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House of Representatives

The House met at 2 p.m. and was called to order by the Speaker pro tempore (Mr. GOMEZ).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 16, 2020.

I hereby appoint the Honorable JIMMY GOMEZ to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Patrick J. Conroy, offered the following prayer:

Loving and gracious God, we give You thanks for giving us another day.

As the Members of the people's House regather after our quadrennial elections, may Your spirit of peace descend upon them. As the 116th Congress moves toward a close, may all here attend to the business at hand, providing what is needed for the benefit of our Nation.

May all Members, regardless of the outcome of the election, trust that their future service, be it in the House or not, will be imbued with Your grace. May they be confident that Americans of good will are grateful for their service in the past and wish them well into the future.

Throughout our Nation the coronavirus continues to spread dangerously. Continue to bless those who attend to those who are suffering and their families. We thank You for the advances that are taking place in developing effective vaccines to address the plague.

Bless us all this day and all days to come. And may all that is done this day be for Your greater honor and glory.

Amen.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to section 4(a) of House Resolution 967, the Journal of the last day's proceedings is approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from California (Ms. LEE) come forward and lead the House in the Pledge of Allegiance.

Ms. LEE of California 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.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 12, 2020.

Hon. NANCY PELOSI,
The Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 12, 2020, at 10:22 a.m.:

That the Senate passed without amendment H.R. 8247.

That the Senate passed without amendment H.R. 8276.

With best wishes, I am,
Sincerely,

CHERYL L. JOHNSON,
Clerk.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 12, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 12, 2020, at 4:46 p.m.:

That the Senate passed without amendment H.R. 1773.

That the Senate passed without amendment H.R. 8472.

With best wishes, I am,
Sincerely,

CHERYL L. JOHNSON,
Clerk.

COMMUNICATION FROM STAFF ASSISTANT, THE HONORABLE NANCY PELOSI, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Elizabeth Beltran, Staff Assistant, the Honorable NANCY PELOSI, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 13, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the rules of the House of Representatives, that I, Elizabeth Beltran, have been served with subpoenas for testimony issued by the United States District Court for the Middle District of Florida.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoenas is consistent with the privileges and rights of the House.

Sincerely,

ELIZABETH BELTRAN,
Staff Assistant.

COMMUNICATION FROM THE SERGEANT AT ARMS

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

OFFICE OF THE SERGEANT AT ARMS,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 13, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to section 1(b)(2) of House Resolution 965, following consultation with the Office of Attending Physician, I write to provide you further notification that the public health emergency due to the novel coronavirus SARS-CoV-2 remains in effect.

Sincerely,

PAUL D. IRVING,
Sergeant at Arms.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces the Speaker's further extension, pursuant to section 1(b)(2) of House Resolution 965, effective November 17, 2020, of the ''covered period'' designated on May 20, 2020.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to 15 requests for 1-minute speeches on each side of the aisle.

HONORING PRESIDENT JERRY RAWLINGS OF GHANA

(Ms. LEE of California asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. LEE of California. Mr. Speaker, I rise in sympathy with the people of Ghana at the passing of former President Jerry Rawlings. I offer my sincerest condolences and prayers to his family, friends, and loved ones.

Personally, I have known President Rawlings and his beautiful family since around 1994. I most recently visited President Rawlings and his family last year when Speaker PELOSI and Chairwoman BASS led a Congressional delegation to Ghana commemorating 400 years since the brutal institution of slavery began in America. It was such a wonderful meeting and visit. He reaffirmed his commitment to strengthen the ties between Ghanaians, the country of Ghana, African Americans, and the United States.

President Rawlings' leadership contributed to steady development, a transition to democracy and peaceful transfer of power.

Today, Ghana is one of the strongest democracies in Africa, a strong partner of the United States, and a respected actor on the world's stage.

My deepest sympathy and love goes out to Mrs. Rawlings, the entire Rawlings family, to the citizens of Ghana, and the entire continent of my motherland of Africa. We stand in solidarity as the people of Ghana continue building a stronger and more inclusive and prosperous country. May President Rawlings' soul rest in peace.

THE PROMISE OF AMERICAN INNOVATION

(Mr. JOYCE of Pennsylvania asked and was given permission to address the House for 1 minute.)

Mr. JOYCE of Pennsylvania. Mr. Speaker, I rise today to showcase the promise of American innovation. Just this morning, Moderna announced that its COVID–19 vaccine is nearly 95 percent effective. Last week, Pfizer reported that its coronavirus vaccine is more than 90 percent effective.

Today, less than a year after the coronavirus reached our shores, this is an incredible achievement. It is a testament to the excellence of American scientists and researchers.

Thanks to these heroes and to the historic private-public partnership spurred by Operation Warp Speed, our Nation is positioned to distribute a safe and effective vaccine more efficiently than any other country in the world.

Now more than ever, as cases of COVID–19 rise across our Nation, we must stand firm against this invisible enemy. And thanks to American innovation, there is hope on the horizon.

HONORING SCIENTISTS AND RESEARCHERS

(Mr. SCHNEIDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHNEIDER. Mr. Speaker, I rise today to thank the frontline heroes, especially our healthcare workers who are working tirelessly under unbearable stresses to save lives.

I thank the researchers and scientists who are developing COVID vaccines. But I also want to plead with my fellow citizens to act responsibly to protect each other in this battle against a deadly virus.

Today, Moderna announced remarkable results for a second vaccine on the heels of Pfizer's recent announcement.

There is light at the end of the tunnel, but the tunnel is long, and the road back is still many months away. We can't afford to let our guard down or millions of Americans will get sick and thousands, tens of thousands of our fellow citizens, our neighbors, and our family members will needlessly die.

As I speak, America's hospitals, especially in rural and underserved communities, are at capacity. They are airlifting patients to bigger cities. We have reports of growing shortfalls of medical supplies and staff. Our frontline healthcare workers desperately need our help.

As we enter the holiday season, I am begging Americans to stay vigilant. Wear a mask, watch your distance, and wash your hands. If you must gather, do so outside, even though it is cold. I know that you want to see your families. I want to see mine. I know that the sacrifice will not be easy, but I also know that there is pain.

We can do this. We can beat back this virus, but only if we do it together. If we don't people will die, and God forbid you or your loved one is the last to die before a vaccine.

DO NOT UNDERESTIMATE REPUBLICAN WOMEN

(Ms. FOXX of North Carolina asked and was given permission to address the House for 1 minute.)

Ms. FOXX of North Carolina. Mr. Speaker, the mainstream media will never acknowledge that 2020 is the year of the Republican women.

They wrote us off on countless occasions, and yet, we proved them wrong time and time again.

Across the country, the American people made their voices heard in voting booths, and they chose numerous Republican women candidates to be their voice in Washington.

To conservative women who aspire for public office, people will work to discredit you, they will claim your priorities are misplaced, and they will do everything they can to undermine your hard work.

But what they won't acknowledge is that you represent the best of the values of the American people. That is what truly matters.

COMMEMORATING THE FALL OF THE BERLIN WALL

(Mr. THOMPSON of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMPSON of Pennsylvania. Mr. Speaker, I rise today as co-chair of the bipartisan German-American Caucus to commemorate the fall of the Berlin Wall.

Last week, November 9, marked 31 years since the Iron Curtain fell and the Cold War began to crumble.

For nearly three decades, the Berlin Wall stood as a growing reminder of the evils of communism and the ongoing threat of the Cold War.

In 1987, President Ronald Reagan famously shouted, ''Mr. Gorbachev, tear down this wall.'' Two years later, the wall finally came down. East and West Berliners celebrated together at Brandenburg Gate.

The following year, on October 3, 1990, East and West Germany reunited as one.

This historic moment was the beginning of the end for the Cold War, and today we are still celebrating this iconic moment in world history as an international symbol of freedom.

I join our German friends in celebrating this milestone and would like to remind all of us that freedom is always worth fighting for.

CONGRATULATING RAQUEL SALTER

(Mr. CARTER of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CARTER of Georgia. Mr. Speaker, I rise today to congratulate Raquel Salter for being selected for promotion from lieutenant commander to commander in the U.S. Coast Guard Reserves.

Commander Salter is a 29-year veteran of the U.S. Coast Guard and served about one-third of her time in Georgia's First Congressional District.

Throughout her service, she has always gone above and beyond to selflessly defend our Nation and advocate for the Coast Guard, especially servicewomen.

Over her 29 years of service, Commander Salter has been activated to Key West for the Cuban Raft Crisis, to Savannah to assist with the Olympic sailing security, to Charleston for Operation Iraqi Freedom, and to Savannah again for 9/11 and to help assist with the G8 summit security.

This year, Commander Salter was chosen as part of a select group to help with COVID–19 response in Miami. I can't thank her enough for her steadfast commitment to serving our country and countless Americans, and I wish her the best in her new position.

THE AMERICAN PEOPLE HAVE A RIGHT TO KNOW

(Mr. LAMALFA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMALFA. Mr. Speaker, many in the media or in opposition are calling for President Trump to concede, but just as many are supporting his pursuit of legitimate legal challenges.

A lack of transparency in the monitoring and vote counting process has raised flags for many Americans, and if left unchecked, will undermine the faith in our electoral process, an important integrity to all Americans.

The President's team has hundreds of sworn affidavits from election workers, postal employees, and election observers everywhere about questionable activities in key States.

These workers do not have built-in safety guarantees like members of the Washington swamp. They are regular Americans putting their livelihoods on the line to speak up and protect our elections.

After 4 years of scare tactics, of fake impeachment, fraudulent dossiers, and Russia witch hunts, the American people have a right to know that every legal vote has been counted and all illegal votes removed. Americans must have all questions surrounding the outcome of this election answered before we can move forward so we do have election integrity that we can count on.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 4 p.m. today.

Accordingly (at 2 o'clock and 14 minutes p.m.), the House stood in recess.

□ 1600

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. KENNEDY) at 4 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which the yeas and nays are ordered.

The House will resume proceedings on postponed questions at a later time.

LUMBEE TRIBE OF NORTH CAROLINA RECOGNITION ACT

Mr. HUFFMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1964) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1964

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 ''Lumbee Tribe of North Carolina Recognition Act''.

SEC. 2. FEDERAL RECOGNITION.

The Act of June 7, 1956 (70 Stat. 254, chapter 375), is amended—

(1) by striking section 2;

(2) in the first sentence of the first section, by striking ''That the Indians'' and inserting the following:

''SEC. 3. DESIGNATION OF LUMBEE INDIANS.

''The Indians'';

(3) in the preamble—

(A) by inserting before the first undesignated clause the following:

''SECTION 1. FINDINGS.

''Congress finds that—'';

(B) by designating the undesignated clauses as paragraphs (1) through (4), respectively, and indenting appropriately;

(C) by striking ''Whereas'' each place it appears;

(D) by striking ''and'' after the semicolon at the end of each of paragraphs (1) and (2) (as so designated); and

(E) in paragraph (4) (as so designated), by striking '': Now, therefore,'' and inserting a period;

(4) by moving the enacting clause so as to appear before section 1 (as so designated);

(5) by striking the last sentence of section 3 (as designated by paragraph (2));

(6) by inserting before section 3 (as designated by paragraph (2)) the following:

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(2) TRIBE.—The term 'Tribe' means the Lumbee Tribe of North Carolina or the Lumbee Indians of North Carolina.''; and

(7) by adding at the end the following:

''SEC. 4. FEDERAL RECOGNITION.

''(a) IN GENERAL.—Federal recognition is extended to the Tribe (as designated as petitioner number 65 by the Office of Federal Acknowledgment).

''(b) APPLICABILITY OF LAWS.—All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Tribe and its members.

''(c) PETITION FOR ACKNOWLEDGMENT.—Notwithstanding section 3, any group of Indians in Robeson and adjoining counties, North Carolina, whose members are not enrolled in the Tribe (as determined under section 5(d)) may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgment of tribal existence.

''SEC. 5. ELIGIBILITY FOR FEDERAL SERVICES.

''(a) IN GENERAL.—The Tribe and its members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes.

''(b) SERVICE AREA.—For the purpose of the delivery of Federal services and benefits described in subsection (a), those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation.

''(c) DETERMINATION OF NEEDS.—On verification by the Secretary of a tribal roll under subsection (d), the Secretary and the Secretary of Health and Human Services shall—

''(1) develop, in consultation with the Tribe, a determination of needs to provide the services for which members of the Tribe are eligible; and

''(2) after the tribal roll is verified, each submit to Congress a written statement of those needs.

''(d) TRIBAL ROLL.—

''(1) IN GENERAL.—For purpose of the delivery of Federal services and benefits described in subsection (a), the tribal roll in effect on the date of enactment of this section shall, subject to verification by the Secretary, define the service population of the Tribe.

''(2) VERIFICATION LIMITATION AND DEADLINE.—The verification by the Secretary under paragraph (1) shall—

''(A) be limited to confirming documentary proof of compliance with the membership criteria set out in the constitution of the Tribe adopted on November 16, 2001; and

''(B) be completed not later than 2 years after the submission of a digitized roll with supporting documentary proof by the Tribe to the Secretary.

''SEC. 6. AUTHORIZATION TO TAKE LAND INTO TRUST.

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is hereby authorized to take land into trust for the benefit of the Tribe.

''(b) TREATMENT OF CERTAIN LAND.—An application to take into trust land located within Robeson County, North Carolina, under this section shall be treated by the Secretary as an 'on reservation' trust acquisition under part 151 of title 25, Code of Federal Regulations (or a successor regulation).

"SEC. 7. JURISDICTION OF STATE OF NORTH CAROLINA.

''(a) IN GENERAL.—With respect to land located within the State of North Carolina that is owned by, or held in trust by the United States for the benefit of, the Tribe, or any dependent Indian community of the Tribe, the State of North Carolina shall exercise jurisdiction over—

''(1) all criminal offenses that are committed; and

''(2) all civil actions that arise.

''(b) TRANSFER OF JURISDICTION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary may accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in subsection (a) over Indian country occupied by the Tribe pursuant to an agreement between the Tribe and the State of North Carolina.

''(2) RESTRICTION.—A transfer of jurisdiction described in paragraph (1) may not take effect until 2 years after the effective date of the agreement described in that paragraph.

''(c) EFFECT.—Nothing in this section affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

"SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated such sums as are necessary to carry out this Act.

"SEC. 9. SHORT TITLE.

''This Act may be cited as the 'Lumbee Tribe of North Carolina Recognition Act'.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. HUFFMAN) and the gentleman from Utah (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUFFMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

H.R. 1964, the Lumbee Recognition Act, introduced by our colleague from North Carolina, Mr. BUTTERFIELD, will finally extend recognition to the Lumbee Tribe of North Carolina.

The Lumbee Tribe resides primarily in Robeson, Hoke, Cumberland, and Scotland Counties of that State and has approximately 60,000 members. That means it is the largest Tribe in North Carolina, the largest Tribe east of the Mississippi River, and the ninth largest Tribe in America.

In 1885, this Tribe was recognized by the State of North Carolina. It then sought Federal recognition from the United States in 1889, and they have been seeking that recognition ever since.

Over the past 130 years, numerous bills have been introduced in Congress to federally recognize the Lumbee people, resulting in a record of hearing transcripts and committee reports. In addition, numerous academic studies have been undertaken on Lumbee ancestry, and reports have been requested and filed by the Department of the Interior on the Tribe's validity.

All of these documents consistently conclude one thing: The Lumbee people are indeed a distinct, self-governing Indian community that has been continuously and undeniably present in the Robeson County area.

In 1955, the Lumbee Tribe sought Federal recognition. Unfortunately, this was during the era known as the termination era, when the United States sought to terminate relationships with Tribal governments and force the assimilation of indigenous people into mainstream American society.

To that end, the Department of the Interior recommended that Congress amend the legislation to deny eligibility for the benefits and services available to the Tribe recognized under the bill.

Congress then enacted this amended legislation in 1956, giving it the dubious effect of simultaneously federally recognizing the Lumbee Tribe and then effectively terminating that recognition.

In 1987, the Lumbee Tribe again attempted to restore their Federal recognition, this time through the newly created Federal acknowledgment process at Interior. However, the Department determined that the Tribe was ineligible to participate in that process because Congress, pursuant to that 1956 act, had terminated the relationship with the Tribe and, therefore, only Congress could restore the relationship. That is exactly what enactment of this bill will accomplish.

Federal recognition is the formal establishment of a government-to-government relationship between the United States and a Tribal nation. Its importance to Tribes cannot be overstated.

Federal recognition allows a Tribe to establish a homeland and to put land into trust to protect future generations. This, in turn, allows the Tribe to manage its own resources and gives them control over local jurisdiction and taxation issues.

Recognition also entitles Tribal people to distinctive benefits, including eligibility to participate in many Federal programs, including healthcare and education.

That is why enactment of this bill is so vital to the Lumbee people and why they have been seeking Federal recognition for so very long.

Other Tribes that were terminated by congressional action have come before Congress, and they have had their relationship reestablished through legislation. It is finally time that we act on that prerogative and extend Federal recognition to the Lumbee Tribe.

Mr. Speaker, I thank Representative BUTTERFIELD for being a champion of this bipartisan legislation, and I urge its quick adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. BISHOP), who has the proper last name, if not the correct first name.

Mr. BISHOP of North Carolina. Mr. Speaker, I thank the ranking member for yielding.

Since 1885, the State of North Carolina has recognized the Lumbee Indians of North Carolina, but today marks the first time in U.S. history since the Lumbee first sought Federal recognition in 1885 that legislation for full and bona fide recognition will pass the U.S. House while a companion bill awaits action in the U.S. Senate strongly favored by two North Carolina Senators and with the President of the United States having promised to sign the legislation that will result.

For 64 years, the 66,000-strong Lumbee have existed in a kind of official limbo that reflects the worst of our Federal Government.

In 1956, Congress passed a law simultaneously granting recognition of the Tribe and terminating it, according to the movement of that era. ''Nothing in this Act,'' said the legislation, ''shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.''

One wonders if they had heard about equal protection.

For the opponents of Lumbee recognition, including other Tribes, it has always been about the money. Of course, there have been fellow travelers motivated by racial prejudice or neglect.

It cannot be disputed, though, that the Lumbee have been, for three centuries, a cohesive and distinct community of aboriginal origins and durable institutions, especially schools, living near the Lumber River, which was known until 1809 by the unfortunate but accurate name Drowning Creek.

Although the Lumbee have also been known by other names—the Croatan, the Cheraw of Robeson, the Siouan Indian Community of Lumber River—they are the continuously present and vital people shown on a map drawn in 1725 whose common modern surnames appear on a document written in 1771, such as Locklear, Chavis, Dees, Sweat, and Groom. They are the Lumbee who were living in Long Swamp in the 1730s, the community now known as Prospect, where I visited just weeks ago.

My maternal forebears were Kinlaws in Bladen County, adjacent to Robeson. We also trace a genealogy to the early 1700s, and our family name evolved, like the Lumbee's did. We were once McKinlaws and, before that, McKinlochs, desperately poor but independent Scots-Irish from the borderlands of the English Civil Wars.

I can only imagine what it would mean to me to have been singled out by the United States Government for centuries of official disregard and denial of my very identity. That is the longstanding injustice that we are correcting today, and the happy ending is already being written by the Lumbee themselves.

I know the Lumbee. I know the Warrior's Ball and Lumbee Homecoming, UNC-Pembroke and Old Main, the Lumbee Cultural Center and even the Cozy Corner.

The Lumbee are supremely patriotic Americans, God-fearing and washed in the blood, devoted to the liberating cause of education and to civic involvement, proud of their community, loving and welcoming to strangers.

They are the best of America, and the only honorable course for the United States Congress is to accord them their due recognition at long last.

Mr. Speaker, I give my thanks to Representatives BUTTERFIELD, HUDSON, and GRIJALVA, and to Ranking Member ROB BISHOP, staunch supporters of the Lumbee's pursuit of justice, and also to President Trump. When I had the right moment to bring this to the President's attention, in characteristic practice, he made no promises other than to give it a close look. When he decided to throw his support behind recognition, he did it all the way, including traveling to Lumberton to tell the Lumbee himself.

Today is a gratifying capstone for my first partial term in the U.S. House.

Mr. Speaker, I urge Members to unanimously pass the Lumbee Recognition Act.

Mr. HUFFMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. BUTTERFIELD).

Mr. BUTTERFIELD. Mr. Speaker, I thank the gentleman very much for yielding time this afternoon.

I rise, Mr. Speaker, in strong support of H.R. 1964, the Lumbee Recognition Act, and I urge my colleagues to vote for its passage.

Mr. Speaker, let me just take a moment to thank the chairman of the committee—he is not here today—Mr. GRIJALVA. I thank him so very much for his friendship and for his leadership on this issue. I thank Mr. HUFFMAN for managing the floor today and recognizing me for just a few moments. And to the ranking member, Mr. BISHOP from Utah, I thank him so very much. He is the ranking member of the committee, and I thank him for his leadership as well.

Mr. Speaker, I particularly want to thank Mr. HUDSON—I don't see Mr. HUDSON on the floor, but I know he is very close by—and my friend, Mr. BISHOP from North Carolina. I thank both of them for their unwavering support for this legislation.

I might say that Robeson County—someone mentioned ''Robeson County'' a few moments ago; it is actually ''Robeson County''—is a part of Mr. BISHOP's Ninth Congressional District.

This bill, Mr. Speaker, will finally extend full Federal recognition to the Lumbee Tribe of North Carolina, making its members eligible for the same services and benefits provided to members of other federally recognized Tribes. Most importantly, the bill will establish once and for all the Lumbee Tribe as an independent and sovereign entity under Federal law.

North Carolina, as Mr. BISHOP, I believe, or Mr. HUFFMAN mentioned a moment ago, has recognized the Lumbee Tribe since 1885. This body even recognized the Lumbees in the 1950s, but during the dark days of the termination era, they refused to allow the Lumbee Tribe access to federally funded services and benefits.

Almost all the Tribes that were terminated in this troubling era have since been restored to Federal recognition. We are long overdue in delivering the same justice to the Lumbee Tribe.

This legislation, Mr. Speaker, has tremendous bipartisan support, as you can see today, tremendous bipartisan support that has only accelerated over the past few months.

At the end of September, under Chairman GRIJALVA's leadership, the Natural Resources Committee passed this bill by a voice vote. It was noncontroversial. Shortly thereafter, Democratic Leader STENY HOYER announced his support for full Federal recognition for the Lumbee Nation and his intention to bring the bill to the floor.

Mr. HOYER told me, and he told Chairman Godwin in a telephone call a few weeks ago, that he would bring this bill, H.R. 1964, to the floor on November 16. Today is November 16.

□ 1615

During the Presidential campaign, Joe Biden gave his unconditional support to this legislation, and President Trump, as Mr. BISHOP said, did so as well.

Now is the time for the House to get this done. When this legislation passes, it is my fervent hope that our Senate colleagues from both parties will support passage and send it to the President's desk for his immediate signature.

