goldstein, of New York, to be an Under Secretary of the Treasury, to which position he was appointed during the last recess of the Senate.

FEDERAL RESERVE SYSTEM

Peter A. Diamond, of Massachusetts, to be a Member of the Board of Governors of the Federal Reserve System for the unexpired term of fourteen years from February 1, 2000.

NATIONAL LABOR RELATIONS BOARD

Craig Becker, of Illinois, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2014.

NATIONAL TRANSPORTATION SAFETY BOARD

Mark R. Rosekind, of California, to be a Member of the National Transportation Safety Board for the remainder of the term expiring December 31, 2009.

THE JUDICIARY

Louis B. Butler, Jr., of Wisconsin, to be United States District Judge for the Western District of Wisconsin.

Edward Milton Chen, of California, to be United States District Judge for the Northern District of California.

Robert Neil Chatigny, of Connecticut, to be United States Circuit Judge for the Second Circuit.

Goodwin Liu, of California, to be United States Circuit Judge for the Ninth Circuit.

John J. McConnell, Jr., of Rhode Island, to be United States District Judge for the District of Rhode Island.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Thursday, August 5, 2010:

DEPARTMENT OF STATE

BISA WILLIAMS, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF NIGER.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

JAMES R. CLAPPER, OF VIRGINIA, TO BE DIRECTOR OF NATIONAL INTELLIGENCE.

DEPARTMENT OF STATE

ROSE M. LIKINS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PERU.

LUIS E. ARREAGA-RODAS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ICELAND.

PHILLIP CARTER III, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COTE D'IVOIRE.

GERALD M. FEIERSTEIN, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF YEMEN.

PETER MICHAEL MCKINLEY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COLOMBIA.

HELEN PATRICIA REED-ROWE, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PALAU.

PATRICK S. MOON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BOSNIA AND HERZEGOVINA.

CHRISTOPHER W. MURRAY, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE CONGO.

MARK CHARLES STORELLA, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZAMBIA.

J. THOMAS DOUGHERTY, OF WYOMING, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BURKINA FASO.

ERIC D. BENJAMINSON, OF OREGON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE GABONESE REPUBLIC, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE.

MAURA CONNELLY, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LEBANON.

DANIEL BENNETT SMITH, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO GREECE.

JAMES FREDERICK ENTWISTLE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC REPUBLIC OF THE CONGO.

LAURENCE D. WOHLERS, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CENTRAL AFRICAN REPUBLIC.

JUDITH R. FERGIN, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE.

MICHAEL S. OWEN, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SIERRA LEONE.

ROBERT PORTER JACKSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CAMEROON.

JAMES FRANKLIN JEFFREY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF IRAQ.

ALEJANDRO DANIEL WOLFF, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CHILE.

SCOT ALAN MARCIEL, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF INDONESIA.

TERENCE PATRICK MCCULLEY, OF OREGON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL REPUBLIC OF NIGERIA.

PAMELA E. BRIDGEWATER AWKARD, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO JAMAICA.

MICHELE THOREN BOND, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF LESOTHO.

PAUL W. JONES, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MALAYSIA.

PHYLLIS MARIE POWERS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PANAMA.

DEPARTMENT OF ENERGY

NEILE L. MILLER, OF MARYLAND, TO BE PRINCIPAL DEPUTY ADMINISTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

JAMES A. WYNN, JR., OF NORTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

J. MICHELLE CHILDS, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA.

RICHARD MARK GERGEL, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA.

LEONARD PHILIP STARK, OF DELAWARE, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE.

DEPARTMENT OF JUSTICE

CATHY JO JONES, OF OHIO, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO FOR THE TERM OF FOUR YEARS.

EDWARD L. STANTON, III, OF TENNESSEE, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS.

STEPHEN R. WIGGINTON, OF ILLINOIS, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF ILLINOIS FOR THE TERM OF FOUR YEARS.

THE SUPREME COURT OF THE UNITED STATES

ELENA KAGAN, OF MASSACHUSETTS, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

DEPARTMENT OF JUSTICE

TIMOTHY Q. PURDON, OF NORTH DAKOTA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NORTH DAKOTA FOR THE TERM OF FOUR YEARS.

WILLIE RANSOME STAFFORD III, OF NORTH CAROLINA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF NORTH CAROLINA FOR THE TERM OF FOUR YEARS.

ARTHUR DARROW BAYLOR, OF ALABAMA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF ALABAMA FOR THE TERM OF FOUR YEARS.

JOHN F. WALSH, OF COLORADO, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF COLORADO FOR THE TERM OF FOUR YEARS.

WILLIAM J. IHLENFELD, II, OF WEST VIRGINIA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF WEST VIRGINIA FOR THE TERM OF FOUR YEARS.

JOHN WILLIAM VAUDREUIL, OF WISCONSIN, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WISCONSIN FOR THE TERM OF FOUR YEARS.