In closing, Mr. Speaker, let me remind the House that this legislation has been before this body many times over the years since I have been in Congress. I recall Democratic Congressman Mike McIntyre repeatedly introducing this legislation. In the 110th and the 111th Congress, the House passed this legislation, but it never ever saw the light in the other body.

It appears that the legislation now has the support of Senators BURR and TILLIS. I am not suggesting that they didn't support it previously. It was another time and another Congress, but it appears that the legislation has the support of Senator BURR and Senator TILLIS and it should be favorably considered in the Senate.

Therefore, I respectfully ask my colleagues to extend a hand of friendship to the 66,000 members of the Lumbee Nation and grant them their long overdue full Federal recognition.

Mr. Speaker, I ask my colleagues to vote ''aye'' on H.R. 1964.

Mr. HUFFMAN. Mr. Speaker, I include in the RECORD an email from the CBO. While we do not have an official CBO score, we do have this email today confirming that the bill will not affect direct spending or revenues.

From: Jon Sperl
Sent: Monday, November 16, 2020 12:06 PM
To: Lim, Sarah
Cc: Urbina, Luis
Subject: RE: HR 1964 (Lumbee Recognition)

MORNING SARAH: My manager has informed me that she won't be able to get to the Lumbee bill today.

For your purposes: HR 1964 would increase discretionary spending. The legislation would not affect direct spending or revenues.

Cheers,

JON.

Mr. HUFFMAN. Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this longstanding issue has been one that has been before many Congresses, so I appreciate Mr. BUTTERFIELD for his efforts and Mr. BISHOP—both of them North Carolina Representatives—for bringing their State together and coming up with a cooperative way of doing it.

The issue with the Lumbees goes back to 1956, as has been mentioned, but also had, starting in 1988 and 1989 and finishing in the last administration, conflicting opinions from solicitors of the Interior Department that have caused this problem regarding the Lumbee Tribe on what they may or may not pursue as far as administrative recognition or other issues that are dealt with.

So the proper way when there are conflicting opinions, especially coming from the executive branch, is for Congress to stand up and do its responsibility and its duty, and that is what H.R. 1964—which was a wonderful year for me; I remember it very well—does is allow Congress to do its responsibility by taking these conflicting opinions and stating what is the purpose and intent of Congress. This is the right way of doing things.

Far too often have we tried to use administrative shortcuts when, in essence, we find out that it produces long-term problems for us. So I commend Representative BISHOP from North Carolina, not only for a great name, but also for the fact that he is representing his constituency extremely well, and he is doing it in the proper way in bringing a piece of legislation to us through markup.

I appreciate, also, the letter that was mentioned by Mr. HUFFMAN as well, because it is significant. One of the things the majority party still has to do is make sure there is a CBO score attached to this bill, perhaps, before it

goes all the way through, but we have overlooked those in the past. We don't need to necessarily overlook them in the future going through there.

But I appreciate what the gentlemen are doing with this process. It is a positive thing, and I urge all of the Members who are here or who are not here to pass this one in the affirmative because it is something that needs to be done. I applaud those who have worked so hard to get unity within the delegation from North Carolina and move forward with it.

Mr. Speaker, I yield back the balance of my time.

Mr. HUFFMAN. Mr. Speaker, I request an ''aye'' vote, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill, H.R. 1964, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROPER AND REIMBURSED CARE FOR NATIVE VETERANS ACT

Mr. HUFFMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6237) to amend the Indian Health Care Improvement Act to clarify the requirement of the Department of Veterans Affairs and the Department of Defense to reimburse the Indian Health Service for certain health care services, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 6237

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 ''Proper and Reimbursed Care for Native Veterans Act'' or the ''PRC for Native Veterans Act''.

SEC. 2. CLARIFICATION OF REQUIREMENT OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE TO REIMBURSE INDIAN HEALTH SERVICE FOR CERTAIN HEALTH CARE SERVICES.

Section 405(c) of the Indian Health Care Improvement Act (25 U.S.C. 1645) is amended by inserting before the period at the end the following: '', regardless of whether such services are provided directly by the Service, an Indian tribe, or tribal organization, through purchased/referred care, or through a contract for travel described in section 213(b)''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. HUFFMAN) and the gentleman from Utah (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUFFMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include any extraneous material on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us, H.R. 6237, is the PRC for Native Veterans Act, introduced by our colleague from Arizona, Representative GALLEGO. This bill will ensure that Native veterans can access high-quality healthcare regardless of the system where they choose to seek it.

Providing for the healthcare of our veterans should be one of our top priorities, including the care of approximately 150,000 Native veterans who have served our country.

By law, a Native veteran is eligible to receive services under both the VA and Indian Health Service. They can choose which one of those to use at any given time.

In instances where a Native veteran is eligible for a particular healthcare service from both the VA and IHS, the VA is considered the primary payer. As such, the VA reimburses IHS and Tribal facilities for any direct care they provide.

Here is the problem that sometimes arises: It is with the Purchased/Referred Care Program, known as PRC. IHS and Tribal facilities are not always able to directly provide all of the necessary health services a Tribal member may need, and in order to bridge that gap, the PRC program was created. It authorizes the purchase of services from a network of private providers when care is not available at IHS or Tribal facilities.

During the permanent reauthorization of the Indian Health Care Improvement Act, Congress amended section 405(c) of that law to require the VA to reimburse IHS and Tribes for health services provided under that PRC program.

But the VA now claims that this language does not statutorily require them to reimburse specialty and referral services through IHS or Tribal facilities. The VA, instead, insists that the referral must come from them.

That creates problems. It means that the Native veterans who arrive at IHS or Tribal facilities needing specialty care are often forced to travel extreme distances to the nearest VA just to get a redundant primary care visit and a referral.

These extra steps cause significant hardship for many Native veterans and can delay critical care. The result is that many IHS and Tribal facilities are referring Native veterans out for specialty care and then just paying for it themselves with their already meager PRC fund so that the patient can be treated in a timely and competent manner.

This bill clarifies that the VA is responsible for reimbursing IHS and Tribes for any specialty care provided through a referral by an IHS or Tribal facility.

I think we can all agree our Native veterans should have timely access to the quality of care they need no matter where they choose to access it.

I want to thank Representative GALLEGO for championing this bipartisan legislation on behalf of all Native veterans, and I urge its quick adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I, too, wish to support H.R. 6237, which is officially the Proper and Reimbursed Care for Native Americans Act. Over the last century, Native Americans have served in the U.S. armed services at a higher per capita rate than any other ethnicity, and with Veterans Day occurring last week at the same time as the opening of the Native American Veterans Memorial, I thank those who have served and continue to serve in this capacity.

Under current law, the Department of Veterans Affairs or the Department of Defense reimburses the Indian Health Services for any health-related services provided to Native Americans.

Unfortunately, not all Indian Health Services or Tribally operated facilities can provide every level of care, and some patients must be referred. For these situations, the VA or the DOD cannot reimburse the Indian Health Service or Tribal facility for certain services.

H.R. 6237 would amend the Indian Health Care Improvement Act to fix this problem and ensure that the Veterans Administration or the Department of Defense has authority to pay for the care Native veterans receive regardless of where those services are provided.

So I have to thank subcommittee Chairman GALLEGO, who is, himself, a marine veteran, for his service and ensuring that Native Americans receive proper care.

I urge adoption of this measure, and I yield back the balance of my time.

Mr. HUFFMAN. Mr. Speaker, I request an ''aye'' vote, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill, H.R. 6237, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

WOUNDED VETERANS RECREATION ACT

Mr. HUFFMAN. Mr. Speaker, I move to suspend the rules and pass the bill (S. 327) to amend the Federal Lands

Recreation Enhancement Act to provide for a lifetime National Recreational Pass for any veteran with a service-connected disability.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 327

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 ''Wounded Veterans Recreation Act''.

SEC. 2. NATIONAL RECREATIONAL PASSES FOR DISABLED VETERANS.

Section 805(b) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6804(b)) is amended by striking paragraph (2) and inserting the following:

''(2) DISABILITY DISCOUNT.—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, without charge and for the lifetime of the passholder, to the following:

''(A) Any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled, within the meaning of the term 'disability' under section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102), if the citizen or person provides adequate proof of the disability and such citizenship or residency.

''(B) Any veteran who has been found to have a service-connected disability under title 38, United States Code.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. HUFFMAN) and the gentleman from Utah (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUFFMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include any extraneous material on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am proud to support this bill to provide wounded veterans with free access to our national parks and our public lands. This clearly is a bipartisan priority, and thanks to the leadership and hard work of my colleague, Senator SHAHEEN from New Hampshire, it cleared the Senate with unanimous support.

I also know that my good friend, RAUL RUIZ from California, the House sponsor of the bill, worked very hard and cares very deeply about the impact this bill will have on the veteran community.

The Department of the Interior and the Forest Service currently waive fees for all disabled Americans, and this bill will make this a permanent and standard feature for all veterans with a service-related disability, ensuring that there are no barriers to access to the lands and waters these brave Americans have sacrificed so much to protect.

Sending this bill to the White House for the President's signature less than a week after Veterans Day is also fitting. It is a meaningful action that will impact the lives of wounded veterans and recognize their important contribution and sacrifice. In the Natural Resources Committee, we have heard numerous stories about the healing and restorative powers of our public lands for countless veterans.

Again, I want to thank the sponsors of this legislation for their attention to this issue. I strongly urge a ''yes'' vote, and I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, S. 327, requires the Department of the Interior and the Department of Agriculture to make available, free of charge, a lifetime national parks and Federal recreation land pass to any veteran who has been found to have service-connected disabilities.

This builds upon the Secretary of the Interior's, Mr. Bernhardt's, recent Secretarial order which provided free park and public land passes to all U.S. veterans and Gold Star families. Providing free access to our Nation's veterans connects them to the treasured lands that they fought to protect.

Each year thousands of veterans will benefit by recreating on these public lands, and providing a park pass is a small token of gratitude to our Nation's cherished servicemen and -women. So I urge adoption of this measure, and I yield back the balance of my time.

□ 1630

Mr. HUFFMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill, S. 327.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. HUFFMAN. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3 of House Resolution 965, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

DIGITAL COAST ACT

Mr. HUFFMAN. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1069) to require the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration, to establish a constituent-driven program to provide a digital information platform capable of efficiently integrating coastal data with decision-support tools, training, and best practices and to support collection of priority coastal geospatial data to inform and improve local, State, regional, and Federal capacities to manage the coastal region, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 1069

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 ''Digital Coast Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Digital Coast is a model approach for effective Federal partnerships with State and local government, nongovernmental organizations, and the private sector.

(2) Access to current, accurate, uniform, and standards-based geospatial information, tools, and training to characterize the United States coastal region is critical for public safety and for the environment, infrastructure, and economy of the United States.

(3) More than half of all people of the United States (153,000,000) currently live on or near a coast and an additional 12,000,000 are expected in the next decade.

(4) Coastal counties in the United States average 300 persons per square mile, compared with the national average of 98.

(5) On a typical day, more than 1,540 permits for construction of single-family homes are issued in coastal counties, combined with other commercial, retail, and institutional construction to support this population.

(6) Over half of the economic productivity of the United States is located within coastal regions.

(7) Highly accurate, high-resolution remote sensing and other geospatial data play an increasingly important role in decision making and management of the coastal zone and economy, including for—

(A) flood and coastal storm surge prediction;

(B) hazard risk and vulnerability assessment;

(C) emergency response and recovery planning;

(D) community resilience to longer range coastal change;

(E) local planning and permitting;

(F) habitat and ecosystem health assessments; and

(G) landscape change detection.

SEC. 3. DEFINITIONS.

In this Act:

(1) COASTAL REGION.—The term ''coastal region'' means the area of United States waters extending inland from the shoreline to include coastal watersheds and seaward to the territorial sea.

(2) COASTAL STATE.—The term ''coastal State'' has the meaning given the term ''coastal state'' in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

(3) FEDERAL GEOGRAPHIC DATA COMMITTEE.—The term ''Federal Geographic Data Committee'' means the interagency committee that promotes the coordinated development, use, sharing, and dissemination of geospatial data on a national basis.

(4) REMOTE SENSING AND OTHER GEOSPATIAL.—The term ''remote sensing and other geospatial'' means collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the Earth and any information related thereto, including surveys, maps, charts, satellite and airborne remote sensing data, images, LiDAR, and services performed by professionals such as surveyors,

photogrammetrists, hydrographers, geodesists, cartographers, and other such services.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration.

SEC. 4. ESTABLISHMENT OF THE DIGITAL COAST.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a program for the provision of an enabling platform that integrates geospatial data, decision-support tools, training, and best practices to address coastal management issues and needs. Under the program, the Secretary shall strive to enhance resilient communities, ecosystem values, and coastal economic growth and development by helping communities address their issues, needs, and challenges through cost-effective and participatory solutions.

(2) DESIGNATION.—The program established under paragraph (1) shall be known as the ''Digital Coast'' (in this section referred to as the ''program'').

(b) PROGRAM REQUIREMENTS.—In carrying out the program, the Secretary shall ensure that the program provides data integration, tool development, training, documentation, dissemination, and archive by—

(1) making data and resulting integrated products developed under this section readily accessible via the Digital Coast internet website of the National Oceanic and Atmospheric Administration, the GeoPlatform.gov and data.gov internet websites, and such other information distribution technologies as the Secretary considers appropriate;

(2) developing decision-support tools that use and display resulting integrated data and provide training on use of such tools;

(3) documenting such data to Federal Geographic Data Committee standards; and

(4) archiving all raw data acquired under this Act at the appropriate National Oceanic and Atmospheric Administration data center or such other Federal data center as the Secretary considers appropriate.

(c) COORDINATION.—The Secretary shall coordinate the activities carried out under the program to optimize data collection, sharing, and integration, and to minimize duplication by—

(1) consulting with coastal managers and decision makers concerning coastal issues, and sharing information and best practices, as the Secretary considers appropriate, with—

(A) coastal States;

(B) local governments; and

(C) representatives of academia, the private sector, and nongovernmental organizations;

(2) consulting with other Federal agencies, including interagency committees, on relevant Federal activities, including activities carried out under the Ocean and Coastal Mapping Integration Act (33 U.S.C. 3501 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), the Integrated Coastal and Ocean Observation System Act of 2009 (33 U.S.C. 3601 et seq.), and the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892 et seq.);

(3) participating, pursuant to section 216 of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note), in the establishment of such standards and common protocols as the Secretary considers necessary to assure the interoperability of remote sensing and other geospatial data with all users of such information within—

(A) the National Oceanic and Atmospheric Administration;

(B) other Federal agencies;

(C) State and local government; and

(D) the private sector;

(4) coordinating with, seeking assistance and cooperation of, and providing liaison to the Federal Geographic Data Committee pursuant to Office of Management and Budget Circular A–16 and Executive Order 12906 of April 11, 1994 (59 Fed. Reg. 17671), as amended by Executive Order 13286 of February 28, 2003 (68 Fed. Reg. 10619); and

(5) developing and maintaining a best practices document that sets out the best practices used by the Secretary in carrying out the program and providing such document to the United States Geological Survey, the Corps of Engineers, and other relevant Federal agencies.

(d) FILLING NEEDS AND GAPS.—In carrying out the program, the Secretary shall—

(1) maximize the use of remote sensing and other geospatial data collection activities conducted for other purposes and under other authorities;

(2) focus on filling data needs and gaps for coastal management issues, including with respect to areas that, as of the date of the enactment of this Act, were underserved by coastal data and the areas of the Arctic that are under the jurisdiction of the United States;

(3) pursuant to the Ocean and Coastal Mapping Integration Act (33 U.S.C. 3501 et seq.), support continue improvement in existing efforts to coordinate the acquisition and integration of key data sets needed for coastal management and other purposes, including—

(A) coastal elevation data;

(B) land use and land cover data;

(C) socioeconomic and human use data;

(D) critical infrastructure data;

(E) structures data;

(F) living resources and habitat data;

(G) cadastral data; and

(H) aerial imagery; and

(4) integrate the priority supporting data set forth under paragraph (3) with other available data for the benefit of the broadest measure of coastal resource management constituents and applications.

(e) FINANCIAL AGREEMENTS AND CONTRACTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary—

(A) may enter into financial agreements to carry out the program, including—

(i) support to non-Federal entities that participate in implementing the program; and

(ii) grants, cooperative agreements, interagency agreements, contracts, or any other agreement on a reimbursable or non-reimbursable basis, with other Federal, tribal, State, and local governmental and nongovernmental entities; and

(B) may, to the maximum extent practicable, enter into such contracts with private sector entities for such products and services as the Secretary determines may be necessary to collect, process, and provide remote sensing and other geospatial data and products for purposes of the program.

(2) FEES.—

(A) ASSESSMENT AND COLLECTION.—The Secretary may, to the extent provided in advance in appropriations Acts, assess and collect fees for the conduct of any training, workshop, or conference that advances the purposes of the program.

(B) AMOUNTS.—The amount of a fee under this paragraph may not exceed the sum of costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the training, workshop, or conference, including for subsistence expenses incidental to the training, workshop, or conference, as applicable.

(C) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this paragraph shall be available to the extent and in such amounts as are provided in advance in appropriations Acts for—

(i) the costs incurred for conducting an activity described in subparagraph (A); or

(ii) the expenses described in subparagraph (B).

(3) SURVEY AND MAPPING.—Contracts entered into under paragraph (1)(B) shall be considered ''surveying and mapping'' services as such term is used in and as such contracts are awarded by the Secretary in accordance with the selection procedures in chapter 11 of title 40, United States Code.

(f) OCEAN ECONOMY.—The Secretary may establish publically available tools that track ocean and Great Lakes economy data for each coastal State.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $4,000,000 for each fiscal year 2021 through 2025 to carry out the program.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. HUFFMAN) and the gentleman from Utah (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUFFMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Digital Coast Act, which passed the Senate by unanimous consent, is an important piece of legislation, one which we passed here in the House as part of the Coastal and Great Lakes Communities Enhancement Act back in December of 2019.

The importance of data in today's world can't be overstated, nor can the role of the climate crisis. NOAA's Digital Coast Partnership supports coastal managers with the data they need to confront today's challenges with intensifying storms, coastal flooding, sea level rise, and coastal economic development.

Digital Coast is a web-based platform containing data, tools, and training resources to support our coastal managers. This includes economic data, satellite imagery, visualization tools, and predictive tools gathered from hundreds of sources across academia, non-governmental, Federal, State, Tribal, and county partners. The Digital Coast Partnership also provides coastal managers with collaborative events like conferences, workshops, and meetings where these managers can focus on important issues like coastal resilience, ocean planning, and habitat protection.

This commonsense, good governance legislation would formally authorize a program that has been proven to work. The National Oceanic and Atmospheric Administration estimates that the Digital Coast Partnership currently produces a 3:1 benefit-to-cost ratio, and they predict that this ratio will increase to over 5:1 by fiscal year 2028.

Let's continue to support this amazing program and make the Digital Coast Act into public law.

Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Puerto Rico (Miss GONZÁLEZ-COLÓN), who will explain and introduce this particular bill. The gentlewoman is someone on our committee who clearly understands the significance of mapping, especially for storm preparations and flood management and everything else.

I wish to congratulate Miss GONZÁLEZ-COLÓN because she is the only one of us on the floor who just recently was returned here for a 4-year term.

Miss GONZÁLEZ-COLÓN of Puerto Rico. Mr. Speaker, I thank Ranking Member BISHOP for yielding.

Mr. Speaker, I rise today in strong support of S. 1069. This legislation authorizes NOAA's Digital Coast Program and ensures coastal communities have up-to-date data and tools to prepare for storms, manage floods, restore shorelines, and plan for long-term coastal resilience.

NOAA's Digital Coast Program has been extremely valuable for jurisdictions like Puerto Rico, where we have 799 miles of coastline and 62 percent of our population lives in coastal municipalities. For instance, after Hurricane Maria devastated the island with powerful storm surge and flash floods, Digital Coast staffers updated their Coastal Flood Exposure Mapper to incorporate high-resolution flood maps for the territory. They also held training sessions on flood mapping and resilient infrastructure, allowing officials to visualize storm surge, high tide flooding, sea level rise, and tsunami scenarios in order to increase our preparedness for such events.

This bill would build upon this work, authorizing NOAA to continue providing comprehensive mapping information that allows planners and coastal managers across the Nation to make accurate decisions and smart investments. This bill will also require NOAA to focus additional data collection efforts on underserved coastal areas.

As Puerto Rico's sole representative in Congress, I know firsthand the importance of having reliable coastal data to help respond to emergencies, to build resilience, and manage water resources. Therefore, I strongly urge my colleagues to support S. 1069.

Mr. HUFFMAN. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER) to speak on this bill.

(Mr. RUPPERSBERGER asked and was given permission to revise and extend his remarks.)

Mr. RUPPERSBERGER. Mr. Speaker, I rise in support of the Digital Coast Act, a bipartisan and bicameral bill that I have put forth for consideration by this Chamber the last 10 years. I have spent a decade pushing this legislation because, while it is critical to coastal communities like mine in the Chesapeake Bay watershed, we all have a stake in protecting America's shorelines. But it is not just about protecting our environment, it is about protecting our economy. Our country's 95,000 miles of shoreline are home to more than 42 percent of our country's population and millions of businesses that supply most of our gross domestic product.

This bill's Republican House cosponsor, Mr. DON YOUNG, represents Alaska, a State with 44,000 miles of coastline. The fishing industry is their largest private-sector employer.

Every day, planners in our hometowns are asking questions such as: What is the storm surge in this community?

Or: How much is this bluff going to erode?

Or: What are the water level trends at the marina where we want to build a new dock?

Unfortunately, the current coastal maps and geospatial data they are relying on for answers are woefully inaccurate, outdated, and nonexistent. The Digital Coast Act will allow professionals at the National Oceanic and Atmospheric Administration to begin a comprehensive mapping process of our Nation's fragile shorelines.

Coastal communities will be able to use the data to better prepare for storms, manage floods, restore ecosystems, and plan smarter developments near America's coasts, harbors, ports, and shorelines. In Alaska, better mapping will improve search and rescue operations.

Also, NOAA will train decision makers at the local and State level on how to use the data sets to answer questions about storm surge, erosion, and water level trends. The data will also be available on NOAA's website for free and easy public access so that every citizen can leverage the expertise of the Federal Government.

This bill is more important now than it was a decade ago when I first introduced it. We are seeing more storms that are stronger, and sea level rise is accelerating. We can't wait any longer.

In addition to Congressman DON YOUNG, I thank Chairman GRIJALVA and Ranking Member BISHOP for their work in bringing this bill to the floor. Finally, I thank Senators TAMMY BALDWIN and LISA MURKOWSKI for championing this bill in the Senate.

Mr. Speaker, I urge all my colleagues to support this bipartisan, commonsense investment in our Nation's coastal communities.

Mr. BISHOP of Utah. Mr. Speaker, I yield myself the balance of my time.