MARK LLOYD ERICKS, OF WASHINGTON, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS.

JOSEPH PATRICK FAUGHNAN, SR., OF CONNECTICUT, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF CONNECTICUT FOR THE TERM OF FOUR YEARS.

HAROLD MICHAEL OGLESBY, OF ARKANSAS, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

CONRAD ERNEST CANDELARIA, OF NEW MEXICO, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF NEW MEXICO FOR THE TERM OF FOUR YEARS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. PAUL H. MCGILLICUDDY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. SCOTT A. VANDER HAMM

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STEPHEN P. MUELLER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DOUGLAS H. OWENS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE

AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. MICHAEL R. MOELLER

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be major general

BRIGADIER GENERAL HUGH T. BROOMALL
BRIGADIER GENERAL PAUL D. BROWN, JR.
BRIGADIER GENERAL JAMES E. DANIEL, JR.
BRIGADIER GENERAL MICHAEL J. DORNBUSH
BRIGADIER GENERAL MATTHEW J. DZIALO
BRIGADIER GENERAL GREGORY A. FICK
BRIGADIER GENERAL ROBERT H. JOHNSTON
BRIGADIER GENERAL JOSEPH L. LENGYEL
BRIGADIER GENERAL WILLIAM N. REDDEL III
BRIGADIER GENERAL JAMES R. WILSON

To be brigadier general

COLONEL DONALD A. AHERN
COLONEL JAMES C. BALSERAK
COLONEL FRANK W. BARNETT, JR.
COLONEL MARK E. BARTMAN
COLONEL ROBERT M. BRANYON
COLONEL RICHARD J. DENNEE
COLONEL RICHARD J. EVANS III
COLONEL LAWRENCE P. GALLOGLY
COLONEL MICHAEL D. HEPNER
COLONEL WORTHE S. HOLT, JR.
COLONEL BRADLEY S. LINK
COLONEL DONALD L. MCCORMACK
COLONEL BRIAN G. NEAL
COLONEL ROY V. QUALLS
COLONEL MARC H. SASSEVILLE
COLONEL MARK L. STEPHENS
COLONEL ALPHONSE J. STEPHENSON
COLONEL KENDALL S. SWITZER
COLONEL DANIEL C. VANWYK

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JOSEPH F. FIL, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM J. TROY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. SANFORD E. HOLMAN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE DEAN OF THE ACADEMIC BOARD, UNITED STATES MILITARY ACADEMY AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 4335:

To be brigadier general

COL. TIMOTHY E. TRAINOR

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. DAVID G. FOX

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be major general

BRIG. GEN. HUGO E. SALAZAR

To be brigadier general

COL. WILLIAM L. GLASGOW

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. STEVEN W. DUFF

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be major general

BRIG. GEN. JAMES A. HOYER

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. WALTER T. LORD

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be major general

BRIGADIER GENERAL FRANK E. BATTS
BRIGADIER GENERAL MELVIN L. BURCH
BRIGADIER GENERAL JOHN E. DAVOREN
BRIGADIER GENERAL LESTER D. EISNER
BRIGADIER GENERAL ALLEN M. HARRELL
BRIGADIER GENERAL ROBERT A. HARRIS
BRIGADIER GENERAL ALBERTO J. JIMENEZ
BRIGADIER GENERAL THOMAS H. KATKUS
BRIGADIER GENERAL JAMES D. TYRE

To be brigadier general

COLONEL STEVEN W. ALTMAN
COLONEL DAVID B. ANDERSON
COLONEL DAVID N. AYCOCK
COLONEL DAVID S. BALDWIN
COLONEL JONATHAN T. BALL
COLONEL CRAIG E. BENNETT
COLONEL JULIE A. BENTZ
COLONEL VICTORIA A. BETTERTON
COLONEL VICTOR J. BRADEN
COLONEL DAVID R. BROWN
COLONEL FELIX T. CASTAGNOLA
COLONEL PETER L. COREY
COLONEL DONALD S. COTNEY
COLONEL STEPHANIE E. DAWSON
COLONEL CAROL A. EGGERT
COLONEL ALFRED C. FABER
COLONEL WILLIAM A. HALL
COLONEL RICHARD J. HAYES
COLONEL TIMOTHY E. HILL
COLONEL TIMOTHY J. HILTY
COLONEL JEFFREY H. HOLMES
COLONEL JANICE G. IGOU
COLONEL JAMES C. LETTKO
COLONEL TOM C. LOOMIS
COLONEL WESLEY L. MCCLELLAN
COLONEL JOHN K. MCGREW
COLONEL JOHNNY R. MILLER
COLONEL STEVEN R. MOUNT
COLONEL ERIC C. PECK
COLONEL CHARLES E. PETRARCA
COLONEL ANDREW P. SCHAFER
COLONEL RAYMOND F. SHIELDS
COLONEL LESTER SIMPSON
COLONEL PHILIP A. STEMPLE
COLONEL RANDY H. WARM
COLONEL CHARLES W. WHITTINGTON