The Digital Coast Act will enhance Federal, State, Tribal, and local authorities' decisionmaking regarding coastal resiliency, mapping, and infrastructure planning. It is one of these good measures that we need to support. I truly support it. It deals with the entire coast of the Nation. It deals with the coasts in other areas that are not yet part of the 50 States—yet—and it deals with the Great Salt Lake. I am sorry, it deals with the Great Lakes.

What I am saying is the only way you could improve this stupid thing is if you added the Great Salt Lake into it as well. But as part of the Intermountain West, I'm used to being ignored by the rest of Congress as they go merrily on their way, not realizing the kind of value that we have in the Intermountain West.

So despite that flaw in this particular piece of legislation, I support it wholeheartedly and I urge my colleagues to vote ''yes'' on this particular piece.

Mr. Speaker, I inquire of the gentleman from California if he has any further speakers.

Mr. HUFFMAN. Mr. Speaker, I have no further speakers.

Mr. BISHOP of Utah. Mr. Speaker, I yield back the balance of my time.

Mr. HUFFMAN. Mr. Speaker, I request an ''aye'' vote, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill, S. 1069, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NATIONAL SEA GRANT COLLEGE PROGRAM AMENDMENTS ACT OF 2020

Mr. HUFFMAN. Mr. Speaker, I move to suspend the rules and pass the bill (S. 910) to reauthorize and amend the National Sea Grant College Program Act, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 910

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 ''National Sea Grant College Program Amendments Act of 2020''.

SEC. 2. REFERENCES TO THE NATIONAL SEA GRANT COLLEGE PROGRAM ACT.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.).

SEC. 3. MODIFICATION OF DEAN JOHN A. KNAUSS MARINE POLICY FELLOWSHIP.

(a) IN GENERAL.—Section 208(b) (33 U.S.C. 1127(b)) is amended by striking ''may'' and inserting ''shall''.

(b) PLACEMENTS IN CONGRESS.—Such section is further amended—

(1) in the first sentence, by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(2) in paragraph (1), as designated by paragraph (1), in the second sentence, by striking ''A fellowship'' and inserting the following:

''(2) PLACEMENT PRIORITIES.—

''(A) IN GENERAL.—In each year in which the Secretary awards a legislative fellowship under this subsection, when considering the placement of fellows, the Secretary shall prioritize placement of fellows in the following:

''(i) Positions in offices of, or with Members on, committees of Congress that have jurisdiction over the National Oceanic and Atmospheric Administration.

''(ii) Positions in offices of Members of Congress that have a demonstrated interest in ocean, coastal, or Great Lakes resources.

''(B) EQUITABLE DISTRIBUTION.—In placing fellows in offices described in subparagraph (A), the Secretary shall ensure that placements are equitably distributed among the political parties.

''(3) DURATION.—A fellowship''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the first calendar year beginning after the date of the enactment of this Act.

(d) SENSE OF CONGRESS CONCERNING FEDERAL HIRING OF FORMER FELLOWS.—It is the sense of Congress that in recognition of the competitive nature of the fellowship under section 208(b) of the National Sea Grant College Program Act (33 U.S.C. 1127(b)), and of the exceptional qualifications of fellowship awardees, the Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, should encourage participating Federal agencies to consider opportunities for fellowship awardees at the conclusion of their fellowships for workforce positions appropriate for their education and experience.

SEC. 4. MODIFICATION OF AUTHORITY OF SECRETARY OF COMMERCE TO ACCEPT DONATIONS FOR NATIONAL SEA GRANT COLLEGE PROGRAM.

(a) IN GENERAL.—Section 204(c)(4)(E) (33 U.S.C. 1123(c)(4)(E)) is amended to read as follows:

''(E) accept donations of money and, notwithstanding section 1342 of title 31, United States Code, of voluntary and uncompensated services;''.

(b) PRIORITIES.—The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, shall establish priorities for the use of donations accepted under section 204(c)(4)(E) of the National Sea Grant College Program Act (33 U.S.C. 1123(c)(4)(E)), and shall consider among those priorities the possibility of expanding the Dean John A. Knauss Marine Policy Fellowship's placement of additional fellows in relevant legislative offices under section 208(b) of that Act (33 U.S.C. 1127(b)), in accordance with the recommendations under subsection (c) of this section.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Sea Grant College Program, in consultation with the National Sea Grant Advisory Board and the Sea Grant Association, shall—

(1) develop recommendations for the optimal use of any donations accepted under section 204(c)(4)(E) of the National Sea Grant College Program Act (33 U.S.C. 1123(c)(4)(E)); and

(2) submit to Congress a report on the recommendations developed under paragraph (1).

(d) CONSTRUCTION.—Nothing in this section shall be construed to limit or otherwise affect any other amounts available for marine policy fellowships under section 208(b) of the National Sea Grant College Program Act (33 U.S.C. 1127(b)), including amounts—

(1) accepted under section 204(c)(4)(F) of that Act (33 U.S.C. 1123(c)(4)(F)); or

(2) appropriated pursuant to the authorization of appropriations under section 212 of that Act (33 U.S.C. 1131).

SEC. 5. REDUCTION IN FREQUENCY REQUIRED FOR NATIONAL SEA GRANT ADVISORY BOARD REPORT.

Section 209(b)(2) (33 U.S.C. 1128(b)(2)) is amended—

(1) in the paragraph heading, by striking ''BIENNIAL'' and inserting ''PERIODIC'';

(2) by striking the first sentence and inserting the following: ''The Board shall report to Congress at least once every four years on the state of the national sea grant college program and shall notify Congress of any significant changes to the state of the program not later than two years after the submission of such a report.''; and

(3) in the second sentence, by adding before the end period the following: ''and provide a summary of research conducted under the program''.

SEC. 6. MODIFICATION OF ELEMENTS OF NATIONAL SEA GRANT COLLEGE PROGRAM.

Section 204(b) (33 U.S.C. 1123(b)) is amended, in the matter preceding paragraph (1), by inserting ''for research, education, extension, training, technology transfer, and public service'' after ''financial assistance''.

SEC. 7. DESIGNATION OF NEW NATIONAL SEA GRANT COLLEGES AND SEA GRANT INSTITUTES.

Section 207(b) (33 U.S.C. 1126(b)) is amended—

(1) in the subsection heading, by striking ''EXISTING DESIGNEES'' and inserting ''ADDITIONAL DESIGNATIONS''; and

(2) by striking ''Any institution'' and inserting the following:

''(1) NOTIFICATION TO CONGRESS OF DESIGNATIONS.—

''(A) IN GENERAL.—Not less than 30 days before designating an institution, or an association or alliance of two or more such institutions, as a sea grant college or sea grant institute under subsection (a), the Secretary shall notify Congress in writing of the proposed designation. The notification shall include an evaluation and justification for the designation.

''(B) EFFECT OF JOINT RESOLUTION OF DISAPPROVAL.—The Secretary may not designate an institution, or an association or alliance of two or more such institutions, as a sea grant college or sea grant institute under subsection (a) if, before the end of the 30-day period described in subparagraph (A), a joint resolution disapproving the designation is enacted.

''(2) EXISTING DESIGNEES.—Any institution''.

SEC. 8. DIRECT HIRE AUTHORITY; DEAN JOHN A. KNAUSS MARINE POLICY FELLOWSHIP.

(a) IN GENERAL.—During fiscal year 2021 and any fiscal year thereafter, the head of any Federal agency may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of that title, a qualified candidate described in subsection (b) directly to a position with the Federal agency for which the candidate meets Office of Personnel Management qualification standards.

(b) DEAN JOHN A. KNAUSS MARINE POLICY FELLOWSHIP.—Subsection (a) applies with respect to a former recipient of a Dean John A. Knauss Marine Policy Fellowship under section 208(b) of the National Sea Grant College Program Act (33 U.S.C. 1127(b)) who—

(1) earned a graduate or post-graduate degree in a field related to ocean, coastal, and Great Lakes resources or policy from an accredited institution of higher education; and

(2) successfully fulfilled the requirements of the fellowship within the executive or legislative branch of the United States Government.

(c) LIMITATION.—The direct hire authority under this section shall be exercised with respect to a specific qualified candidate not later than 2 years after the date that the candidate completed the fellowship described in subsection (b).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL SEA GRANT COLLEGE PROGRAM.

(a) IN GENERAL.—Section 212(a) (33 U.S.C. 1131(a)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out this title—

''(A) $87,520,000 for fiscal year 2021;

''(B) $91,900,000 for fiscal year 2022;

''(C) $96,500,000 for fiscal year 2023;

''(D) $101,325,000 for fiscal year 2024; and

''(E) $105,700,000 for fiscal year 2025.''; and

(2) by amending paragraph (2) to read as follows:

''(2) PRIORITY ACTIVITIES FOR FISCAL YEARS 2021 THROUGH 2025.—In addition to the amounts authorized to be appropriated under paragraph (1), there are authorized to be appropriated $6,000,000 for each of fiscal years 2021 through 2025 for competitive grants for the following:

''(A) University research on the biology, prevention, and control of aquatic nonnative species.

''(B) University research on oyster diseases, oyster restoration, and oyster-related human health risks.

''(C) University research on the biology, prevention, and forecasting of harmful algal blooms.

''(D) University research, education, training, and extension services and activities focused on coastal resilience and United States working waterfronts and other regional or national priority issues identified in the strategic plan under section 204(c)(1).

''(E) University research and extension on sustainable aquaculture techniques and technologies.

''(F) Fishery research and extension activities conducted by sea grant colleges or sea grant institutes to enhance, and not supplant, existing core program funding.''.

(b) MODIFICATION OF LIMITATIONS ON AMOUNTS FOR ADMINISTRATION.—Paragraph (1) of section 212(b) (33 U.S.C. 1131(b)) is amended to read as follows:

''(1) ADMINISTRATION.—

''(A) IN GENERAL.—There may not be used for administration of programs under this title in a fiscal year more than 5.5 percent of the lesser of—

''(i) the amount authorized to be appropriated under this title for the fiscal year; or

''(ii) the amount appropriated under this title for the fiscal year.

''(B) CRITICAL STAFFING REQUIREMENTS.—

''(i) IN GENERAL.—The Director shall use the authority under subchapter VI of chapter 33 of title 5, United States Code, and under section 210 of this title, to meet any critical staffing requirement while carrying out the activities authorized under this title.

''(ii) EXCEPTION FROM CAP.—For purposes of subparagraph (A), any costs incurred as a result of an exercise of authority as described in clause (i) shall not be considered an amount used for administration of programs under this title in a fiscal year.''.

(c) ALLOCATION OF FUNDING.—

(1) IN GENERAL.—Section 204(d)(3) (33 U.S.C. 1123(d)(3)) is amended—

(A) in the matter preceding subparagraph (A), by striking ''With respect to sea grant

colleges and sea grant institutes'' and inserting ''With respect to sea grant colleges, sea grant institutes, sea grant programs, and sea grant projects''; and

(B) in subparagraph (B), in the matter preceding clause (i), by striking ''funding among sea grant colleges and sea grant institutes'' and inserting ''funding among sea grant colleges, sea grant institutes, sea grant programs, and sea grant projects''.

(2) REPEAL OF REQUIREMENTS CONCERNING DISTRIBUTION OF EXCESS AMOUNTS.—Section 212 (33 U.S.C. 1131) is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 10. REPEAL OF REQUIREMENT FOR REPORT ON COORDINATION OF OCEANS AND COASTAL RESEARCH ACTIVITIES.

Section 9 of the National Sea Grant College Program Act Amendments of 2002 (33 U.S.C. 857–20) is repealed.

SEC. 11. TECHNICAL CORRECTIONS.

The National Sea Grant College Program Act (33 U.S.C. 1121 et seq.) is amended—

(1) in section 204(d)(3)(B) (33 U.S.C. 1123(d)(3)(B)), by moving clause (vi) 2 ems to the right; and

(2) in section 209(b)(2) (33 U.S.C. 1128(b)(2)), as amended by section 5, in the third sentence, by striking ''The Secretary shall'' and inserting the following:

''(3) AVAILABILITY OF RESOURCES OF DEPARTMENT OF COMMERCE.—The Secretary shall''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. HUFFMAN) and the gentleman from Utah (Mr. BISHOP) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUFFMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and include extraneous material on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am a proud supporter of the Sea Grant College Program. In fact, I am the lead author of H.R. 2405 to reauthorize Sea Grant in the House. Today, I am proud of the bipartisanship this bill has garnered, and I am happy to stand in support of S. 910, the National Sea Grant College Program Amendments Act championed by the chair of the Senate Commerce Committee, Senator WICKER. The Senate passed this bill by unanimous consent in September. The Senate overwhelmingly supports this bill on both sides of the aisle.

The House passed my legislation as part of the Coastal and Great Lakes Communities Enhancement Act back in December 2019, again, a great piece of legislation that for some reason didn't include the Great Salt Lake, but we can keep working on that. My hope is that we, once again, vote in support of this legislation today. This is an exciting day, as we have never been this close to getting the Sea Grant College Program reauthorized.

The Sea Grant College Program supports our oceans, coasts, and Great Lakes through grants and contracts with 33 State-level programs. These programs support research, education, and advisory services that are crucial for our coastal communities. Sea Grant is incredibly efficient, too. For every Federal dollar appropriated, Sea Grant leverages nearly $3 from partnerships among State universities, State and local governments, and coastal communities and businesses.

In 2017 alone, after being appropriated $63 million, it is estimated that Sea Grant Programs helped regenerate $579 million in economic impacts, created or supported 12,500 jobs, assisted 462 communities to improve their resilience, restored or protected over 700,000 acres of coastal ecosystems, worked with 1,300 industry and private sector, local, State, and regional partners and supported the education and training of over 1,800 undergraduate and graduate students.

In addition to reauthorizing and updating the Sea Grant College Program, this bill also makes important updates to the program's Knauss Marine Policy Fellowship, which fosters our next generation of ocean and coastal policy managers.

The legislation also identifies Sea Grant spending priorities for the next 5 years, which include aquatic invasive species, oyster disease and restoration, harmful algal blooms, coastal resilience, sustainable aquaculture, and fishery research and extension.

My colleague on the other side of the aisle will likely have one main complaint about Sea Grant, and that is the decades-old fellowship program. Somehow I think my colleague across the aisle may believe the fellowship is a handout to Democratic offices. The truth is that Sea Grant, which has been around since 1979, focuses on training the next generation of ocean scientists and policy makers, and fellows end up in the offices where they can best prepare for future careers in marine science and policy. Sea Grant fellows have gone on to prominent positions in both Democratic and Republican administrations. In fact, the Trump administration's former Chief of Staff at NOAA is a fellowship alumni.

Further, this legislation will actually help level the playing field for Republican and Democratic offices vying for fellows by directing that NOAA ensure equitable distribution among political parties.

□ 1645

I would hope that my colleagues on the Committee on Natural Resources would take a step back and listen to the many Republicans representing coastal areas who strongly support this legislation. I thank Senator WICKER and all the cosponsors of my bill in the House for their support and their work on this important legislation.

Mr. Speaker, I urge my colleagues to support this program and vote in favor of the bill, and I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield 3 minutes to the gentlewoman from Puerto Rico (Miss GONZÁLEZ-COLÓN) on this particular bill.

Miss GONZÁLEZ-COLÓN of Puerto Rico. Mr. Speaker, I thank Ranking Member BISHOP.

Mr. Speaker, I express my support for S. 910 to reauthorize the National Sea Grant College Program, which is a network of 34 university-based programs that support coastal States and territories, as well.

In 2019, the Sea Grant program generated over $400 million in economic benefits and supported more than 10,000 jobs. In my district, the program, based at the University of Puerto Rico, has produced vital research to address erosion, has developed strategies for the sustainable use of fisheries, and has contributed to the island's tourism-based economy through its coral reef restoration efforts.

Puerto Rico's Sea Grant is also a critical source of funding for research projects that provide data for the development of sound management plans for our marine resources.

Mr. Speaker, I believe it is crucial that we reauthorize and support the Sea Grant program, and I urge my colleagues to vote in favor of it.

Mr. HUFFMAN. Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ZELDIN).

Mr. ZELDIN. Mr. Speaker, I rise today in support of S. 910, the National Sea Grant College Program Amendments Act of 2020, which would authorize roughly $513 million over 5 years for NOAA's National Sea Grant College Program.

Mr. Speaker, representing a district almost completely surrounded by water in New York's First Congressional District, Sea Grant has worked to support our local fishermen and oyster growers, protect our beaches, and support marine science research that is essential for our local economy and environment.

Leading some of the largest bipartisan coalitions of lawmakers to ever support Sea Grant, with my Democratic colleague, Congressman JOE COURTNEY from Connecticut, we have helped secure critical funding over the years for Sea Grant through the appropriations process.

With imported seafood making up the vast majority of American's seafood consumption, this critical program will help strengthen local seafood businesses on Long Island and across the country.

Mr. Speaker, I urge my colleagues to support this important bipartisan legislation.

Mr. HUFFMAN. Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, I yield myself such time as I may consume, as now we come to some of the

realities of this particular bill and the procedures.

Mr. Speaker, it would be nice if we actually dealt with the good of the body and recognize that reauthorizations are important so that we can reevaluate what kinds of programs actually exist and if they are still necessary. We don't do a very good job in Congress of doing that. We allow reauthorizations to lapse, and then we simply go on automatic pilot, unfortunately.

This is the situation with this particular program because the Sea Grant College Program expired in 2014 and has never been reauthorized by Congress since that time. The appropriators still put money into it, even though they are not supposed to do it. But once again, when we, as a Congress, fail to do the reauthorization investigation and hearings and prioritize, then we make major mistakes in what we are attempting to do. We certainly don't have the priorities that we should when these programs were originally started to make sure that they are doing what we originally intended them to do, or if, indeed, there needs to be a change, like including the Great Salt Lake in many of its provisions so that you actually do something positive for the rest of the world.

Mr. Speaker, Congress in the last year, fiscal year 2019, even though this was not an authorized program, still spent $72 million to do that, even though it was eliminated from the administration's budget. The House in this fiscal year appropriated in the 2020 bill only $71 million for this program.

There is, of course, a glitch in that appropriation, which simply means that unlike other Senate bills that are coming here to the floor, this one will not go directly to the President's desk. It has to go back to the Senate for some kind of a revote and reanalysis with it. But this is not simply a reauthorization of a program. This is a reauthorization that changes things, including of which is a much higher amount with that program.

So, beginning with this bill, this would change it not only from $70 million; it would take it to the $87.5 million for fiscal year 2020 and add a generous 5 percent increase to each year through 2024. In addition, it funds an additional $30 million for six specific research and extension activities.

Now, once again, whether those are justifiable or not—it would be nice—that should be part of the discussion in a reauthorization program before you actually come up with these kinds of numbers that go into that. The increases won't necessarily result in more Sea Grant marine research or outreach because it also increases the percentage of funds that can be used by program administration.

Now, the CBO score of this bill is at $513 million. A half-billion dollars for any program is simply a big deal if it is not considered in the context of the other priorities that this government should have, and that is one of the programs and processes that should be done.

So, this bill, like its House companion bill, goes beyond simple reauthorization. It adds new priorities. It adds new programs that benefit certain offices more than others. I am not just going to contend that this has a disproportionate influence on certain bodies, but let's just say this provides for free office work, fellows that are placed in offices year after year.

In the latest list of congressional placements and their opportunities, out of 29 total spots in both the House and the Senate, only five were put in Republican offices. Maybe there is a reason for that. Maybe there is simply a process that we are not looking at in the reauthorization and the way this program is managed, which, once again, should be considered before you go through the reauthorization approach to it.

The problem is that some of these positions now go in there, and it should not be that Congress provides itself its own free staff, but that is exactly what this is attempting to do. Those free staffs are involved in drafting legislation that benefits the Sea Grant program, which is, of course, a built-in conflict of interest.

With those other conflicts of interests, there is another advantage that has now been built-in for these fellows that I don't think is appropriate and something we should actually think about properly before we even go forward with that and decide if these kinds of programs need to be done at taxpayer expense. The Sea Grant bill also gives preferential access to Federal jobs. This bill allows the direct hire of fellows by any Federal agency, regardless of if there are better qualified candidates.

So, fellows already receive a unique educational professional experience that provides advancement in opportunities that others in the same field may not have. Yet, they are now being asked to reduce the competition to get a job in the Federal workforce to help a select few in this program.

I am sorry, that is a process that is simply not in the best interest of good government. It is that process that needs to be revisited, that should be revisited.

Actually, this also eliminates some of the transparency. Right now, this program needs to report to Congress on a yearly basis. By this bill, the advisory board will have to report every other year to Congress.

I understand that the Sea Grant program is popular among some States, especially coastal States. Even as a representative from an inland State, I have to applaud the efforts for research and outreach that are conducted by Sea Grant universities and institutions, and I also don't object to fellows at all who are placed in the executive branch. But I have grave concerns regarding the politicized nature of this program, the fellowship program. I have problems with the direct-hire incentives and authorities that are given in this particular program, also, without actually having some rationale for it, just the mandatory increase in spending that goes along with this type of program.

Therefore, I cannot vote for this particular piece of legislation. Obviously, for me, I will vote ''no'' and urge the rejection of this.

Mr. Speaker, I reserve the balance of my time.

Mr. HUFFMAN. Mr. Speaker, I reserve the balance of my time.

Mr. BISHOP of Utah. Mr. Speaker, if the gentleman has no other speakers, I yield back the balance of my time.

Mr. HUFFMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am grateful for the broad bipartisan support for this bill and its House companion bill, and I urge an ''aye'' vote.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill, S. 910, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

DEPARTMENT OF VETERANS AFFAIRS WEBSITE ACCESSIBILITY ACT OF 2019

Mrs. LURIA. Mr. Speaker, I move to suspend the rules and pass the bill (S. 3587) to require the Secretary of Veterans Affairs to conduct a study on the accessibility of websites of the Department of Veterans Affairs to individuals with disabilities, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3587

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 ''Department of Veterans Affairs Website Accessibility Act of 2019''.

SEC. 2. STUDY ON THE ACCESSIBILITY OF WEBSITES OF THE DEPARTMENT OF VETERANS AFFAIRS TO INDIVIDUALS WITH DISABILITIES.

(a) STUDY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall conduct a study of all websites of the Department of Veterans Affairs to determine whether such websites are accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(b) REPORT.—Not later than 90 days after completing the study under subsection (a), the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on such study.

(c) ELEMENTS.—The report required by subsection (b) shall include the following:

(1) A list of each website described in subsection (a) that is not accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(2) For each website identified in the list under paragraph (1)—

(A) the plan of the Secretary to bring the website into compliance with the requirements of section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

(B) a description of the barriers to bringing the website into compliance with the requirements of such section, including any barriers relating to vacant positions at the Department of Veterans Affairs.

(d) WEBSITE DEFINED.—In this section, the term ''website'' includes the following:

(1) A file attached to a website.

(2) A web-based application.

(3) A kiosk at a medical facility of the Department of Veterans Affairs, the use of which is required to check in for scheduled appointments.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Virginia (Mrs. LURIA) and the gentleman from Florida (Mr. BILIRAKIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Virginia.

GENERAL LEAVE

Mrs. LURIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous materials to S. 3587.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Virginia?

There was no objection.

Mrs. LURIA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 3587 will require the Secretary of Veterans Affairs to conduct a study on the accessibility of VA websites to our veterans and VA employees with disabilities and to ensure that these websites comply with the accessibility standards established by section 508 of the Rehabilitation Act of 1973.

Section 508 ensures that disabled Americans have equal access to electronic and information technology. As it stands today, the VA has not brought all of its online services into compliance with this existing law. This bill forces the VA to take a closer look at all of its websites and electronic services, identify the ones that are not legally compliant, and develop a correctional plan to make those services functional for the disabled. This will be particularly helpful to our blind veterans.

According to a 2018 study conducted by the Veterans Health Administration, our country has an estimated 131,500 legally blind veterans, though that number is projected to grow in the coming decades. Because these individuals depend on screen readers and magnification software when using websites, apps, kiosks, and telehealth tools, it is imperative that all VA programs be compatible with accessible communications technologies. That way, every veteran has equal access to the essential information and services that the Department provides.

□ 1700

Mr. Speaker, not only will this legislation better assist veterans seeking care and benefits from the VA, it will also assist the Department's own disabled employees. Far too often, the VA utilizes inaccessible PDF formats when conducting internal operations, hindering its own employees who rely on screen readers in their work and in their service to our veterans. This legislation will identify and improve these barriers for services to the public.

Last year, I met with a group of blinded veterans, and they explained the structure of the VA websites and how it makes it difficult for them to learn about treatments and schedule doctor appointments. To remedy this problem, I introduced the House companion to this bill, H.R. 1199, the VA Website Accessibility Act.

Blinded veterans deserve equal access to all VA services, and I am honored to champion their cause. Our heroes should not have to wait a day longer. Today, we can help thousands of veterans receive better access to healthcare resources. I urge support of the VA Website Accessibility Act.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 3587, the Department of Veterans Affairs Website Accessibility Act of 2019. This bill will require the Department of Veterans Affairs to conduct a study of all VA websites, apps, and electronic forms; determine which are inaccessible to veterans with disabilities; and develop a plan to make each of them accessible and compliant with section 508 of the Rehabilitation Act of 1973.

Although the VA has taken steps to improve the accessibility of its website, the committee has heard concerns from Blinded Veterans of America that ''a web page that was easily accessed one day cannot be read or even located during the next visit to the site.'' Of course that is unacceptable as far as I am concerned.

Moreover, visually impaired veterans, in particular, often face barriers to accessing information from VA because they are directed to forms or pages that are incompatible with screen readers.

Given that over 4.9 million veterans have at least one service-connected disability, it is unacceptable that the VA's delivery of information falls short of disabled veterans' needs. This bill will require the VA to take systematic action to address these issues.

I applaud Senator BOB CASEY and Congresswoman ELAINE LURIA, who does an outstanding job on the Committee on Veterans' Affairs, for their leadership on this particular bill and their efforts to ensure that all veterans are able to access the information they need from the VA.

I will be supporting this bill today, and I urge my colleagues to join me.

Mr. Speaker, I yield back the balance of my time.

Mrs. LURIA. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Virginia (Mrs. LURIA) that the House suspend the rules and pass the bill, S. 3587.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TRAVIS W. ATKINS DEPARTMENT OF VETERANS AFFAIRS CLINIC

Mrs. LURIA. Mr. Speaker, I move to suspend the rules and pass the bill (S. 900) to designate the community-based outpatient clinic of the Department of Veterans Affairs in Bozeman, Montana, as the ''Travis W. Atkins Department of Veterans Affairs Clinic'', as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 900

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

SECTION 1. DESIGNATION OF TRAVIS W. ATKINS DEPARTMENT OF VETERANS AFFAIRS CLINIC IN BOZEMAN, MONTANA.

(a) DESIGNATION.—The community-based outpatient clinic of the Department of Veterans Affairs located in Bozeman, Montana, shall after the date of the enactment of this Act be known and designated as the ''Travis W. Atkins Department of Veterans Affairs Clinic'' or the ''Travis W. Atkins VA Clinic''.

(b) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the community-based outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Travis W. Atkins Department of Veterans Affairs Clinic.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Virginia (Mrs. LURIA) and the gentleman from Florida (Mr. BILIRAKIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Virginia.

GENERAL LEAVE

Mrs. LURIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous materials on S. 900, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Virginia?

There was no objection.

Mrs. LURIA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to remember the life of Army Staff Sergeant Travis Atkins, who was killed in Iraq on June 1,

2007. I thank my colleague, Mr. GIANFORTE from Montana, for bringing this bill before us so we may all pay tribute to a selfless public servant.

Travis was born on December 9, 1975, to parents Jack and Elaine. Growing up in Bozeman, Montana, he was an active outdoorsman, spending most of his time fishing, hunting, and snowmobiling. After high school, he worked as a painting and concrete contractor but soon felt called to serve.

On November 9, 2000, 24-year-old Travis joined the Army. He deployed to Kuwait with the 101st Airborne Division in March of 2003 and was an infantry team leader during the invasion of Iraq later that month.

After that deployment, he decided to pursue college and was honorably discharged in December of 2003. But as his father put it, the civilian life just didn't do it for him, and he rejoined the Army in December of 2005 as part of the 10th Mountain Division and was again deployed to Iraq.

Mr. Speaker, on June 1, 2007, during a route clearance in a town outside of Baghdad, Atkins' unit noticed two men trying to cross a road that they were securing. Atkins asked the men to stop. When trying to search one of the men, a fight broke out. Realizing the man was wearing a suicide vest, he fought to keep him from finding the trigger. Eventually, he did. Without hesitating, Staff Sergeant Atkins bear-hugged the insurgent, threw him to the ground and pinned him there, shielding his fellow soldiers only a few feet away. Staff Sergeant Atkins saved three men that day.

In every account of his character from his battle buddies, the word most used to describe him was a ''leader,'' and a fine leader he was, right up until his final moments.

Surviving Sergeant Atkins are his parents and his son, Trevor. Trevor said that he wants his father to be remembered as the best dad and the best soldier that anyone could ask for. At the White House, on March 27, 2019, Trevor accepted his father's Medal of Honor.

The legacy of Staff Sergeant Atkins—of loyalty, of dedication, of leadership—must never be forgotten. As the citizens he protected, we honor him by trying to live by his example to care deeply and lead well.

While we will never be able to fully convey the depth of our gratitude to the Atkins family, I hope that this bill, the naming of the clinic in his hometown, will offer some fraction of that comfort.

Mr. Speaker, I wholeheartedly support this bill and I urge my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 900, as amended, a bill to name the Department of Veterans Affairs community-based outpatient clinic in Bozeman, Montana, the Travis W. Atkins Department of Veterans Affairs Clinic.

Staff Sergeant Travis Atkins was a Montana native and Army veteran. He was killed in action in Iraq in 2007 during an encounter with two enemy insurgents when he put himself between a suicide bomber and his fellow soldiers.

Staff Sergeant Atkins' quick and selfless actions saved the lives of those three soldiers and led to him being posthumously awarded the Medal of Honor. By naming the VA clinic in Bozeman after him today, we will further ensure that his life and legacy is forever remembered.

This bill was sponsored in the Senate by Senator STEVE DAINES and in the House by my friend and colleague Congressman GREG GIANFORTE, who will be the Governor of Montana very soon. It is also strongly supported by the other member of Montana's congressional delegation, the ranking member of the Senate Veterans' Affairs Committee and another good friend of mine, Senator JON TESTER.

I am grateful to Senator DAINES, Congressman GIANFORTE, Ranking Member TESTER, and the many Montana veteran service organizations that sent in letters of support for this bill, for their efforts to honor Staff Sergeant Atkins' service and sacrifice through this legislation. These are the true heroes, Mr. Speaker. I know you know that.

Staff Sergeant Atkins was just 32 years old when he died. He left behind many loved ones, including his then 11-year-old son, Trevor. I send my prayers to Trevor and to all of Staff Sergeant Atkins' friends and family members who, I know, are still grieving his loss today.

I hope that it is a small comfort to them to know that, with the passage of this bill, Mr. Speaker, Staff Sergeant Atkins' memory will live on and serve as an inspiration to all the veterans who seek hope and healing in the clinic that will now bear his name.

I am proud to support this bill, Mr. Speaker, and I yield back the balance of my time.

Mrs. LURIA. Mr. Speaker, I ask my colleagues to join me in passing S. 900, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Virginia (Mrs. LURIA) that the House suspend the rules and pass the bill, S. 900, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

IMPROVING SAFETY AND SECURITY FOR VETERANS ACT OF 2019

Mrs. LURIA. Mr. Speaker, I move to suspend the rules and pass the bill (S. 3147) to require the Secretary of Veterans Affairs to submit to Congress reports on patient safety and quality of care at medical centers of the Department of Veterans Affairs, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3147

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 Safety and Security for Veterans Act of 2019''.

SEC. 2. DEPARTMENT OF VETERANS AFFAIRS REPORTS ON PATIENT SAFETY AND QUALITY OF CARE.

(a) REPORT ON PATIENT SAFETY AND QUALITY OF CARE.—

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report regarding the policies and procedures of the Department relating to patient safety and quality of care and the steps that the Department has taken to make improvements in patient safety and quality of care at medical centers of the Department.

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) A description of the policies and procedures of the Department and improvements made by the Department with respect to the following:

(i) How often the Department reviews or inspects patient safety at medical centers of the Department.

(ii) What triggers the aggregated review process at medical centers of the Department.

(iii) What controls the Department has in place for controlled and other high-risk substances, including the following:

(I) Access to such substances by staff.

(II) What medications are dispensed via automation.

(III) What systems are in place to ensure proper matching of the correct medication to the correct patient.

(IV) Controls of items such as medication carts and pill bottles and vials.

(V) Monitoring of the dispensing of medication within medical centers of the Department, including monitoring of unauthorized dispensing.

(iv) How the Department monitors contact between patients and employees of the Department, including how employees are monitored and tracked at medical centers of the Department when entering and exiting the room of a patient.

(v) How comprehensively the Department uses video monitoring systems in medical centers of the Department to enhance patient safety, security, and quality of care.

(vi) How the Department tracks and reports deaths at medical centers of the Department at the local level, Veterans Integrated Service Network level, and national level.

(vii) The procedures of the Department to alert local, regional, and Department-wide leadership when there is a statistically abnormal number of deaths at a medical center of the Department, including—

(I) the manner and frequency in which such alerts are made; and

(II) what is included in such an alert, such as the nature of death and where within the medical center the death occurred.

(viii) The use of root cause analyses with respect to patient deaths in medical centers of the Department, including—

(I) what threshold triggers a root cause analysis for a patient death;

(II) who conducts the root cause analysis; and

(III) how root cause analyses determine whether a patient death is suspicious or not.

(ix) What triggers a patient safety alert, including how many suspicious deaths cause a patient safety alert to be triggered.

(x) The situations in which an autopsy report is ordered for deaths at hospitals of the Department, including an identification of—

(I) when the medical examiner is called to review a patient death; and

(II) the official or officials that decide such a review is necessary.

(xi) The method for family members of a patient who died at a medical center of the Department to request an investigation into that death.

(xii) The opportunities that exist for family members of a patient who died at a medical center of the Department to request an autopsy for that death.

(xiii) The methods in place for employees of the Department to report suspicious deaths at medical centers of the Department.

(xiv) The steps taken by the Department if an employee of the Department is suspected to be implicated in a suspicious death at a medical center of the Department, including—

(I) actions to remove or suspend that individual from patient care or temporarily reassign that individual and the speed at which that action occurs; and

(II) steps taken to ensure that other medical centers of the Department and other non-Department medical centers are aware of the suspected role of the individual in a suspicious death.

(xv) In the case of the suspicious death of an individual while under care at a medical center of the Department, the methods used by the Department to inform the family members of that individual.

(xvi) The policy of the Department for communicating to the public when a suspicious death occurs at a medical center of the Department.

(B) A description of any additional authorities or resources needed from Congress to implement any of the actions, changes to policy, or other matters included in the report required under paragraph (1)

(b) REPORT ON DEATHS AT LOUIS A. JOHNSON MEDICAL CENTER.—

(1) IN GENERAL.—Not later than 60 days after the date on which the Attorney General indicates that any investigation or trial related to the suspicious deaths of veterans at the Louis A. Johnson VA Medical Center in Clarksburg, West Virginia, (in this subsection referred to as the ''Facility'') that occurred during 2017 and 2018 has sufficiently concluded, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report describing—

(A) the events that occurred during that period related to those suspicious deaths; and

(B) actions taken at the Facility and throughout the Department of Veterans Affairs to prevent any similar reoccurrence of the issues that contributed to those suspicious deaths.

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) A timeline of events that occurred at the Facility relating to the suspicious deaths described in paragraph (1) beginning the moment those deaths were first determined to be suspicious, including any notifications to—

(i) leadership of the Facility;

(ii) leadership of the Veterans Integrated Service Network in which the Facility is located;

(iii) leadership at the central office of the Department; and

(iv) the Office of the Inspector General of the Department of Veterans Affairs.

(B) A description of the actions taken by leadership of the Facility, the Veterans Integrated Service Network in which the Facility is located, and the central office of the Department in response to the suspicious deaths, including responses to notifications under subparagraph (A).

(C) A description of the actions, including root cause analyses, autopsies, or other activities that were conducted after each of the suspicious deaths.

(D) A description of the changes made by the Department since the suspicious deaths to procedures to control access within medical centers of the Department to controlled and non-controlled substances to prevent harm to patients.

(E) A description of the changes made by the Department to its nationwide controlled substance and non-controlled substance policies as a result of the suspicious deaths.

(F) A description of the changes planned or made by the Department to its video surveillance at medical centers of the Department to improve patient safety and quality of care in response to the suspicious deaths.

(G) An analysis of the review of sentinel events conducted at the Facility in response to the suspicious deaths and whether that review was conducted consistent with policies and procedures of the Department.

(H) A description of the steps the Department has taken or will take to improve the monitoring of the credentials of employees of the Department to ensure the validity of those credentials, including all employees that interact with patients in the provision of medical care.

(I) A description of the steps the Department has taken or will take to monitor and mitigate the behavior of employee bad actors, including those who attempt to conceal their mistreatment of veteran patients.

(J) A description of the steps the Department has taken or will take to enhance or create new monitoring systems that—

(i) automatically collect and analyze data from medical centers of the Department and monitor for warnings signs or unusual health patterns that may indicate a health safety or quality problem at a particular medical center; and

(ii) automatically share those warnings with other medical centers of the Department, relevant Veterans Integrated Service Networks, and officials of the central office of the Department.

(K) A description of the accountability actions that have been taken at the Facility to remove or discipline employees who significantly participated in the actions that contributed to the suspicious deaths.

(L) A description of the system-wide reporting process that the Department will or has implemented to ensure that relevant employees are properly reported, when applicable, to the National Practitioner Data Bank of the Department of Health and Human Services, the applicable State licensing boards, the Drug Enforcement Administration, and other relevant entities.

(M) A description of any additional authorities or resources needed from Congress to implement any of the recommendations or findings included in the report required under paragraph (1).

(N) Such other matters as the Secretary considers necessary.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Virginia (Mrs. LURIA) and the gentleman from Florida (Mr. BILIRAKIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Virginia.

GENERAL LEAVE

Mrs. LURIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous materials on S. 3147.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Virginia?

There was no objection.

Mrs. LURIA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 3147, the Improving Safety and Security for Veterans Act, introduced by Senator MANCHIN and Senator CAPITO of West Virginia. Representative MCKINLEY introduced a companion measure, H.R. 5616, here in the House.

This bipartisan bill requires the Department of Veterans Affairs to submit to Congress two critical reports relating to patient safety and quality of care at its medical facilities.

This bill was introduced in the wake of a disturbingly tragic series of patient deaths that occurred in 2017 and 2018 at the Clarksburg, West Virginia, VA Medical Center.

This past July, a nursing assistant who worked at the Clarksburg VA Medical Center pleaded guilty to seven counts of second-degree murder and one count of assault to commit murder after unnecessarily injecting several veteran patients with insulin with the intent to cause death.

There are no words to adequately express the sorrow we feel for the families of veterans whose lives were tragically cut short in Clarksburg. There are countless questions about how this could have happened and what the Department of Veterans Affairs is doing to better protect veteran patients in the future, not only in Clarksburg, but in other VA facilities nationwide.

The first report outlined in this bill and mandated by S. 3147, which is due within 30 days of enactment, requires the VA to outline the Department's policies and procedures related to monitoring patient safety and suspicious deaths, ensuring proper storage and access controls for high-risk substances, trafficking employees' contact with veteran patients, and removing from patient care employees who are implicated in suspicious deaths.

□ 1715

The Improving Safety and Security for Veterans Act also requires the VA to submit to Congress an after-action report on the events that occurred in Clarksburg. Among other things, the report will detail the timeline of events at Clarksburg and the actions taken at the facility level and throughout the Department of Veterans Affairs in response to these tragic and suspicious deaths.

We can only hope that S. 3147, the Improving Safety and Security for Veterans Act, will serve as a first step toward better understanding what gaps in VA management existed and what actions the Department still needs to take to protect our veterans.

We also hope that this measure will serve as a foundation for helping to restore veterans' confidence in the safety, security, and quality of the care delivered at VA medical facilities.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of S. 3147, the Improving Safety and Security for Veterans Act of 2019.

This bill was drafted in response to a tragic incident at the Department of Veterans Affairs Medical Center in Clarksburg, West Virginia, where a former VA nursing assistant killed at least seven veteran patients by injecting them with lethal doses of insulin while they were under her care.

As a member of the House Veterans' Affairs Committee, I personally grieved the loss of those veterans. I cannot fathom the pain that their loved ones must feel. My heart is with them, especially during this holiday season.

Congress must act to ensure that no other veteran, family, or community experiences such tragedy ever again.

Passing S. 3147 today will help us do that, Mr. Speaker. The bill would require VA to report to Congress on the Department's efforts to assess, monitor, and improve patient safety and quality of care throughout the VA healthcare system. It would also require the VA to report to Congress on the series of events surrounding the Clarksburg murders and the actions taken in Clarksburg and nationwide, for that matter.

We need to ensure that we learn from this tragedy and that it never, ever is repeated.

This bill is sponsored by Senator JOE MANCHIN from West Virginia and is the companion to a House bill in the House by my good friend, a great member of the Energy and Commerce Committee, and I know he supports veterans, DAVID MCKINLEY, who I will yield to in a second. DAVID is from West Virginia.

I appreciate Senator MANCHIN's and Congressman MCKINLEY's efforts to ensure that veterans in West Virginia and across the country receive care that is timely, safe, and of the very highest quality. Again, we have to thank them for their service to our country, and they are entitled to this quality of care, Mr. Speaker.

Every veteran deserves to feel confident that they will be well cared for when they walk through VA's doors. While nothing can bring back the veterans who were ruthlessly murdered in Clarksburg, I hope that the passage of this bill today will restore some of the trust that has been lost due to this heartbreaking chapter in VA's history and ease other veterans' fears that they may have about their own safety seeking care through the VA healthcare system.

Mr. Speaker, I urge every one of my colleagues to join me in supporting this bill today. I reserve the balance of my time.

Mrs. LURIA. Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia (Mr. MCKINLEY).

Mr. MCKINLEY. Mr. Speaker, I rise in support of S. 3147, the Improving Safety and Security for Veterans Act of 2019.

The bill is indeed the companion to H.R. 5616, which I introduced in January of this year following the death of seven veterans at our Clarksburg VA Medical Center.

A former nursing assistant at the hospital has now pled guilty to murdering these veterans by intentionally and inappropriately injecting them with insulin. Her actions are beyond the pale. Congress must do everything it can to ensure that this never happens again.

This bill was just the first step toward that goal. It will, indeed, as you heard the chairman say, provide transparency and accountability at our VA medical facilities by requiring the VA to submit to Congress detailed reports on patient safety and quality of care at those hospitals.

It will also ensure that the public is well-informed as to what occurred in Clarksburg. The public was kept in the dark for far too long during the course of this investigation.

Our veterans have sacrificed so much for our country, and they deserve the best possible care and should feel safe when they come to one of our facilities.

Congress now has the opportunity to restore the public's confidence in our Veterans Affairs system and ensure that our veterans are receiving the care they deserve.

I join with the chairman, Mr. Speaker, in saying that I urge all of our colleagues to join unanimously in supporting this bill.

Mr. BILIRAKIS. Mr. Speaker, I yield back the balance of my time.

Mrs. LURIA. Mr. Speaker, I have no further speakers, and I am prepared to close. I yield myself such time as I may consume.

Mr. Speaker, I ask all of my colleagues to join me in passing S. 3147.

I want to thank Mr. MCKINLEY for introducing this bill in the House and Senator MANCHIN for working very diligently in the Senate to bring this legislation before us today because, as Mr. MCKINLEY said, we do need to provide assurance to our veterans about their safety in our VA health centers, both in Clarksburg and across the country.

I also want to thank Mr. BILIRAKIS, my colleague on the Veterans' Affairs Committee, for his work on this and all the bills that we have reviewed today.

Mr. Speaker, I urge my colleagues to join me in passing S. 3147, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Virginia (Mrs. LURIA) that the House suspend the rules and pass the bill, S. 3147.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mrs. LURIA. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3 of House Resolution 965, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 5 o'clock and 23 minutes p.m.), the House stood in recess.

□ 1830

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. CUELLAR) at 6 o'clock and 30 minutes p.m.

WOUNDED VETERANS RECREATION ACT

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the vote on the motion to suspend the rules and pass the bill (S. 327) to amend the Federal Lands Recreation Enhancement Act to provide for a lifetime National Recreational Pass for any veteran with a service-connected disability, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUFFMAN) that the House suspend the rules and pass the bill.