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT E. SCHMIDLE, JR

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JOHN E. WISSLER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

GEN. JAMES N. MATTIS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. WILLIAM T. COLLINS
COL. JAMES S. HARTSELL
COL. ROGER R. MACHUT
COL. MARCELA J. MONAHAN

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. CHARLES J. LEIDIG, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. WILLIAM E. LANDAY III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. JOHN M. BIRD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. DANIEL P. HOLLOWAY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. WALTER M. SKINNER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

VICE ADM. SAMUEL J. LOCKLEAR III

DEPARTMENT OF JUSTICE

MELINDA L. HAAG, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS.

BARRY R. GRISSOM, OF KANSAS, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF KANSAS FOR THE TERM OF FOUR YEARS.

DAVID J. HICKTON, OF PENNSYLVANIA, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF FOUR YEARS.

DONALD MARTIN O'KEEFE, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS.

JAMES THOMAS FOWLER, OF TENNESSEE, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS.

CRAIG ELLIS THAYER, OF WASHINGTON, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS.

JOSEPH ANTHONY PAPILI, OF DELAWARE, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF DELAWARE FOR THE TERM OF FOUR YEARS.

JAMES ALFRED THOMPSON, OF UTAH, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF UTAH FOR THE TERM OF FOUR YEARS.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING WITH LORI A. ADAMS AND ENDING WITH SHANNON G. WOMBLE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 21, 2010.

AIR FORCE NOMINATIONS BEGINNING WITH WILLARD B. AKINS II AND ENDING WITH MICHAEL J. ZUBER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 21, 2010.

AIR FORCE NOMINATION OF ZENNON A. BOCHNAK, TO BE MAJOR.

AIR FORCE NOMINATIONS BEGINNING WITH FREDRICK D. ALDRIDGE AND ENDING WITH SCOTT D. YACKLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

IN THE ARMY

ARMY NOMINATION OF RALPH L. KAUZLARICH, TO BE COLONEL.

ARMY NOMINATION OF EDWARD B. MCKEE, TO BE COLONEL.

ARMY NOMINATION OF JOHN D. VIA, TO BE LIEUTENANT COLONEL.

ARMY NOMINATION OF KYU LUND, TO BE MAJOR.

ARMY NOMINATION OF MATTHEW L. Y. OKUDA, TO BE MAJOR.

ARMY NOMINATION OF ALEXANDER K. BRENNER, TO BE MAJOR.

ARMY NOMINATION OF RICHARD J. GRAY, TO BE LIEUTENANT COLONEL.

ARMY NOMINATIONS BEGINNING WITH JOSEPH B. DORE AND ENDING WITH COURTNEY T. TRIPP, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

ARMY NOMINATIONS BEGINNING WITH EDWARD C. CAMACHO AND ENDING WITH JON B. TIPTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

ARMY NOMINATIONS BEGINNING WITH DAVID GONZALEZ AND ENDING WITH PAMELA H. REYNOLDS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

ARMY NOMINATIONS BEGINNING WITH GREGORY C. RISK AND ENDING WITH VICTOR Y. YU, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

ARMY NOMINATIONS BEGINNING WITH MARK M. JACKSON AND ENDING WITH AVINASH JADHAV, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

ARMY NOMINATIONS BEGINNING WITH SUSAN M. CEBULA AND ENDING WITH D070757, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 12, 2010.

ARMY NOMINATIONS BEGINNING WITH JOHN S. AITA AND ENDING WITH D010009, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 12, 2010.

ARMY NOMINATIONS BEGINNING WITH ILSE K. ALUMBAUGH AND ENDING WITH PAMELA M. WULF,

WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 14, 2010.

ARMY NOMINATIONS BEGINNING WITH DERRON A. ALVES AND ENDING WITH SAMUEL L. YINGST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 14, 2010.

ARMY NOMINATIONS BEGINNING WITH JENNIFER L. ANDERSON AND ENDING WITH D006711, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 14, 2010.

ARMY NOMINATION OF EDWARD J. BENZ III, TO BE MAJOR.

ARMY NOMINATIONS BEGINNING WITH PAUL W. CARDEN AND ENDING WITH SHERRY L. WOMACK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 14, 2010.

ARMY NOMINATIONS BEGINNING WITH JOHN P. BATSON AND ENDING WITH TONY K. YOON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

ARMY NOMINATIONS BEGINNING WITH CHRISTOPHER W. ABBOTT AND ENDING WITH D005987, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

ARMY NOMINATIONS BEGINNING WITH MATTHEW C. ABOUDARA AND ENDING WITH DAVID J. YOO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

ARMY NOMINATIONS BEGINNING WITH PETER M. ABBRUZZESE AND ENDING WITH G001388, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

ARMY NOMINATIONS BEGINNING WITH JOSE C. ACOSTAJAVIERRE AND ENDING WITH G010027, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING WITH KAREN S. SLITER AND ENDING WITH ELIA P. VANECHANOS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2010.

FOREIGN SERVICE NOMINATIONS BEGINNING WITH JAMES K. CHAMBERS AND ENDING WITH CAMERON MUNTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2010.

IN THE NAVY

NAVY NOMINATION OF PAUL J. JOYCE, TO BE LIEUTENANT COMMANDER.

NAVY NOMINATION OF KERRY J. KRAUSE, TO BE CAPTAIN.

NAVY NOMINATION OF MATTHEW D. BARKER, TO BE LIEUTENANT COMMANDER.

NAVY NOMINATIONS BEGINNING WITH CHRISTOPHER J. KLUGEWICZ AND ENDING WITH BRIGHAM C. WILLIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH EDGARDO MONTERO AND ENDING WITH BECKY J. WATSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH DAVID B. RODRIGUEZ AND ENDING WITH BRADLEY J. THOM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH ROBERT C. BURTON AND ENDING WITH ROBERT A. OLIVER, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH JERRY D. BINGHAM AND ENDING WITH AMIN MOURAD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH RUBY O. ANDERSON AND ENDING WITH LYNN C. OMALLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH JOHN R. CAPRA AND ENDING WITH DILLON L. ROSS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH PATRICIA A. FREDRICKSON AND ENDING WITH JAMES M. SMITH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH FRANK M. GUPTON AND ENDING WITH JAIME A. QUEJADA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH MICHAEL J. BATTAGLIA II AND ENDING WITH KATHLEEN G. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH ROBERTO J. ATHA, JR. AND ENDING WITH JAMES A. MCMULLIN III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH THOMAS H. COTTON AND ENDING WITH KEVIN R. STEPHENS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH MARIANIE O. BALOLONG AND ENDING WITH JONATHAN J. VORRATH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH FRANKLIN W. BENNETT AND ENDING WITH EDWIN SANTANA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH RICHARD M. ARCHER AND ENDING WITH NAGEL B. SULLIVAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH WILLIAM ARIAS AND ENDING WITH JAMES V. WALSH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH NICHOLAS E. ANDREWS AND ENDING WITH WILLIAM E. WREN, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH JAMIE W. ACHEE AND ENDING WITH DARYK E. ZIRKLE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH KEVIN L. ANDERSEN AND ENDING WITH PAUL W. WILKES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH PATRICK L. BENNETT AND ENDING WITH TIMOTHY L. ZANE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH BRIAN M. AKER AND ENDING WITH BRETT A. WISE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH DAVID L. AAMODT AND ENDING WITH CHRISTOPHER M. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 29, 2010.

NAVY NOMINATIONS BEGINNING WITH JASON L. RICH AND ENDING WITH BRUNO A. SCHMITZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 12, 2010.

NAVY NOMINATIONS BEGINNING WITH WENDY C. GAZA AND ENDING WITH PATRICIA A. LIMPERT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 12, 2010.

NAVY NOMINATIONS BEGINNING WITH JARED A. BATTANI AND ENDING WITH ROBERT D. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 14, 2010.

NAVY NOMINATION OF VIRGINIA SKIBA, TO BE LIEUTENANT COMMANDER.

NAVY NOMINATION OF BARBARA A. MUNRO, TO BE LIEUTENANT COMMANDER.

NAVY NOMINATIONS BEGINNING WITH LISA M. BECOAT AND ENDING WITH ROSCOE C. PORTER, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH STEVEN R. BARSTOW AND ENDING WITH MARK S. WINWARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH MICHAEL J. ADAMS AND ENDING WITH HEATHER A. WATTS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH RICHARD S. ADCOOK AND ENDING WITH JEFFREY G. ZELLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH CHRISTOPHER F. BEAUBIEN AND ENDING WITH JEFFREY D. THOMAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH DOMINGO B. ALINIO AND ENDING WITH MARK A. ZIEGLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH KAREN L. ALEXANDER AND ENDING WITH MARC T. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH CRISTINA ALBERTO AND ENDING WITH KIM T. ZABLAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

NAVY NOMINATIONS BEGINNING WITH PHILLIP M. ADRIANO AND ENDING WITH ROBERT A. ZALEWSKIZARAGOZA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 21, 2010.

WITHDRAWAL

Executive message transmitted by the President to the Senate on August 5, 2010, withdrawing from further Senate consideration the following nomination:

JOHN J. SULLIVAN,, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2013, VICE ELLEN L. WEINTRAUB, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON MAY 4, 2009.