The vote was taken by electronic device, and there were—yeas 401, nays 0, not voting 28, as follows:

[Roll No. 219]

YEAS—401

Adams	Bera	Brown (MD)
Aguilar	Bergman	Brownley (CA)
Allen	Beyer	Buchanan
Allred	Biggs	Buck
Amash	Bilirakis	Bucshon
Armstrong	Bishop (GA)	Budd
Arrington	Bishop (NC)	Burchett
Axne	Bishop (UT)	Burgess
Babin	Blumenauer	Bustos
Bacon	Blunt Rochester	Butterfield
Baird	Bonamici	Byrne
Balderson	Bost	Carbajal
Banks	Boyle, Brendan F.	Cárdenas
Barr	Brady	Carson (IN)
Barragán	Brindisi	Carter (GA)
Bass	Brooks (AL)	Carter (TX)
Beatty		Cartwright

Case
Casten (IL)
Castor (FL)
Castro (TX)
Chabot
Cheney
Chu, Judy
Cicilline
Cisneros
Clark (MA)
Clarke (NY)
Clay
Cleaver
Cline
Cloud
Clyburn
Cohen
Cole
Comer
Conaway
Connolly
Cook
Cooper
Correa
Costa
Courtney
Cox (CA)
Craig
Crawford
Crenshaw
Crist
Crow
Cuellar
Cunningham
Curtis
Davids (KS)
Davidson (OH)
Davis (CA)
Davis, Danny K.
Davis, Rodney
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DeSaulnier
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Doyle, Michael F.
Duncan
Dunn
Emmer
Engel
Escobar
Eshoo
Espaillat
Estes
Evans
Ferguson
Finkenauer
Fitzpatrick
Fleischmann
Fletcher
Flores
Fortenberry
Foster
Foxx (NC)
Frankel
Fudge
Fulcher
Gabbard
Gaetz
Gallagher
Gallego
Garamendi
Garcia (CA)
García (IL)
Garcia (TX)
Gibbs
Gohmert
Golden
Gomez
Gonzalez (OH)
Gonzalez (TX)
Gooden
Gosar
Gottheimer
Granger
Graves (LA)
Graves (MO)
Green (TN)
Green, Al (TX)
Griffith
Grijalva
Grothman
Guest
Guthrie
Haaland
Hagedorn
Harder (CA)
Harris
Hartzler
Hastings
Hayes
Heck
Hern, Kevin
Herrera Beutler
Hice (GA)
Higgins (LA)
Higgins (NY)
Hill (AR)
Himes
Holding
Hollingsworth
Horn, Kendra S.
Horsford
Houlahan
Hoyer
Hudson
Huffman
Hurd (TX)
Jackson Lee
Jacobs
Jayapal
Jeffries
Johnson (GA)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Johnson (TX)
Jordan
Joyce (OH)
Joyce (PA)
Kaptur
Katko
Keating
Keller
Kelly (IL)
Kelly (MS)
Kelly (PA)
Kennedy
Khanna
Kildee
Kilmer
Kim
Kind
King (NY)
Kinzinger
Kirkpatrick
Krishnamoorthi
Kuster (NH)
Kustoff (TN)
LaHood
LaMalfa
Lamb
Langevin
Larsen (WA)
Larson (CT)
Latta
Lawrence
Lawson (FL)
Lee (CA)
Lee (NV)
Levin (CA)
Levin (MI)
Lieu, Ted
Lipinski
Loebsack
Lofgren
Long
Loudermilk
Lowenthal
Lowey
Lucas
Luján
Luria
Lynch
Malinowski
Maloney, Carolyn B.
Maloney, Sean
Marshall
Massie
Mast
Matsui
McAdams
McBath
McCarthy
McCaul
McClintock
McCollum
McEachin
McGovern
McKinley
McNerney
Meeks
Meng
Meuser
Mfume
Miller
Moolenaar
Mooney (WV)
Moore
Morelle
Moulton
Mucarsel-Powell
Mullin
Murphy (FL)
Murphy (NC)
Nadler
Napolitano
Neal
Neguse
Newhouse
Norcross
Norman
Nunes
O'Halleran
Ocasio-Cortez
Omar
Palazzo
Pallone
Palmer
Panetta
Pappas
Pascrell
Payne
Pence
Perlmutter
Perry
Peters
Peterson
Phillips
Pingree
Pocan
Porter
Posey
Pressley
Price (NC)
Quigley
Raskin
Reed
Reschenthaler
Rice (NY)
Rice (SC)
Riggleman
Rodgers (WA)
Roe, David P.
Rogers (AL)
Rose (NY)
Rose, John W.
Rouda
Rouzer
Roy
Roybal-Allard
Ruiz
Ruppersberger
Rush
Rutherford
Ryan
Sánchez
Sarbanes
Scalise
Scanlon
Schakowsky
Schiff
Schneider
Schrader
Schrier
Schweikert
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sewell (AL)
Shalala
Sherman
Sherrill
Sires
Slotkin
Smith (MO)
Smith (NE)
Smith (NJ)
Smucker
Soto
Spanberger
Spano
Speier
Stanton
Stauber
Stefanik
Steil
Steube
Stevens
Stewart
Stivers
Suozzi
Swalwell (CA)
Takano
Taylor
Thompson (CA)
Thompson (MS)
Thompson (PA)
Tiffany
Timmons
Tipton
Titus
Tlaib
Tonko
Torres (CA)
Torres Small (NM)
Trahan
Trone
Turner
Underwood
Upton
Van Drew
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walden
Walker
Walorski
Wasserman Schultz
Waters
Watkins
Watson Coleman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westerman
Wexton
Wild
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoho
Zeldin

NOT VOTING—28

Abraham
Aderholt
Amodei
Brooks (IN)
Calvert
Collins (GA)
Gianforte
Huizenga
King (IA)
Lamborn
Lesko
Luetkemeyer
Marchant
McHenry
Mitchell
Olson
Richmond
Roby
Rogers (KY)
Rooney (FL)
Shimkus
Simpson
Smith (WA)
Thornberry
Walberg
Waltz
Wright
Young

□ 1925

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 965, 116TH CONGRESS

Barragán (Beyer)
Blumenauer (Beyer)
Bonamici (Clark (MA))
Boyle, Brendan F. (Jeffries)
Brownley (CA) (Clark (MA))
Bustos (Kuster (NH))
Carson (IN) (Cleaver)
Castro (TX) (Garcia (TX))
Clay (Cleaver)
Cohen (Beyer)
Costa (Cooper)
DeGette (Blunt Rochester)
DeSaulnier (Matsui)
Doggett (Raskin)
Escobar (Garcia (TX))
Evans (Brown (MD))
Frankel (Clark (MA))
Garamendi (Sherman)
Gonzalez (TX) (Gomez)
Grijalva (García (IL))
Hastings (Wasserman Schultz)
Higgins (NY) (Sánchez)
Jayapal (Raskin)
Johnson (TX) (Jeffries)
Keating (Kuster (NH))
Khanna (Gomez)
Kind (Beyer)
Kirkpatrick (Stanton)
Langevin (Courtney)
Lawrence (Kildee)
Lawson (FL) (Demings)
Lieu, Ted (Beyer)
Lipinski (Cooper)
Lofgren (Jeffries)
Lowenthal (Beyer)
Lowey (Tonko)
Lynch (McGovern)
McEachin (Wexton)
Meng (Kuster (NH))
Moore (Beyer)
Nadler (Jeffries)
Napolitano (Correa)
Payne (Wasserman Schultz)
Peterson (McCollum)
Pingree, (Kuster (NH))
Pocan (Raskin)
Porter (Wexton)
Price (NC) (Butterfield)
Rose (NY) (Golden)
Roybal-Allard (Bass)
Ruiz (Dingell)
Rush (Underwood)
Ryan (Kildee)
Schrier (Kilmer)
Serrano (Jeffries)
Speier (Scanlon)
Takano (Chu, Judy)
Titus (Connolly)
Vargas (Correa)
Watson Coleman (Pallone)
Welch (McGovern)
Wilson (FL) (Hayes)

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess for a period of less than 15 minutes.

Accordingly (at 7 o'clock and 26 minutes p.m.), the House stood in recess.

□ 1936

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. CUELLAR) at 7 o'clock and 36 minutes p.m.

IMPROVING SAFETY AND SECURITY FOR VETERANS ACT OF 2019

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the vote on the motion to suspend the rules and pass the bill (S. 3147) to require the Secretary of Veterans Affairs to submit to Congress reports on patient safety and quality of care at medical centers of the Department of Veterans Affairs, and for other purposes, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Virginia (Mrs. LURIA) that the House suspend the rules and pass the bill.

The vote was taken by electronic device, and there were—yeas 394, nays 0, not voting 35, as follows:

[Roll No. 220]

YEAS—394

Adams
Aguilar
Allen
Allred
Amash
Armstrong
Arrington
Axne
Babin
Bacon
Baird
Balderson
Banks
Barr
Barragán
Bass
Beatty
Bera
Bergman
Beyer
Biggs
Bilirakis
Bishop (GA)
Bishop (UT)
Blumenauer
Bonamici
Bost
Boyle, Brendan F.
Brady
Brindisi
Brooks (AL)
Brown (MD)
Brownley (CA)
Buck
Bucshon
Budd
Burchett
Burgess
Bustos
Butterfield
Byrne
Carbajal
Cárdenas
Carson (IN)
Carter (GA)
Carter (TX)
Cartwright
Case
Casten (IL)
Castor (FL)
Castro (TX)
Chabot
Cheney
Chu, Judy
Cicilline
Cisneros
Clark (MA)
Clarke (NY)
Clay
Cline
Cloud
Clyburn
Cohen
Cole
Comer
Conaway
Connolly
Cook
Cooper
Correa
Costa
Courtney
Cox (CA)
Craig
Crawford
Crenshaw
Crist
Crow
Cuellar
Cunningham
Curtis
Davids (KS)
Davidson (OH)
Davis (CA)
Davis, Danny K.
Davis, Rodney
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DeSaulnier
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Doyle, Michael F.
Duncan
Dunn
Emmer
Engel
Escobar
Eshoo
Espaillat
Estes
Evans
Ferguson
Finkenauer
Fitzpatrick
Fleischmann
Fletcher
Flores
Fortenberry
Foster
Foxx (NC)
Frankel
Fudge
Fulcher
Gabbard
Gaetz
Gallagher
Garamendi
Garcia (CA)
García (IL)
Garcia (TX)
Gibbs
Gohmert
Golden
Gomez
Gonzalez (OH)
Gonzalez (TX)
Gooden
Gosar
Gottheimer
Granger
Graves (LA)
Graves (MO)
Green (TN)
Green, Al (TX)
Griffith
Grijalva
Grothman
Guest
Guthrie
Haaland
Hagedorn
Harder (CA)
Harris
Hartzler
Hastings
Hayes
Heck
Hern, Kevin
Herrera Beutler
Hice (GA)
Higgins (LA)
Higgins (NY)
Hill (AR)
Himes
Hollingsworth
Horn, Kendra S.
Horsford
Houlahan
Hoyer
Hudson
Huffman
Hurd (TX)
Jackson Lee
Jacobs
Jayapal
Jeffries
Johnson (GA)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Johnson (TX)
Jordan
Joyce (OH)

Joyce (PA)	Mucarsel-Powell	Sherman
Kaptur	Mullin	Sherrill
Katko	Murphy (FL)	Sires
Keating	Murphy (NC)	Slotkin
Keller	Nadler	Smith (MO)
Kelly (IL)	Napolitano	Smith (NE)
Kelly (MS)	Neal	Smith (NJ)
Kelly (PA)	Neguse	Smucker
Kennedy	Newhouse	Soto
Khanna	Norcross	Spanberger
Kildee	Norman	Spano
Kilmer	Nunes	Speier
Kim	O'Halleran	Stanton
Kind	Ocasio-Cortez	Stauber
King (NY)	Omar	Stefanik
Kinzinger	Palazzo	Steil
Kirkpatrick	Pallone	Steube
Krishnamoorthi	Palmer	Stevens
Kuster (NH)	Panetta	Stewart
Kustoff (TN)	Pappas	Stivers
LaHood	Pascrell	Suozzi
LaMalfa	Payne	Swalwell (CA)
Lamb	Pence	Takano
Langevin	Perlmutter	Taylor
Larsen (WA)	Perry	Thompson (CA)
Larson (CT)	Peters	Thompson (MS)
Latta	Peterson	Thompson (PA)
Lawrence	Phillips	Tiffany
Lawson (FL)	Pingree	Timmons
Lee (CA)	Pocan	Tipton
Lee (NV)	Porter	Titus
Levin (CA)	Posey	Tlaib
Levin (MI)	Pressley	Tonko
Lieu, Ted	Price (NC)	Torres (CA)
Lipinski	Quigley	Torres Small (NM)
Loebsack	Raskin	Trahan
Lofgren	Reed	Trone
Long	Reschenthaler	Turner
Loudermilk	Rice (NY)	Underwood
Lowenthal	Rice (SC)	Upton
Lowey	Riggleman	Van Drew
Lucas	Rodgers (WA)	Vargas
Luján	Roe, David P.	Veasey
Luria	Rogers (AL)	Vela
Lynch	Rose (NY)	Velázquez
Malinowski	Rose, John W.	Visclosky
Maloney, Carolyn B.	Rouda	Wagner
Maloney, Sean	Rouzer	Walden
Marshall	Roy	Walker
Mast	Roybal-Allard	Walorski
Matsui	Ruiz	Wasserman Schultz
McAdams	Ruppersberger	Waters
McBath	Rush	Watkins
McCarthy	Rutherford	Watson Coleman
McCaul	Ryan	Weber (TX)
McClintock	Sánchez	Webster (FL)
McCollum	Sarbanes	Welch
McEachin	Scalise	Wenstrup
McGovern	Scanlon	Westerman
McKinley	Schakowsky	Wexton
McNerney	Schiff	Wild
Meeks	Schneider	Williams
Meng	Schrader	Wilson (FL)
Meuser	Schrier	Wilson (SC)
Mfume	Schweikert	Wittman
Miller	Scott (VA)	Womack
Moolenaar	Scott, Austin	Woodall
Mooney (WV)	Scott, David	Yarmuth
Moore	Sensenbrenner	Yoho
Morelle	Serrano	Zeldin
Moulton	Sewell (AL)	
	Shalala	

NOT VOTING—35

Abraham	Holding	Roby
Aderholt	Huizenga	Rogers (KY)
Amodei	King (IA)	Rooney (FL)
Bishop (NC)	Lamborn	Shimkus
Blunt Rochester	Lesko	Simpson
Brooks (IN)	Luetkemeyer	Smith (WA)
Buchanan	Marchant	Thornberry
Calvert	Massie	Walberg
Cleaver	McHenry	Waltz
Collins (GA)	Mitchell	Wright
Gallego	Olson	Young
Gianforte	Richmond	

□ 2007

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 965, 116TH CONGRESS

Barragán (Beyer)	Hastings (Wasserman Schultz)	Napolitano (Correa)
Blumenauer (Beyer)	Higgins (NY) (Sánchez)	Payne (Wasserman Schultz)
Bonamici (Clark (MA))	Jayapal (Raskin)	Peterson (McCollum)
Boyle, Brendan F. (Jeffries)	Johnson (TX) (Jeffries)	Pingree (Kuster (NH))
Brownley (CA) (Clark (MA))	Keating (Kuster (NH))	Pocan (Raskin)
Bustos (Kuster (NH))	Khanna (Gomez)	Porter (Wexton)
Carson (IN) (Cleaver)	Kind (Beyer)	Price (NC) (Butterfield)
Castro (TX) (Garcia (TX))	Kirkpatrick (Stanton)	Rose (NY) (Golden)
Clay (Cleaver)	Langevin (Courtney)	Roybal-Allard (Bass)
Cohen (Beyer)	Lawrence (Kildee)	Ruiz (Dingell)
Costa (Cooper)	Lawson (FL) (Demings)	Rush (Underwood)
DeGette (Blunt Rochester)	Lieu, Ted (Beyer)	Ryan (Kildee)
DeSaulnier (Matsui)	Lipinski (Cooper)	Schrier (Kilmer)
Doggett (Raskin)	Lofgren (Jeffries)	Serrano (Jeffries)
Escobar (Garcia (TX))	Lowenthal (Beyer)	Speier (Scanlon)
Evans (Brown (MD))	Lowey Tonko)	Takano (Chu, Judy)
Frankel (Clark (MA))	Lynch (McGovern)	Titus (Connolly)
Garamendi (Sherman)	McEachin (Wexton)	Vargas (Correa)
Gonzalez (TX) (Gomez)	Meng (Kuster (NH))	Watson Coleman (Pallone)
Grijalva (García (IL))	Moore (Beyer)	Welch (McGovern)
	Nadler (Jeffries)	Wilson (FL) (Hayes)

HONORING KOREAN WAR VETERANS

(Mr. KELLER asked and was given permission to address the House for 1 minute.)

Mr. KELLER. Mr. Speaker, last week I had the honor of presenting Korean Ambassador of Peace Medals to Korean war veterans and their families in Towanda, Pennsylvania. The Korean Ambassador of Peace Medal is an honor from the Embassy of the Republic of Korea for American veterans who served in the Korean war.

One of the greatest parts of representing Pennsylvania's 12th Congressional District is hearing our veterans' stories of service and sacrifice for our Nation. As the names of these heroes are read on the House floor, it is my hope that their legacies echo through these Halls and across America for generations to come:

Glen Ellis, United States Navy;

Silas Mills, United States Army;

Charles Miller, United States Army;

Kent Edsell, United States Marine Corps;

Nicholas Williams, United States Navy;

Edward Moritz, United States Army;

Earl Mayo, United States Army;

Carlton Repsher, Jr., United States Army; and

Keith Haight, Sr., United States Marine Corps.

It is incumbent upon us to honor these individuals and reflect on their heroism in the name of liberty and our American way of life.

RECOGNIZING THE RETIREMENT OF LARSEN JAY

(Mr. BURCHETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURCHETT. Mr. Speaker, during the coronavirus pandemic, community organizations in east Tennessee stepped up to help our neighbors in need. I rise today to highlight the efforts of Random Acts of Flowers, which recently delivered its 500,000th bouquet; and to recognize the retirement of its founder, my good friend, Larsen Jay.

In 2007, Larsen Jay was in the hospital recovering from an accident, and he noticed many patients weren't receiving visitors or flowers. He reflected on the amount of support he received and wanted others to have that encouragement, too. Larsen founded Random Acts of Flowers in 2008 to deliver repurposed flowers to local hospital patients and seniors in nursing homes.

The nonprofit recycles arrangements donated from events like weddings and makes them into beautiful floral bouquets. Since opening its doors in Knoxville, the nonprofit has grown to serve folks in Indianapolis and Tampa Bay, Florida.

Random Acts of Flowers has safely resumed operations after a pause during the coronavirus pandemic. Isolation continues to be a serious problem for seniors and those in poor health during this crisis, but outstanding organizations like Random Acts of Flowers are here to let our neighbors know they are loved and supported.

Mr. Speaker, after reaching the milestone of delivering half a million bouquets, Larsen Jay announced his retirement from Random Acts of Flowers. He has long been active in community service, currently serving as chairman of the Knox County Commission.

I know he will continue to find ways to make an impact in our community. I thank him for his efforts to make Random Acts of Flowers a successful and meaningful organization in east Tennessee and I congratulate the nonprofit on its 500,000th delivery.

□ 2015

CORONAVIRUS' IMPACT ON MINORITY COMMUNITIES

The SPEAKER pro tempore (Mr. CASTEN of Illinois). Under the Speaker's announced policy of January 3, 2019, the gentlewoman from California (Ms. LEE) is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Ms. LEE of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of our Special Order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. LEE of California. Mr. Speaker, first, I thank the chair of our Congressional Black Caucus. I thank Chairwoman BASS, who has helped us organize this tonight, for her leadership of the Congressional Black Caucus.

I join with my colleagues to speak on the impact of COVID–19, the pandemic which has had an especially disparate impact on communities of color.

First, again, let me thank Chairwoman BASS, Chairwoman CHU, and Congressman CASTRO of the Tri-Caucus, as well as Representatives KELLY, HAALAND, and DAVIDS, for working together to ensure that we address the disproportionate effects of the COVID–19 pandemic on communities of color—also, Congresswoman SYLVIA GARCIA.

It is really very imperative that our strategy to crush COVID intentionally includes provisions to support the specific needs of our communities.

I also want to take a moment to thank Speaker PELOSI and Chairman PALLONE for negotiating some of the provisions of our COVID Community Care Act, that is H.R. 8192, in our Heroes bill, which further strengthens efforts to engage medically underserved communities in the latest version, again, of the Heroes bill.

I thank Chairman SCOTT and, of course, our subcommittee chair, ROSA DELAURO, for their support, their input, and their assistance in getting this bill, the COVID Community Care Act, really very targeted, very focused, and something that all of us could support as a Tri-Caucus, also—and, of course, Speaker PELOSI, again, for her steadfast understanding and support for this issue.

Now, millions of people have suffered incomprehensible grief and hardship due to the COVID pandemic. Just in the United States, we now have over 10.3 million cases of COVID–19 and over 240,000 deaths. That is mind-boggling.

We are here today to insist that any coronavirus response addresses the needs of people of color. This is because the impacts of the pandemic and the economic fallout have had a disproportionate impact on African Americans, Latinx, Indigenous, Asian Pacific Islander, and immigrant communities. We have witnessed the horrific result of how longstanding inequities stemming from structural racism has exacerbated COVID's threats to people of color.

Black people are dying at more than twice the rate of White people in the United States. Indigenous and Latinx people are both 50 percent more likely to die from COVID than White Americans. Between January and July, the AAPI death rate rose 35 percent compared to an increase of 9 percent for White Americans.

The Federal Government must address the vicious cycle of disparities that drive these unequal impacts on communities of color, especially during the COVID–19 crisis. That is why we introduced, together, H.R. 8192, the COVID Community Care Act, legislation to ensure that any effort to fight the pandemic engages local communities as partners in crushing the virus.

This bill, supported by our Tri-Caucus colleagues, ensures that any testing and tracing efforts engage communities of color where they live with trusted messengers who speak their language and know their unique challenges.

Speaker PELOSI and Chairman PALLONE worked with us to add language to Chairman PALLONE's $75 billion CONTACT plan. This is included in the revised version of the Heroes Act passed October 1, which will further strengthen efforts to engage communities of color.

The strengthened CONTACT plan mandates that community-based organizations and nonprofits in medically underserved communities play an important role to reach those communities that public health agencies have difficulty engaging. It ensures the people hired to conduct the outreach have experience and relationships with people living in the communities that they serve.

Turning a blind eye to the American people's desperate need for culturally rooted contact tracing and testing will result in increased deaths and illnesses that we could have prevented.

We must build a relief package that addresses the needs of millions, especially Black and Brown people, who are suffering disproportionately from this virus.

Mr. Speaker, we thank our Speaker for her persistence, leadership, and fighting spirit to ensure that lawmakers acknowledge and respond to the racial and ethnic disparities that have plagued our Nation for centuries.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. GARCIA), who played an important role in making sure that the Latinx community and all the Hispanic issues, as it relates to COVID, were included as a part of this bill.

Ms. GARCIA of Texas. Mr. Speaker, I thank Representative LEE and the caucuses involved for putting this Special Order together.

Today in America, there is not one State that has the pandemic under control. My own State of Texas became the first State to surpass 1 million cases.

Let me repeat that: 1 million cases.

These cases represent many of our neighbors, our friends, and our own family. I personally have self-quarantined once and have already been tested four times for different times I have been exposed to someone with the virus.

Thank God all tests have come back positive—I am sorry, negative. I meant to say, ''not come back positive.'' Little misspeaking there.

Mr. Speaker, this pandemic is affecting everyone, but it is not affecting everyone in the same way. Black and Latino communities are bearing the weight of this pandemic. While Black and Latino people are being hospitalized and dying at higher rates than White people, they are also the ones most likely to be working jobs that put them more at risk.

They have always been essential workers. Now more than ever, this is sadly more true. They are meatpacking workers, farmworkers, sanitation workers, custodians, restaurant workers, grocery clerks, postal workers, police officers, firefighters, longshoremen. These aren't jobs you can do from home. If you don't show up, you just don't get paid.

Black and Latino families have had to go into work even when it meant they may get sick. And many of them have gotten sick. Even worse, many infected a loved one with the virus.

America depends on these workers to put food on our tables and keep us safe. Because our leaders didn't take any steps to prepare us for this pandemic, we can't even offer the protective gear needed to keep essential frontline workers safe.

So while we are asking these communities to go to work every day without the proper protections, we also know that Latino and Black Americans are more likely to have health conditions, like asthma and diabetes, that make the virus even more dangerous.

Nationwide, Latinos make up 55 percent of the COVID cases and 24 percent of the overall deaths. Yet, we are only 18.5 percent of the total U.S. population. In Texas, Latinos are about 40 percent of the population, but we are nearly 55 percent of the deaths—more than half, Mr. Speaker. In Houston, sadly, Latinos account for 54 percent of the deaths caused by this virus—again, more than half.

My district, which is nearly 80 percent Latino, was one of the hardest hit areas in the Houston region. But despite these numbers, many of my constituents are still scared of getting tested or even seeing the doctor. Many don't have health insurance. Others don't trust our healthcare system. Many more are undocumented and fear deportation.

Mr. Speaker, now, I am optimistic about the future, given some of the news about vaccine trials. However, we must make sure, once we have a safe and effective vaccine, that it is distributed fairly and equitably and that no one is left behind.

We do not need to repeat the disparate mistakes of the past. As elected officials, we must work together to keep all of our constituents safe.

Right now, with the virus rapidly spreading, we are losing precious time if we don't act. People will get sick, and even more people will die, if we wait any longer.

Legislation like the Heroes Act provides protections that working families and frontline workers need now. It would provide rent relief for families who are afraid of losing their homes. It would help our schools keep kids healthy and safe for in-person learning.

It would give local and State governments much-needed relief to retain frontline workers on payroll. It would give hardworking families another stimulus check. It would also reinstate the supplemental weekly $600 in unemployment benefits, a lifeline that helped many families stay afloat.

Lastly, we need to earn the trust of these communities and let them know that, yes, they are a part of us. People of color know and must know that we are working for them. We cannot save the economy if we don't save people first.

Saving many lives must be our top priority. It will take all of us to crush this virus, but I know that we will get together to make sure that we are all working together to get past this pandemic, and if we do, it will be for all of us. Todos juntos.

Mr. Speaker, I thank the gentlewoman for this Special Order.

Ms. LEE of California. Mr. Speaker, I thank Congresswoman GARCIA very much for her input in helping to write the COVID Community Care Act.

Mr. Speaker, I yield to the gentlewoman from Connecticut (Ms. DELAURO), my good friend, the chair of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the House Appropriations Committee.

Ms. DELAURO. Mr. Speaker, I thank my colleague for yielding to me this evening and being here with other colleagues because we know, and we have said over and over again, that we face public health and economic crises unlike any that our country has seen in a generation.

More than 245,000 Americans have died of COVID–19. Tens of millions are out of work. And we know how communities of color have suffered acutely and disproportionately.

While we have known about some of these issues in the past, about the inequities in our healthcare system, in our economy, this virus has exposed and shone a light on the depths of the injustices and inequities that exist for communities of color. While we need to fight the virus, we need to fight the virus of injustice.

In my home State of Connecticut, as of last Thursday, Black people accounted for more than 14.5 percent of Connecticut's COVID-related deaths when they are just 12 percent of the population.

Mr. Speaker, 18 percent of COVID cases are Hispanic, outpacing the 17 percent they make up of our State's population.

Yet, this data is not perfect, which is why I have been so proud to work with my friend and my colleague, Congresswoman BARBARA LEE, to require the Health and Human Services agency and the Centers for Disease Control and Prevention to provide Congress with the data on which communities are bearing the worst impacts so that we can make sure that testing—once we have an administration that takes testing strategy seriously—is focused on those communities and that they get the resources they need going forward.

My colleague from California, Congresswoman LEE, has been indefatigable in questioning the issue of the data that we have on communities of color, and she did this long before we probably could spell ''coronavirus.'' To be frank, it is frustrating that we even had to put this requirement into law.

The CDC is complying with the reporting, but we keep a vigilant eye on that information. We have more work to do to ensure that we have complete data.

Through November 12, 47 percent of cases had unknown race and ethnicity in the CDC's surveillance system. That is just not good enough. This moment demands the boldest possible efforts to secure affordable healthcare, to address the deep racial disparities exposed by this virus, to help families.

I am proud to chair this subcommittee, which has been central to our response to this pandemic and the disparities that it has exposed. Together, my colleagues on the committee and on this subcommittee, we have appropriated $280 billion in emergency funding for education, for health, for working people throughout the pandemic. Through the good offices of my colleagues, Congresswoman LEE and Congresswoman BASS, we inserted language that would focus on the issue of disparities and how we address them. We could add $400 million in the latest iteration of The Heroes Act.

□ 2030

Yet the United States Senate has refused to do anything to help struggling Americans and get us to a place where we can test everyone, that we can do contact tracing, and that we can provide treatment.

We know more is needed. So, as I mentioned, the House has passed two additional relief packages, and we looked at boosting SNAP benefits by 15 percent; expanding access to paid leave and paid sick days; and expanding and improving the child tax credit for one-third of our children, which includes half of Black and Hispanic children, who are currently left behind because their families earn too little. If we do not address the virus, we will not be able to do anything about turning our economy around.

Let me say a thank-you to Congresswoman BARBARA LEE, who has been a tireless champion for communities of color, for organizing this Special Order. She and I, along with others, are committed to bringing to bear the full weight of the Federal Government for the communities of color, not only in my district, but around the country, because together we can and we must do better. People's lives are depending on it.

We know what we need to do to save lives. It is incomprehensible that we can't get to a protocol which allows us to save people's lives and those in communities of color, which are affected the most.

Ms. LEE of California. Thank you, Chairwoman DELAURO, for your statement and for reminding us that we have to address the health and economic impacts at the same time. One does not supersede the other. Thank you for helping us move our COVID Community Care Act forward with your leadership on the subcommittee.

Mr. Speaker, I yield to the gentlewoman from California (Ms. JUDY CHU), the chair of the Congressional Asian Pacific American Caucus, someone who contributed to crafting our COVID Community Care Act but also whom I have had the pleasure to serve with as co-chair of the Healthcare Task Force for CAPAC, a true leader on so many issues.

Ms. JUDY CHU of California. Mr. Speaker, as chair of the Congressional Asian Pacific American Caucus, I am here to say that we have reached another terrible milestone. Just yesterday, the number of COVID–19 cases in our country surpassed 11 million. One million of those cases came in just the last week alone.

The coronavirus is spreading at a rapid rate, and while hospitals and healthcare providers in all 50 States are overwhelmed, there is still no plan to contain it. The failure to contain the coronavirus has let it spread within every State and community.

Almost one-third of Americans know someone who has died from COVID–19, and yet we are still hearing false claims, including from some of my colleagues on the other side of this Chamber, that masks don't work and that gathering in large groups indoors is safe.

The message that we can or should live with this virus is a denial of the hundreds of thousands of Americans who are sick or who have died from this virus already, and it is condemning thousands more to die as well.

But not everyone is impacted equally. While all of us are susceptible to the virus, communities of color have been disproportionately impacted by the Trump administration's inaction. Now that we know more about this virus, we can see who is paying more for it.

Native Hawaiians and Pacific Islanders have seen cases surge in their communities and continue to face some of the highest COVID–19 infection and mortality rates out of any of the racial groups in several States, including in my own State of California.

And new data shows that Asian Americans are also dying from COVID–19 at a disproportionate rate, with deaths in the Asian-American community nationwide increasing by 35 percent this year compared with the average over the last 5 years. This is compared to a 9 percent increase in deaths for White Americans.

For other communities of color, there are equally high rates: for

Blacks, a 31 percent increase compared to 5 years ago; 44 percent for Hispanics; and a 22 percent increase for Native Americans.

Downplaying this virus is also downplaying the reality of healthcare inequality and minority health disparities in this country. That is why we crafted an urgently needed COVID–19 response bill: to make us sure we can combat the disproportionate effects of coronavirus on communities of color.

That is precisely what the House did in May, with the passage of The Heroes Act, and again in October, with the updated Heroes Act, which ensured that we collect disaggregated race and ethnicity data related to COVID–19 and that we restore Medicaid coverage for citizens of the Freely Associated States of the Pacific islands and include provisions like Congressmember BARBARA LEE's COVID–19 Community Care Act.

It is so important because it would provide targeted COVID–19 testing, treatment, and contact tracing for communities of color that have been devastated by the pandemic. What is so crucial is that it would include culturally and linguistically competent outreach for contact tracing that is so critical to the AAPI community.

Communities of color cannot wait any longer. Americans cannot wait any longer. We need the outgoing President and Republicans in Congress to stop playing games with American lives. We can't ignore the fact that Americans are dying and the economy is struggling because of a refusal to take this virus seriously. It is time to face facts and work together to pass a coronavirus relief package now.

Ms. LEE of California. Thank you very much, Chairwoman CHU, and thank you for being with us tonight, but also for your consistently sounding the alarm to all of us about the necessity for culturally and linguistically appropriate services, testing, contact tracing, as well as the importance of disaggregating the data based on race and ethnicity. Thank you for input into helping to write this bill.

Mr. Speaker, I yield to the gentlewoman from Illinois (Ms. KELLY), who is the chair of the Congressional Black Caucus' Health Braintrust, someone who is a member of the House Energy and Commerce Committee and also a member of the Oversight and Reform Subcommittee on National Security and Subcommittee on Civil Rights and Civil Liberties.

Congresswoman ROBIN KELLY has helped put together this bill and helped make sure that we put provisions in for data collection and all of the information that we know we need to be able to target these resources.

So thank you, Congresswoman ROBIN KELLY, for being here tonight and for helping us.

Ms. KELLY of Illinois. Mr. Speaker, I rise today to challenge this Congress to act to end the shocking health disparities that COVID–19 has put on display. To date, nearly 250,000 Americans have lost their lives to COVID–19 and more than 10 million have been infected. And these numbers are still rising.

Shocking, but not surprisingly, a disproportionate number, as you have heard, of those who fought and those who fought and lost battles with COVID–19 have been people of color. Once again, another public health crisis has taken an oversized toll on Black Americans, Latinx Americans, Asian and Pacific Americans, and Native Americans.

COVID–19 is simply the latest in a long list of diseases, including cancer, addiction, HIV/AIDS, maternal mortality, diabetes, cardiovascular conditions, and on and on and on, with a disproportionate impact on communities of color.

Why does this continue to be the case in America, the greatest, richest, most powerful country in the history of our world?

The answer is simple: health disparities.

In America, despite all of our technology and pledges to equity, the ZIP Code in which you are born is nearly inescapable as a determinant of your life, your health, and, yes, even your death.

In Chicago, part of my district, life expectancy varies up to 30 years by neighborhood. The pattern is the same across most American communities.

But what are the social determinants of health, or, as I like to say, the social determinants of life?

In short, they are all of the nonmedical factors that impact your health, the things you don't necessarily see a doctor for, such as not having ample fresh food and vegetables in your diet because there aren't any grocery stores in your community; missing routine preventive care, such as cancer screenings, because seeing the doctor means getting up at 4 a.m., taking two buses, and missing a day of work or school.

It means worrying about manganese or lead poisoning in the air you breathe, the water you drink, or the playground where your child plays.

It means dealing with stress, anxiety, and depression from housing instability on top of a recession and pandemic.

All of these factors decide our lives, our health, and, tragically, again, our death. So many of these factors are out of one's individual control, including environmental factors, the location of medical facilities, discriminatory housing policy, and discrimination and so forth.

We all know these factors have been with us for a long time. They have been undermining our health and the health of generations of Americans for centuries.

As we work on these issues, I am continuously reminded of a quote from Dr. King: ''Of all of the forms of inequality, injustice in healthcare is the most shocking and inhumane.''

Despite 70 years passing and amazing technological and societal advancement since he spoke these words, injustice in healthcare, of all of the forms of inequality, still remains the most shocking and inhumane.

Right now, we are seeing parallel COVID–19 pandemics: one in wealthier, whiter communities, and a much harsher one in vulnerable communities of color.

But this is America. There shouldn't be a two-tiered system, because when it comes to public health, we are all in this together.

The only solution is to root out health disparities at their source. We must end systemic racism and a lack of opportunities for low-income and minority communities.

To address these issues in healthcare, my colleague and mentor, Congresswoman BARBARA LEE, has introduced the COVID Community Care Act, H.R. 8192. This legislation, which I am proud to support and my office helped develop, will provide grants for community-based organizations and nonprofits to conduct testing, tracing, and outreach activities in communities.

Given the number and rates of COVID–19, we know that these resources are most urgently needed in communities of color. I believe this legislation is central to making health equity a cornerstone of our Nation's immediate pandemic response. I am proud to be an original cosponsor of this important and immediate-acting legislation.

Additionally, I have introduced the Ending Health Disparities During COVID–19 Act, H.R. 8200, which provides a sweeping approach to addressing the widening health disparities from COVID–19. It tackles the immediate-term needs of testing, tracing, and public awareness from COVID–19.

But just as crucially, the bill makes long-term investments to build a stronger system to reduce and eliminate health inequities in the future via investments in the social determinants of health, technology, research, workforce diversity, and community health centers and workers.

Lastly, H.R. 8200 makes our government accountable for progress on health equity by creating a Federal task force with oversight over health disparities during COVID–19 and beyond and protects the Office of Minority Health. That is a long list to do, but it is all desperately needed.

I truly feel that this long-term approach, combined with strict accountability for health disparities, is exactly what this moment calls for. For the first time, many Americans are waking up to the reality faced by communities of color, a reality that the Tri-Caucus and our fellow Members of Congress, such as champions like Representative BARBARA LEE, are working to address.

We need to harness this rightful outrage and catalyze it into action. We need to make this the last pandemic to have a disproportionate impact on any

American community, because the fact is Americans deserve a public health system that works for all Americans. We deserve to live in one America, not an unequal America with worse health outcomes for Black and Brown people.

We all deserve healthcare because healthcare is a human right, yet it is not easily won. It must be fought for. As Frederick Douglass taught us: ''Power concedes nothing without a demand. It never did and it never will.'' The only path forward is for us to demand it.

□ 2045

We demand action to end health disparities once and for all. We must do this by passing the COVID Community Care Act, H.R. 8192; and Ending Health Disparities during the COVID–19 Act, H.R. 8200.

Ms. LEE of California. Mr. Speaker, I thank Congresswoman KELLY for laying out actually what the social determinants of healthcare are. Oftentimes, we see that as separate from healthcare, but you laid it out perfectly, so thank you for educating us tonight.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. JACKSON LEE), who is a member of the Judiciary Committee, but also is a member of the Congressional Black Caucus and the Congressional Native American Caucus. I know Congresswoman JACKSON LEE's district in Texas is ravaged by this COVID pandemic, so I want to thank her for helping us with our COVID Community Care Act and for being here tonight.

Ms. JACKSON LEE. Mr. Speaker, I thank very much the distinguished manager, the honorable BARBARA LEE. I am most grateful for her yielding to me. Also, let me acknowledge the very important work that she has done over the years in disparities and racial equity. I thank her for being my partner in H.R. 40, and me her partner in H. Res. 100, that really also speaks to the pain and the issues of disparities.

We look forward to reconciliation and we look forward to repair with those two initiatives. Let me also acknowledge the chair of the Congressional Black Caucus for gathering us all together, and my colleagues that are here, and my colleague that has just joined us, Congresswoman ADAMS.

Let me try to address where we are nationwide and how disparities weaves its way into this phenomenon of the transfer of power—the peaceful transfer of power—and how the President's status of the President-elect and Vice President-elect is interwoven in how to best respond to one of the disparities in healthcare, and that is COVID–19.

Mr. Speaker, first to take note of the fact that the stability of the United States electoral system is remarkable, it first involved the election of 1800, which marked the first time in United States history that power was transferred. The second was the 1876 election, which the President was chosen, who won neither the absolute majority popular vote nor the necessary electoral votes, but it was resolved by the infamous Hayes-Tilden Compromise. The third instance involved the 2000 election, which sought the Supreme Court effectively deciding the Presidency. But in each of those moments there was an end. In each of those moments there was a transfer of power.

We find ourselves now in a quandary. Believe it or not, there are people who are on ventilators. There are people in El Paso and Dallas who are in hospitals, who are being negatively impacted by the idea of the lack of peaceful engagement, specifically because the President-elect and Vice President-elect definitively need to be able to secure information to have their COVID–19 task force speak with the White House task force to understand prospectively how vaccines will be transferred or implemented throughout the Nation.

So as people are languishing on hospital beds, as loved ones are saying goodbye over telephones, we have this inability to transfer power. Our history has shown the transfer of power in the Nation. It was designed as a benefit. It can be harmed when the transition is not smooth and transparent, which can be invariably attributed to one or more of the following reasons.

The outgoing President is still engaged in the building of his or her legacy in the final months of the administration; two, there are sharp differences in philosophy or style between the outgoing and incoming administration; or the current or future President actively makes trouble for his or her successor.

In this timeframe, I hope my colleagues, Republicans and Democrats, will find a way, as we come back to Washington, to be able to look to the transition of Dwight D. Eisenhower and John F. Kennedy, for example, and speak to the idea of how this should go; or maybe even from Lyndon Baines Johnson and Richard Nixon, opposite parties, but yet they found a way to come together in the wake of the importance of the Constitution and democracy.

Why would I start a health disparities discussion on the transfer of power?

As I indicated, it is very important for the work that is going to be part of containing COVID–19 to really start now, to really start now with a new attitude about wearing masks, socially distance, washing your hands, and yes, testing, testing, testing.

That is what I have found as a chair of the bipartisan Congressional COVID Task Force where we have been working on doing the work of implementing and talking about the diagnostic testing and all its gradations over the past couple of months.

Our first testing site in Houston was opened on March 19. We have opened 41 test sites. The most recent was this past Saturday. We open the 42nd on this coming Saturday. The question in disparities is very, very real. The pandemics dealing with racial disparities indicates that there are 74 Black or African-American persons out of 100,000 impacted by COVID; Alaska Native and American Indian, 40; Hispanic or Latino, 40; Asian, 31; White, 30; Native Hawaiian, 29; others, 29.

We can see that there are large numbers of African Americans, Hispanic, and American Indian. We just heard that the Navajo community will be shutting down for a period of time. That is how devastating COVID–19 is. That is how much the disparities in healthcare are evident.

Let me share with you this question of disparities and underlying conditions. Those are numbers of the number of deaths. So the number of deaths is much higher among African Americans and Hispanics.

Why?

Thirty percent more likely to die of CVD—that is cardiovascular disease—that is Black Americans. Latin Americans, 40 percent more likely to die from stroke. And then it goes on. Two times as likely to die as an infant, two times more likely to die of asthma, three times more likely to develop ESRD, two times more likely to die from prostate cancer, two times on cervical cancer, three times in pregnancy. There is still a high level of maternal mortality among African Americans.

As it relates to Latin Americans and Hispanics, two times more likely to die of liver cancer, two times more likely to die of asthma, 1.7 more times to have diabetes, and two times more likely to die of HIV-AIDS. Which is why we see this increasing number of those on that ethnic backgrounds, African Americans, Hispanics and, of course, Native Americans and Alaskans, because of the underlying conditions and the lack of access to healthcare.

We are on this floor today because, as members of the Tri-Caucus, we have made it our constructive business, starting from the Affordable Care Act, to deal with the question of health disparities. As a Member of Congress many years back, I authored legislation to create an Office of Health Disparities in the Health and Human Services Department, knowing that there was a lack of recognition of different clinicals that African Americans were not participating in, men and women. Hispanic men and women were not participating in those as well.

In the course of the work that we are doing right now, we are seeing a high number of deaths. Texas hit 1 million cases on November 6. We were the first State to hit 1 million cases. Now, in Dallas and El Paso, my sister cities, my colleagues who are there working very hard, our hospitals are being oversaturated. The same thing that happened to Houston, Texas, in July of 2020.

And so it is crucial to do three things: One, we must pass the Heroes

Act. We are desperate for that money in testing, desperate for PPPs, desperate for PPEs. We are now running out of PPEs in some of these saturated towns. We are desperate, as I said, for testing. We are desperate for economic dollars that are needed.

Every testing site that I have had—most of them, let me clarify that, we have had full distribution by our Houston Food Bank, because people need food. And as evidenced with lines in my sister State, just a day or two ago in Los Angeles, we saw cars and cars and cars of individuals recognizing that testing was crucial.

I believe that we cannot ignore anymore. There must be cooperation with our Republican friends, I will call them, to deal with providing this financial relief to our cities and to all of our constituents who are desperately in need. We must acknowledge the health disparities. It is important both in the White House task force, we know that it is happening in the COVID task force under the President-elect and Vice President-elect, that health disparities can kill.

And we can see that the lack of a transition of power right at this time, the continued denial of who has been the victor, so that the General Services Administration can stop violating the administrative procedure code in not allowing the resources necessary for the team that is now in place looking to transition to power with the existing Presidency being stopped, not by law, not by any determination that you did not meet the standard of victory in terms of the Electoral College, but by an individual administrator who indicates that they refuse to certify and to allow that transfer of funds for them to work on.

So I thank the gentlewoman for allowing me to present today, to speak both on the disparities and the needs for response, but also on the devastating impact of COVID–19 impacting now several States.

Mr. Speaker, I want to close on this. I want to say it to America. We are coming on our holidays, and many different faiths celebrate their holidays during this time, from Thanksgiving to, in the Christian faith, Christmas, but many different faiths. I am not here to judge how and which faith will be celebrating this very special time of the year. We beg of you, on the basis of science, to realize that because someone is your family member does not mean that they are immune or that they cannot transfer COVID to you, or they are not asymptomatic. My message is that we must test, test, test.

Today, I had a press conference in Houston, and I want to read these words as I close. I would encourage all cities and States to follow what was utilized in Los Angeles. It was effective. And that is a public safety alert. A public safety alert that is simple, that goes out to the text of all citizens.

COVID–19 cases are increasing. Please wear a mask and social distance. Get tested if you have symptoms or might have been exposed. I would add to that, get tested because you may be asymptomatic. That simple note to the text of people in that State allowed thousands of individuals to see the importance of getting tested, and they went to the testing sites. That is going to help contain and stop the community spread.

So my message is, as you get into Thanksgiving, please do your events outside. If you are inside, doing them 10 or less. Please ask all of your relatives and loved ones to get tested, tested, tested, so that we can contain this preceding the vaccine, which we know is coming, but is not coming as soon as we would like.

We also know that we will be addressing the question of implementation and distribution as it relates to people of color and those who suffer disparities, along with the elderly and those underlying conditions.

You will not get a vaccine tomorrow. While we are waiting for that process, we need to do what is right. And that is to continue to social distance, wearing the mask and getting tested.

Mr. Speaker, I thank the gentlewoman for her kindness and her leadership.

Mr. Speaker, today I rise to join my colleagues during this Special Order to shed light on the impact of COVID–19 on communities of color.

I want to recognize and thank Congresswoman KAREN BASS and the Congressional Black Caucus for hosting this hour, so that we may not only speak about the disproportionate impact of the coronavirus on communities of color but also call upon the federal government to address these devastating inequities.

Mr. Speaker, before addressing the devastating impact of the COVID–19 crisis on communities of color, I wish to speak briefly on the important subject of presidential transitions and the peaceful transfer of power for which the United States is justly celebrated around the world.

The stability of the United States electoral system is remarkable, but this does not mean it has never been tested; it has—three times—and weathered each crisis.

The first involved the election of 1800, which marked the first time in United States history that power had transferred peacefully between political parties.

The second involved the 1876 election, in which a president was chosen who won neither the absolute majority popular vote nor the necessary number of electoral votes and was resolved by the infamous 'Hayes-Tilden Compromise,' which effectively ended Reconstruction.

The third instance involved the 2000 election which saw the Supreme Court effectively decide the presidency by ordering the cessation of ballot counting in the state of Florida.

Mr. Speaker, what enabled the country to weather these crises is that all parties, including the victor and the vanquished, understood and accepted the primacy of the rule of law and the bedrock democratic value that power is only legitimately conveyed by the people through their votes and is held in trust and to be used exclusively to protect and advance the national interest.

A peaceful transfer of power implies also a smooth and seamless transition from outgoing administration to the incoming one, which has usually but not always been the case.

Our history has shown how the transfer of power, and the nation it was designed to benefit, can be harmed when the transition is not smooth and transparent, which can invariably be attributed to one or more of the following reasons: (1) the outgoing president is still engaged in the business of building his or her legacy in the final months of the administration; (2) there are sharp differences in philosophy or style between the outgoing and incoming administrations; or (3) the current or future president actively makes trouble for his successor or predecessor.

The transition between President Dwight D. Eisenhower and the newly elected John F. Kennedy is an example of the dangers of presidential legacy building post-election because Eisenhower authorized covert programs for regime change in what is today the Democratic Republic of the Congo, in the Dominican Republic, and, most famously, against Fidel Castro's Cuba but none of these programs were completed by the time Kennedy took the oath of office.

The second form of trouble can come from the soon-to-be-powerful people on the receiving end of a transition, as when incoming President George W. Bush failed to pay due heed to the warnings received from then President Bill Clinton about the dangers of Osama Bin Laden and Al Qaeda.

But far the most serious harm to be avoided stems from the failure of the outgoing administration to prioritize and expedite the sharing of vital information and resources with the incoming administration.

This is the danger we currently face in the aftermath of President-elect Biden's resounding victory in the Electoral College and the popular vote.

Mr. Speaker, the federal government is perhaps the most complex organization in the world because it involves a $5 trillion-plus budget, four million person workforce, including the military and reservists, who are stationed all over the globe, and two million career civil servants in hundreds of operating units of the Executive Branch, not to mention the 4,000 political appointments made by the President.

So, a presidential transition of this enterprise is a massive operation that requires a lot of work, time, and cooperation in three important areas.

The first is access to the agencies themselves—there are over 100 operating in the government—and the incoming team needs to understand what's happening inside them because each and every one of them have different urgent issues that they are addressing and deciding, including for example, the approval and distribution of any vaccine for COVID–19 and dealing with the economic damage caused by the pandemic.

The second area is the processing of personnel, 1,200 of whom require Senate confirmation and who will need security clearances and financial agreements with the Office of Government Ethics to make sure there are no conflicts.

Third, the incoming President must have access to the President's Daily Brief, to ensure it has awareness and understanding of the most current threats and challenges facing our nation.

The final area is providing funding needed to pay the salaries and expenses of the incoming administration's transition personnel.

I call upon the current President to honor his oath of office to defend, protect, and preserve the Constitution and America's sacred tradition of peaceful transfers of power and begin the full and seamless transition to the Biden Administration.

Turning to the immediate subject at hand, we must recognize the impact of COVID–19 on people of color and its devastating consequences on the communities we represent.

As a Founding Member of the Bipartisan Congressional Coronavirus Task Force, I call upon my fellow Members of Congress to not only recognize the disproportionate impact of this virus on communities of color but also to come together to redress this reality.

I first saw news reports on the rapid spread of the coronavirus in early January.

As the numbers of infected increased, I knew this was not something to be taken lightly, so I began to monitor the situation more closely.

On February 10, 2020, I held the first press conference on the issue of the novel coronavirus at Houston Intercontinental Airport, where I was joined by public health officials, local unions, and advocates to raise awareness regarding the virus, the implications it might have for travel to the United States from China, and the need to combat early signs of discrimination targeting Asian businesses in the United States.

From the onset of this pandemic, I have actively worked to address the negative and unequal affects of this disease on people of color.

I have facilitated the opening of 41 COVID–19 testing sites, which have collectively provided over 200,000 tests to residents in Harris County, one of the most diverse counties in the state of Texas.

Across the United States, Black individuals comprise thirteen percent of the population.

Yet, we experience a higher rate of incarceration and health disparities, are more vulnerable to economic slowdowns, and are even more likely to get COVID–19 and face significantly worse health outcomes from the disease.

Disparities tell the story of living while Black in America, and there are disparities in every aspect of African American life and death.

Right now, Black people are dying at 2.2 times the rate and Latinx people at two times the rate of white people.

Whereas American Indian and Alaska Native people are 5.3 times more likely than white people to be hospitalized due to COVID–19.

My district of Harris County has reported over 175,000 total cases of coronavirus, of which over 17,300 identify as Black and over 37,700 identify as Hispanic or Latinx.

From a high prevalence of preexisting conditions to limited employment opportunities to additional structural inequities that are the result of implicit bias and racial discrimination, there are several factors at play for why communities of color are disproportionately affected by the coronavirus,

For example, the African American community is known to be highly affected by preexisting conditions, such as diabetes, heart disease, hypertension, lung disease, and obesity.

With these underlying health conditions, many African Americans suffer from an impaired immune system, thereby dramatically increasing the risk of being infected with and the fatality of the coronavirus.

Limited employment opportunities also play a role in understanding why people of color are most affected by this disease.

According to the Center for Economic and Policy Research, Black workers make up about one in nine workers overall, but they represent about one in six front-line-industry workers, further increasing the disproportionate likelihood of being exposed to and contracting the virus.

These disparities cannot be separated from the history of enslavement of Black people and subsequent periods of segregation, racialized violence, pervasive racial discrimination and their ongoing impacts.

With that in mind, I urge my colleagues to support my bill, H.R. 40, the Commission to Study and Develop Reparation Proposals for African-Americans Act, as it is the most comprehensive legislative solution to begin repairing the legacy of systemic racism and accounting for the harms of past and present.

Mr. Speaker, it is abundantly clear that people across the United States are struggling in the face of this epidemic.

As Members of Congress, we have a duty to our constituents to address this vicious cycle of socioeconomic disparities that further the inequities facing communities of color, especially during the COVID–19 crisis.

We must come together to ensure that COVID–19 relief extends to all members of our communities.

Ms. LEE of California. Mr. Speaker, I thank the gentlewoman from Texas for using this opportunity to deliver a very powerful public health message also. I also would just note a personal privilege. I was born and raised in El Paso, Texas, and my heart goes out to all of those who are suffering from this terrible deadly pandemic.

Mr. Speaker, I want to salute our colleague, Congresswoman VERONICA ESCOBAR, for being such a tremendous leader in El Paso in trying to help on the ground with taking care of people and preventing the transition of the virus.

I thank Congresswoman JACKSON LEE again.

Mr. Speaker, I now yield to the gentlewoman from North Carolina (Ms. ADAMS), a member of the Committee on Education and Labor, whose mission in life, I think, is to make sure that our young people are educated and receive the best quality education through the Historically Black Colleges and Universities, and at the same time make sure that their health and safety is a top priority issue for their health and their safety.

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Ms. ADAMS. Mr. Speaker, I thank the gentlewoman for yielding and for her leadership. I thank, as well, the Chair of the Congressional Black Caucus for getting us together tonight.

Mr. Speaker, I rise today as the founder and co-chair of the Black Maternal Health Caucus.

I want to take this time to speak briefly about the impact of COVID–19 on the Black community, communities of color, and pregnant women.

For the past 8 months, our country has been battling this incredibly deadly virus. It is a national public health crisis unlike any we have experienced. And it has highlighted the existing racial health disparities that our communities were already facing.

The data does not lie. We know that people of color are experiencing significantly higher rates of infections and deaths compared to White individuals.

Black people are more than twice as likely to die from COVID–19 as White people, and the mortality rate for Native Americans is nearly two times that of White persons.

Researchers have also found that Black and Hispanic people are nearly three times as likely to contract COVID–19 and nearly two times as likely to die from COVID–19.

This month, a CDC morbidity and mortality weekly report found that pregnant women are at increased risk for severe illness from COVID–19.

Since January 22, more than 38,000 pregnant women have been diagnosed with COVID–19 in the United States, of which 51 have died.

The study found that pregnant women are more likely to be admitted to the intensive care unit, receive invasive ventilation, and are at increased risk of death compared to White, nonpregnant women.

But much remains unknown.

But what we do know is that before the pandemic Black and Brown mothers were already dying at alarming and unacceptable rates.

In particular, Black women from all walks of life were three and four times more likely to die from pregnancy-related complications than White women.

According to the CDC data, Latina women account for nearly 50 percent of COVID–19 cases among pregnant women.

And these numbers indicate the devastating effects of the pandemic on the minority community.

A recent study also showed that Black and Latina women in Philadelphia who are pregnant were five times more likely to be exposed to the new coronavirus than White pregnant women.

Physicians in Washington, DC, said that anecdotally they were also seeing similar patterns, according to an August report in the Washington Post.

As Congresswoman LEE and I have continued to say since the start of the pandemic, we are facing a crisis within a crisis. And that is why I have been working closely with healthcare providers, stakeholders, to provide a comprehensive plan for eliminating these racial health disparities, especially during the pandemic.

We must improve access to screening and treatment for women at risk for preterm birth;

Ensure that all women have access to high quality maternity care, no matter where they live;

And provide access to midwives or doulas that can advocate for families' needs throughout pregnancy, labor, and delivery.

This summer I introduced the COVID–19 Bias and Anti-Racism Training Act to provide grants for hospitals and healthcare providers for implicit bias training, particularly in light of COVID–19.

We all have our unconscious bias, and it is important for our healthcare providers to be more aware of those issues as they are providing care to patients during the pandemic.

We need to invest in programs that help families meet their basic needs, including nutrition assistance, housing assistance, and other social supports.

Last, but certainly not least, we must improve the quality of the data being collected and ensure diversity among stakeholders that serve on mortality review committees.

If we don't stand together to address these inequities, Black and Brown mothers, our families, our friends, and our communities will continue to suffer.

I hope this Congress will stand together to ensure that our communities, our mothers, our babies have the resources they need—not only to survive this pandemic, but to thrive and truly build back stronger.

Mr. Speaker, I thank the gentlewoman from California for her leadership.

Ms. LEE of California. Mr. Speaker, I thank Congresswoman ALMA ADAMS for that very clear statement and I thank her for outlining the interconnection and the intersection between systemic racism and the social determinants of healthcare and how they impact the underlying conditions and exacerbate it now as seen in COVID–19. I thank Congresswoman ADAMS again for her leadership.

Mr. Speaker, I yield to the gentlewoman from Pennsylvania (Ms. SCANLON), who certainly knows the serious and devastating impact of this COVID pandemic in her district. I visited her district and understand how close she is to her nonprofits and her community-based organizations who are doing phenomenal work.

Mr. Speaker, I thank Congresswoman SCANLON very much for being here.

Ms. SCANLON. Mr. Speaker, I thank the gentlewoman for arranging this Special Order hour.

I stand before you today frustrated by the lack of Federal relief as COVID–19 surges across the country. With each day that we don't have relief for families, businesses, our frontline workers, and the State and local governments that have borne the brunt of the pandemic response, its impact grows that much more disastrous—and disproportionately so for our communities of color.

More than a quarter of my constituents are Black, and we now know that Black individuals are almost three times as likely to become infected with COVID–19 as White individuals and twice as likely to die of the virus. So over the past 9 months my district has seen families and neighborhoods devastated by this virus.

My district is also home to our Nation's poorest and hungriest major city. When you live paycheck to paycheck, one missed shift or even missing an hour's worth of work forces families to make impossible decisions between putting food on the table or keeping a roof overhead, and it makes quarantining impossible.

For the most part these are not new challenges caused by COVID–19, these are challenges that have been plaguing our most marginalized communities and communities of color for decades. But the pandemic has exacerbated and laid bare these inequities for all who care enough to see. It is why we must provide relief to help our communities survive the pandemic and commit to closing the gaps preexisting the pandemic that have been holding families back for far too long.

Our families are in crisis. They need stimulus checks to pay their rent and mortgages. They need access to free testing to protect themselves and their families. They also need food and childcare and access to equitable education, housing, healthcare, and wages.

This pandemic has shown us there is a roadmap to improving the lives of millions of Americans, especially our communities of color, but we must have the courage to follow it.

Ms. LEE of California. Mr. Speaker, I thank Congresswoman SCANLON for joining us tonight with our Tri-Caucus and Congressional Black Caucus, because so many of the issues that you are talking about in your district as it relates to COVID and health disparities and the social determinants we all are dealing with in our districts, and so thank you for your leadership and for continuing to help us get this Heroes Act passed so that we can do some of the things that you laid out that our communities deserve.

Mr. Speaker, I include in the RECORD the following statements from the Leadership Conference on Civil and Human Rights, the National Indian Health Board, the Asian Health Services, and UnidosUS.

STATEMENT FOR THE RECORD: LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

On behalf of the Leadership Conference on Civil and Human Rights, I submit this testimony for the record.

No matter what we look like, where we live, or what is in our wallets, getting sick reminds us that at our core we are all the same. But we cannot ignore the pandemic's disproportionate and devastating impact on Black and Brown people, Native Americans, low-income people, people with disabilities, the elderly, women, and immigrant communities. Through health and education disparities, income inequality, discrimination in voting and housing, unequal treatment within the legal system, and the digital divide, communities of color have been routinely locked out and left behind—and sadly, as we have seen in increased hate violence and in far worse health outcomes for people of color, this pandemic is no different.

This pandemic calls for the enactment of policies and sufficient funding to protect low- and moderate-income people from economic disaster and to meet the urgent needs of the most vulnerable people in our nation. Communities that have already been marginalized by structural barriers to equal opportunities and who have low levels of wealth are particularly vulnerable during this current emergency. While many working people have been sidelined, many others are still providing essential services during the crisis—working at our grocery stores, delivering mail and packages, and providing care to vulnerable people—putting their lives at risk, often at reduced hours and wages, to keep our country running. The ongoing crisis has laid bare the structural racism and barriers to opportunity that are entrenched in our society, and our collective actions now must not worsen them.

STATEMENT FOR THE RECORD: NATIONAL INDIAN HEALTH BOARD

On behalf of the National Indian Health Board (NIHB) and the 574 sovereign Tribal Nations we serve, I submit this testimony for the record.

American Indian and Alaska Native (AI/AN) Tribal communities have been disproportionately impacted by the COVID–19 pandemic. No sector of Tribal economies or health systems have been spared from the devastation this crisis has unleashed. We are now, as of this writing, seven months in the throes of an unparalleled pandemic. While we may not have been able to prevent the outbreak of COVID–19, we absolutely could have mitigated the worst of its impacts—especially in Indian Country. But unfortunately, our Tribes are, once again, battling a catastrophic, unprecedented, once-in-a-lifetime disease without the necessary federal relief funds and resources to protect and preserve life.

Since June of this year alone, NIHB has submitted seventeen letters to Congress urging immediate action and passage of emergency stimulus funds for the Indian health system to better respond to COVID–19. We solemnly await congressional action. We have consistently urged long-term reauthorization of the Special Diabetes Program for Indians (SDPI), vital to Tribal efforts to mitigate the spread of COVID–19 by preventing, treating, and managing one of the strongest risk factors for a more serious COVID–19 illness: type II diabetes. We solemnly await congressional action. We have demanded that Congress work to fulfill Treaty obligations to Tribal Nations and Native people by ensuring congressional COVID–19 relief funds are on par with the recommendations outlined by Tribal leaders and health experts. We solemnly await congressional action. We have urged that burdensome administrative requirements for accessing federal grants and programs be eliminated to ensure expeditious delivery of relief resources. We solemnly await congressional action. We have urged that Congress not subject the Indian health system to a destabilizing continuing resolution (CR) as it continues to combat against an unparalleled pandemic; or to, at the least, attach emergency COVID–19 appropriations for IHS to the CR to mitigate the pain and disruption. Again, we solemnly await congressional action.

To be clear, we continue to appreciate the commitment and leadership of members of Congress in working to advance Tribal health priorities in response to COVID–19. But the Tribes require action from all of Congress on those commitments. On September 10, NIHB was joined by the National

Congress of American Indians and the National Council of Urban Indian Health in a letter to congressional leadership urging immediate action on the priorities listed below. These priorities have remained intact since early summer, as Indian Country continues to bear the brunt of this extraordinary crisis. In short, these priorities have not changed because the situation in Indian Country remains just as dire. Once again, we solemnly await congressional action.

TRIBAL COVID–19 PRIORITIES

Minimum $2 billion in emergency funds to IHS for immediate distribution to I/T/U system.

$1.7 billion to replenish lost 3rd party reimbursements across the I/T/U system.

Prioritize equitable distribution of a safe and effective COVID–19 vaccine across Indian Country, including a minimum 5 percent set-aside in vaccine funds for the I/T/U system.

Minimum $1 billion for water and sanitation systems across IHS and Tribal communities.

Long-term reauthorization (5 years), higher funding, and expansion of self-determination and self-governance for the Special Diabetes Program for Indians.

COVID–19 UPDATES

The last time NIHB appeared before this Subcommittee was June 10, 2020. Since that time, the number of AI/AN COVID–19 case infections reported by IHS have nearly quadrupled. Similarly, the Centers for Disease Control and Prevention (CDC) reported a roughly 22 percent increase in COVID–19 hospitalization rates among AI/ANs—increasing from a rate of 272 per 100,000 in mid-July to 347.7 per 100,000 as of September 12, 2020. Rates of death from COVID–19 among AI/ANs have more than doubled since the last time NIHB testified before the Subcommittee—from a rate of 36 per 100,000 on June 9 to 81.9 per 100,000 as of September 15.

In August, the Centers for Disease Control and Prevention (CDC) reported that across 23 states, cumulative incidence rates of lab-confirmed COVID–19 cases among AI/ANs are 3.5 times higher than for non-Hispanic Whites. Also, according to CDC, age-adjusted rates of COVID–19 hospitalization among AI/ANs from March 1, 2020, through August 22, 2020, were 4.7 times higher than for non-Hispanic Whites. Without sufficient additional congressional relief sent directly to I/T/U systems, these shocking upward trends will more than likely continue as COVID–19 restrictions are eased, schools and businesses reopen, and the potential threat of a more severe flu season coincides with this pandemic. State-specific data further demonstrate the vast inequities in COVID–19 deaths between AI/ANs and the general population. Below are a few examples of these state-specific disparities based on NIHB's analysis of state-specific data.

In Arizona, AI/ANs account for 5.5 percent of the population, but 13.4 percent of COVID–19 deaths.

In New Mexico, AI/ANs account for 10.7 percent of the population, but nearly 57 percent of COVID–19 deaths.

In Montana, AI/ANs account for 8.2 percent of the population, but 27 percent of COVID–19 deaths.

In South Dakota, AI/ANs account for 10.4 percent of the population, but nearly 23 percent of COVID–19 deaths.

In North Dakota, AI/ANs account for 6.5 percent of the population, but 13.3 percent of COVID–19 deaths.

In Mississippi, AI/ANs account for less than 1 percent of the population, but 3 percent of COVID–19 deaths.

Even more alarming is the lack of complete data on COVID–19 outcomes among AI/ANs. Available COVID–19 data already highlight significant disparities between AI/ANs and the general population; shockingly, true estimates of disease burden and death resulting from COVID–19 in Indian Country are likely much higher. In CDC's own August 2020 report on COVID–19 in Indian Country, the authors noted the following:

This analysis represents an underestimate of the actual COVID–19 incidence among AI/AN persons for several reasons. Reporting of detailed case data to CDC by states is known to be incomplete; therefore, this analysis was restricted to 23 states with more complete reporting of race and ethnicity. As a result, the analysis included only one half of reported laboratory-confirmed COVID–19 cases among AI/AN persons nationwide, and the examined states represent approximately one third of the national AI/AN population. In addition, AI/AN persons are commonly misclassified as non-AI/AN races and ethnicities in epidemiologic and administrative data sets, leading to an underestimation of AI/AN morbidity and mortality.

Indeed, there are multiple states that still have a significant percentage of COVID–19 cases missing critical demographic data. In California for instance, a whopping 31 percent of cases are still missing race and ethnicity. The State of New York has failed to report AI/AN data altogether—listing only Hispanic, Black, White, Asian, or Other on their COVID–19 data dashboards.

Meanwhile, the Special Diabetes Program for Indians (SDPI)—instrumental for COVID–19 response efforts in Indian Country because it is focused on prevention, treatment, and management of diabetes, one of the most significant risk factors for a more serious COVID–19 illness—has endured four short-term extensions since last September, placing immense and undue strain on program operations. Under the House-passed CR for FY 2021 H.R. 8337, SDPI is extended for a mere eleven days—its shortest reauthorization on record. A national survey of SDPI grantees conducted by NIHB found that nearly 1 in 5 Tribal SDPI grantees reported employee furloughs, including for healthcare providers, with 81 percent of SDPI furloughs directly linked to the economic impacts of COVID–19 in Tribal communities. Roughly 1 in 4 programs have reported delaying essential purchases of medical equipment to treat and monitor diabetes due to funding uncertainty, and nearly half of all programs are experiencing or anticipating cutbacks in the availability of diabetes program services—all under the backdrop of a pandemic that continues to overwhelm the Indian health system.

Now, with the inevitability of a continuing resolution (CR) through at least December 11, 2020—and the possibility of another CR thereafter—it is even more imperative that Congress provide emergency appropriations to better stabilize the Indian health system. This Subcommittee knows full well that IHS is the only federal healthcare system that is subject to government shutdowns and CRs. This Subcommittee is also acutely aware of the devastating impacts that endless CRs have had, and will continue to have, on the Indian health system. We commend Chair McCollum's leadership in introducing H.R. 1128 and Ranking Member Joyce's strong support for H.R. 1135—both of which would authorize advance appropriations for IHS and permanently insulate it from the volatility of the annual appropriations process. But in the interim, Congress must ensure a funding fix that protects and preserves life in Indian Country and delivers critical pandemic relief in recognition of federal Treaty obligations. If Congress fails to provide sufficient emergency appropriations for the Indian health system, a stopgap measure will force a healthcare system serving roughly 2.6 million AI/ANs to operate during a pandemic without an enacted budget or even adjustments for rising medical and non-medical inflation. In short, that is a recipe for even more disaster, death, and despair.

We patiently remind you that federal Treaty obligations for healthcare to Tribal Nations and AI/AN Peoples exist in perpetuity and must be fully honored, especially in light of the current pandemic and its unparalleled toll in Indian Country. While we appreciate the roughly $1 billion to IHS under the CARES Act and the $750 million testing set-aside under the Paycheck Protection Program and Health Care Enhancement Act; these investments have been necessary but woefully insufficient to stem the tide of the pandemic in Tribal communities.

We thank you for your continued commitment to Indian Country, and as always, stand ready to work with you in a bipartisan fashion to advance the health of all AI/AN people.

Sincerely,

NATIONAL INDIAN HEALTH BOARD.

STATEMENT FOR THE RECORD: ASIAN HEALTH SERVICES

On behalf of the One Nation Commission, Co-Chairs Sherry Hirota, CEO of Asian Health Services, and former Congressman Mike Honda, I submit this testimony for the record.

The information shared, is documented in the One Nation Commission 2020 Report: One Nation AAPIs Rising to Fight Dual Pandemics COVID–19 and Racism, which was delivered to every member of Congress and the Senate in October 2020.

The COVID–19 pandemic has hit communities of color, including AAPIs, the hardest. In the 13th Congressional District, Alameda County in California, AAPIs are the largest population subgroup, comprising a diverse and varied population, spanning every economic stratum; essential workers and corporate CEOs, Nobel Laureates and students on the broken side of the digital divide, researchers and doctors, janitors and food servers, and new immigrants all contributing to society in this time of crisis.

By the time COVID–19 was declared a global pandemic and national emergency, the Asian American and Pacific Islander (AAPI) Community had already gone underground. Fear of the virus was compounded by a sudden and virulent rise in hate and violence against Asians. Racist taunting by our country's top leader calling Covid–19 ''Kung Flu,'' and ''China Virus,'' used the pandemic and its economic destruction to scapegoat Asian Americans across the country. Congresswoman Lee's own staffer was called, ''COVID'' and pelted with rocks while riding his bike through Rock Creek Park in D.C. Despite calls from every sector of the AAPI Community for the president to retract his dangerous words, the hate speak continued. The result was a tsunami of attacks on Asian Americans.

As COVID–19 cases spiked around the country, AAPIs were not only blamed but appeared missing from the news coverage, data, and charts. The twenty-five-year-old health advocacy battle to ''disaggregate data'' reared its ugly head again and was now a matter of life and death. Lumping together information about ethnic and language groups obstructs effective epidemiology and care. In the big picture, the absence of data ensures invisibility for AAPIs as a whole, and each subpopulation within that designation. Missing are the number of AAPIs who have been tested, how many tested positive, how many are sick, or hospitalized, or have died. We must expand the frame—to ask, what is the impact of COVID–19 on AAPI communities? To fill the gap a self-organized

work group of nationally renowned AAPI researchers pulled data from multiple cities and states revealing higher death rates among Asian Americans who were Covid positive.

Nine months into the dual pandemic of COVID–19 and racism, the AAPI community is fighting back against being both blamed and ignored. The One Nation Commission is honored to join forces with Congresswoman Barbara Lee, Congresswoman Karen Bass, and the Congressional Black Caucus, Congressional Asian Pacific Islander American Caucus, and individuals and organizations to defeat COVID–19, bring back our communities stronger and healthier, combat hate crimes against AAPIs, and work in solidarity with the Black, Latinx and Indigenous People to fight systemic racism.

Hidden disparities undermine effective and just health policy and outcomes. COVID vaccine allocation, for example, based prioritization in part on inaccurate information of disparities and vulnerabilities. Recently the National Academy of Sciences released recommendations on vaccine allocation but did not name Asian Americans as a vulnerable group. This must be immediately rectified.

Critical to health, justice, equity, and the opportunity for our communities to emerge stronger than before from these dual pandemics:

(1) Mandate disaggregated data collection and reporting;

(2) Require linguistically and culturally competent outreach and care;

(3) Strengthen and resource the community health center and nonprofit safety net; and

(4) Reverse unfair and un-American anti-immigrant policies that endanger the public health and public good, including Public Charge.

Immediate next steps:

(1) Protecting and further investing in trusted community-based organizations to implement new programs and preserve proven programs,

COVID community testing,

COVID contact tracing,

Cultural and linguistic competency,

Addressing misinformation that creates fear and chilling effects (e.g., public charge rule change).

(2) Expanding beyond COVID–19 outcomes (cases and deaths) to understand full impacts

Anti-Asian hate crimes à physical and mental health,

Mental health,

Immigration status affecting access and utilization of services (e.g., public charge rule change),

Other social determinants of health (occupation/essential workers, living conditions, language barriers).

(3) Data disaggregation is paramount to identifying and addressing hidden disparities. Encourage immediate disaggregated data collection at the local levels—testing, cases, comorbidities, deaths,

Do not let the perfect be the enemy of the good: Reinforce disaggregated data reporting in public communications to create this paradigm shift, even with small numbers,

An example of hidden disparities: Filipinos having even more striking death rates. In the U.S., Filipino nurses make up 4 percent of workforce but nearly 31.5 percent of deaths among registered nurses.

STATEMENT FOR THE RECORD: UNIDOSUS

On behalf of UnidosUS, I submit this testimony for the record.

Communities of color are putting life and limb on the line every day to help our nation through the COVID–19 crisis yet continue to be overwhelmingly and disproportionately impacted by the dire health and economic repercussions of this pandemic.

These unprecedented and devastating times continue to expose the appalling and deeply unjust fault lines in our nation's health care system and labor force. Despite the fact that Latinos are overrepresented in ''essential'' occupations where they are most at risk of exposure to the coronavirus infection and are also bearing the brunt of the economic fallout from the pandemic, they have been consistently excluded from much needed COVID–19 relief legislation.

Any further delay in COVID–19 relief legislation will be particularly devastating to the health and well-being of our nation's 58 million Latinos, far too many of whom have been left out of the four coronavirus relief packages enacted so far. Failure to respond urgently to the human suffering we are witnessing is deeply objectionable and, from a public health and economic perspective, wholly indefensible.

Latinos have long suffered from health disparities—being more likely to develop chronic health conditions such as diabetes, heart disease, and obesity. Another disparity is emerging, Latinos are contracting and dying from COVID–19 disproportionately and are nearly three times more likely to die compared to non-Hispanic Whites.

These disparities are a result of multiple preexisting structural and societal factors, including a health care system that leaves coverage out of reach of millions of Latinos. Before the pandemic, more than 10 million Latinos (including 1.6 million Latino children) were uninsured, and preliminary data now show that the Latino uninsured rate increased over the course of 2020. Latinos have also long struggled with food insecurity and increased stressors and mental health issues, and the pandemic has only exacerbated these challenges.

Ms. LEE of California. Mr. Speaker, let me take a moment to thank all of our colleagues who joined us this evening laying out the pandemic upon pandemic upon pandemic in communities of color.

In all past public health crises one recurring lesson stands out: That is, success depends on the willingness of people to trust the health information that they are getting. We learned this from the HIV and AIDS pandemic, Ebola, H1N1, and now we are learning it again during COVID. So this is especially true for communities of color.

This year millions of Americans have taken to the streets to demand racial justice. This is because the system that exists today has failed them. We must acknowledge the centuries old racial and ethnic disparities, and intentionally build culturally and community-minded policies to move forward for a stronger and unified country.

We must act swiftly. The longer communities suffer from COVID–19, the greater the long-term impact and disparities. States project that their shortfall for 2021-fiscal year will be much deeper than the shortfalls faced in any year of the Great Recession.

Federal Reserve economists project that unemployment will be at 6.5 percent at the end of 2021. Of course, it is higher in communities of color. The Congressional Budget Office projects an even higher rate at 6.7 percent; again, for communities of color more than likely it is double that.

Our Nation's workforce is disproportionately composed of communities of color and some of the most marginalized communities and groups. Many are essential workers. These workers and their families are being put at greater risk during the coronavirus pandemic due to the conditions of their jobs and their socioeconomic realities and, mind you, the lack of Federal response. We must pass a COVID relief bill.

I am proud to stand before you joined by my colleagues because I know that this change is on the horizon. From the sidewalks to the ballot boxes, people are fully engaged and are courageously advocating to be heard. It is our job that every community is ensured coronavirus relief and that we negotiate what is needed, including funding to provide relief for every community and with community stakeholders.

Our bill, H.R. 8192, the COVID Community Care Act, does just that. We cannot afford to leave anyone behind.

Mr. Speaker, once again, I thank our Speaker; Chairwoman BASS, for sharing this CBC Special Order hour; and I thank our Tri-Caucus chairs, Congresswoman CHU and Representative CASTRO, Representatives HAALAND, DAVIDS, of course, Representative GARCÍA. And I thank all of our colleagues for being here tonight to really sound the alarm.

This is an emergency in the entire country. It is a deep and broad emergency pandemic as it relates to COVID–19, and we need relief right away.

Mr. Speaker, I yield back the balance of my time.

Ms. JOHNSON of Texas. Mr. Speaker, I rise today to speak on the impact of the coronavirus (COVID–19) pandemic on our communities of color across this nation. This virus has deeply impacted every segment of our society, but the harms that have befallen certain populations have been disproportionate and devastating.

For our Black, Latino, Indigenous, Asian, and immigrant families, COVID–19 has exacerbated longstanding inequities in our health care and economic systems, and our communities of color have been burdened with higher rates of comorbidities, more barriers in accessing medical care, and worse health outcomes due to this virus. This has been devastating to observe, as many of these same communities have also been dealing with significant economic turmoil in these recent months.

Never has our society faced a challenge such as this. These are truly unprecedented times, and it merits our relentless efforts to lessen the damages of this pandemic, which is expected to worsen during this upcoming winter season. It is our responsibility as members of this chamber to prevent the imminent disparate harms of COVID–19 on communities of color. We must also address the systematic issues of structural racism in our society, which affects the health and economic wellbeing of our families.

Everyday, our nation sees the need for further action to combat this public

health crisis. I urge my colleagues to join me in supporting additional federal assistance to fight this pandemic and protecting our communities of color.

Mr. CARSON of Indiana. Mr. Speaker, I rise today in support of the Tri-Caucus' Special Order to highlight the disproportionate impact of COVID–19 on communities of color. Our nation is currently overwhelmed by unprecedented numbers of COVID–19 cases, hospitalizations and deaths. After more than eight months of suffering, the COVID–19 pandemic continues to ravage our communities, creating incalculable pain, massive economic disruption, and immense strain on our public health system. As of this moment, more than 246,000 Americans have lost their lives from this deadly disease. More than eleven million have been infected, and nearly 70,000 are currently hospitalized with severe cases of COVID–19. While all Americans are suffering from this pandemic, communities of color are experiencing acute and disproportionate pain.

From the beginning of this pandemic, it was clear that the phrase ''when white America catches a cold, Black America gets pneumonia'' would be particularly true with COVID–19's devastating consequences. In fact, the COVID–19 pandemic disproportionately harms Black and Brown communities with dramatically unequal infection rates, hospitalizations, and deaths. Specifically, Black people are three times more likely to become infected with COVID–19 than whites. Moreover, Black people die from COVID–19 at around twice the rate of white people. These aren't just statistics. They represent our friends, neighbors, and loved ones. They are people like my cousin who died from COVID–19 earlier this year, and so many others who are no longer with us.

Like past disease outbreaks and natural disasters, the COVID–19 pandemic lays bare the consequences of systemic injustices suffered by communities of color. Institutional racism, compounded by environmental and economic injustices, have resulted in severe health disparities for communities of color which make the COVID–19 pandemic so uniquely devastating. Despite the disproportionate harm the COVID–19 pandemic has caused among communities of color, many states still do not provide transparency regarding racial and ethnic demographic data for COVID–19 cases and deaths. For example, in my state of Indiana, the State only provides an aggregate breakdown of the racial and ethnic demographics for cases and deaths during the entire pandemic. This results in a profoundly incomplete picture of the disproportionate sickness, death, fear and tragedy this virus is inflicting on communities of color.

As Congress considers much-needed, additional measures to combat COVID–19 and provide relief for businesses, hospitals and workers, one thing is clear: Communities of color must receive substantial relief and support that matches the devastation they've suffered from this pandemic. In addition, states and public health departments must provide updated and daily demographic information, including a racial and ethnic breakdown, for the daily numbers of COVID–19 cases and deaths. This data transparency is essential to fully understand how the pandemic is affecting different communities and how we can best respond. With this data, we can better target our COVID–19 relief funds and support to ensure that communities of color get all the help we need to weather the storm of this pandemic and combat the underlying inequities in our health care system that this pandemic has exacerbated.

I am committed to work with my colleagues on both sides of the aisle to act now and to act boldly to implement a national plan that will save lives from this terrible disease.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ADERHOLT (at the request of Mr. MCCARTHY) for today and the balance of the week on account of quarantining as precautionary measure as recommended by the Office of Attending Physician.

CERTIFICATION SUBMITTED PURSUANT TO SECTION 5(a) OF HOUSE RESOLUTION 965, 116TH CONGRESS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC, November 10, 2020.

Hon. NANCY PELOSI,
Speaker, of the House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: Pursuant to section 5(a) of House Resolution 965, following consultation with the Ranking Minority Member, I write to notify you that that operable and secure technology exists to conduct remote voting in the House of Representatives.

Sincerely,

ZOE LOFGREN,
Chairperson.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, November 16, 2020.

Hon. NANCY PELOSI,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: Section 202(d) of the Congressional Accountability Act (CAA), 2 U.S.C. 1312(d), requires the Board of Directors of the Office of Congressional Workplace Rights (''the Board'') to issue regulations implementing Section 202 of the CAA relating to sections 101 through 105 of the Family and Medical Leave Act of 1993 (''FMLA''), 29 U.S.C. 2611 through 2615, made applicable to the legislative branch by the CAA. 2 U.S.C. 1312(a)(1).

Section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting ''such notice to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal.''

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the Speaker of the House of Representatives. I request that this notice be published in the House section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Susan Tsui Grundmann, Executive Director of the Office of Congressional Workplace Rights, Room LA–200, 110 Second Street, S.E., Washington, D.C. 20540–1999; 202–724–9250.

Sincerely,

BARBARA CHILDS WALLACE,
Chair of the Board of Directors,
Office of Congressional Workplace Rights.

Attachment.

NOTICE OF PROPOSED RULEMAKING FROM THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

MODIFICATIONS TO THE RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA), NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. 1312, CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background:

The purpose of this Notice is to propose modifications to the existing legislative branch FMLA substantive regulations under section 202 of the CAA (2 U.S.C. 1302 et seq.), which applies the rights and protections of sections 101 through 105 of the FMLA to covered employees. On December 20, 2019, Congress enacted the Federal Employee Paid Leave Act (subtitle A of title LXXVI of division F of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, December 20, 2019) (FEPLA). FEPLA amended the FMLA to allow most civilian Federal employees, including eligible employees in the legislative branch, to substitute up to 12 weeks of paid parental leave (PPL) for unpaid FMLA leave granted in connection with the birth of an employee's son or daughter or for the placement of a son or daughter with an employee for adoption or foster care. These modifications are necessary in order to bring existing legislative branch FMLA regulations (issued April 19, 1996) in line with these recent statutory changes.

What is the authority under the CAA for these proposed substantive regulations?

Section 202(a) of the CAA provides that the rights and protections established by sections 101 through 105 of the FMLA (29 U.S.C. 2611–2615) shall apply to covered employees in the legislative branch. Section 202(d)(1) and (2) of the CAA require that the Office of Congressional Workplace Rights Board of Directors (the Board), pursuant to section 304 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in the subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The modifications to the regulations proposed by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued.

Are there currently FMLA regulations in effect?

Yes. On January 22, 1996, the OCWR Board adopted and submitted for publication in the Congressional Record the original FMLA final regulations implementing section 202 of the CAA, which applies certain rights and protections of the FMLA. On April 15, 1996, pursuant to section 304(c) of the CAA, the House and the Senate passed resolutions approving the final regulations. Specifically,

the Senate passed S. Res. 242, providing for approval of the final regulations applicable to the Senate and the employees of the Senate; the House passed H. Res. 400 providing for approval of the final regulations applicable to the House and the employees of the House; and the House and the Senate passed S. Con. Res. 51, providing for approval of the final regulations applicable to employing offices and employees other than those offices and employees of the House and the Senate. After the Senate and the House passed these resolutions, the OCWR Board formally issued the FMLA regulations on April 19, 1996.

Note: On June 22, 2016, the Board adopted and submitted for publication in the Congressional Record additional amendments to its substantive regulations regarding the FMLA. 162 Cong. Rec. H4128–H4168, S4475–S4516 (daily ed. June 22, 2016). The 2016 amendments provide needed clarity on certain aspects of the FMLA. First, they add the military leave provisions of the FMLA, enacted under the National Defense Authorization Acts for Fiscal Years 2008 and 2010, Pub. L. 110–181, Div. A, Title V 585(a)(2), (3)(A)–(D) and Pub. L. 111–84, Div. A, Title V 565(a)(1)(B) and (4), which extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a service member's deployment. They also define those deployments covered under these provisions, extend FMLA military caregiver leave for family members of current service members to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty, and extend FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses. Second, the amendments set forth the revised definition of ''spouse'' under the FMLA in light of the Department of Labor's February 25, 2015 Final Rule on the definition of spouse, and the United States Supreme Court's decision in *Obergefell, et al., v. Hodges*, 135 S. Ct. 2584 (2015), which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. Because Congress has not acted on the Board's request for approval of these amendments, the Board will resubmit them for congressional approval when it submits its request for approval of its FEPLA amendments to its substantive FMLA regulations.

What does the FMLA provide?

In general, the FMLA provides eligible employees the right to take a total of 12 workweeks of unpaid leave during any 12–month period for specified family and medical reasons and for specified circumstances relating to a family member's military service. Employing offices in the legislative branch covered by FMLA provisions of the CAA must provide unpaid leave to eligible employees: (1) for the birth of a son or daughter and to care for the newborn son or daughter; or (2) for placement with the employee of a son or daughter for adoption or foster care; (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition; (4) because of a serious health condition that makes the employee unable to perform the functions of the employee's job; (5) because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status; and (6) to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.

How do the FEPLA amendments affect the FMLA as applied to the legislative branch?

The FEPLA amendments to the FMLA include provisions expressly applicable to the legislative branch that both: (1) change the eligibility rules for employees to take protected leave for births or placements under the FMLA; and (2) permit employees to substitute PPL and other paid accrued leave for unpaid FMLA leave for such births or placements. The FEPLA amendments are summarized below.

For purposes of FMLA leave with respect to any birth or placement, all covered employees in the legislative branch are eligible for job-protected leave under the FMLA immediately upon commencement of employment. ''Covered employee'' means any employee of: (1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Congressional Workplace Rights; (9) the Office of Technology Assessment; (10) the Library of Congress; (11) the Stennis Center for Public Service; (12) the China Review Commission; (13) the Congressional Executive China Commission; or (14) the Helsinki Commission. *See* 2 U.S.C. 1301(a)(3).

Generally, FMLA leave is unpaid leave. However, under certain circumstances, the FEPLA amendments to the FMLA, as made applicable by the CAA, permit an eligible employee to choose to substitute PPL and accrued paid leave (such as paid annual, vacation, personal, family, medical, or sick leave) for unpaid FMLA leave. The term ''substitute'' means that paid leave will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay during the period of otherwise unpaid FMLA leave. For leave taken for a birth or placement, an employee may elect to substitute for unpaid FMLA leave—(1) up to 12 workweeks of PPL in connection with the occurrence of a birth or placement; and (2) any additional paid annual, vacation, personal, family, medical, or sick leave provided by the employing office to such employee. Paid parental leave may be used only ''in connection with the birth or placement involved.'' *See* 2 U.S.C. 1312(d)(2)(A).

By law, unpaid FMLA leave is generally limited to a total of 12 weeks in any 12-month period. Accordingly, any use of unpaid FMLA leave for a purpose other than birth or placement may reduce an employee's ability to substitute PPL for a birth or placement. Thus, for example, if an employee has used 3 weeks of unpaid FMLA leave before the birth or placement, that employee's entitlement to 12 weeks of PPL may be reduced to 9 weeks.

Paid parental leave may be used no later than the end of the 12-month period beginning on the date of the birth or placement involved. There are no carryover provisions for unused PPL. An employee may not be paid for unused or expired PPL. Paid parental leave may not be considered annual leave for purposes of making a lump-sum payment for annual leave or for any other purpose.

FEPLA expressly provides that legislative branch employees using parental leave under the FMLA are not subject to the limitations that apply in the executive branch whereby employees may be required to agree in writing to work for the executive branch agency for at least 12 weeks after returning from leave. FEPLA also expressly provides that PPL applies to covered employees in the legislative branch without regard to the limitations that may apply in the executive branch, state and local governments, and private sector, whereby an employer may recover the premiums for maintaining coverage under a group health plan if the employee fails to return from PPL.

When are the Paid Parental Leave provisions of FEPLA effective?

FEPLA provides that the amendments to the CAA concerning PPL are not effective with respect to any birth or placement for adoption or foster care occurring before October 1, 2020. Thus, by law, PPL will be available to covered employees only in connection with a birth or placement that occurs on or after October 1, 2020.

How does FEPLA address active duty service in the National Guard or Reserves?

Effective December 20, 2019, FEPLA amended the general eligibility provisions of the FMLA (as applied by the CAA) to provide that, for purposes of determining whether a covered employee has been employed by any employing office for at least 12 months and for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, any service on active duty (as defined in 29 U.S.C. 2611(14)) by a member of the National Guard or Reserves shall be counted as time during which such employee has been employed by an employing office.

Why are these changes to the FMLA regulations necessary?

The CAA requires that the FMLA regulations applicable to the legislative branch and promulgated by the OCWR be the same as substantive regulations promulgated by the Secretary of Labor to implement FMLA title I, except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under the CAA. 2 U.S.C. 1312(e). FMLA title I covers employees of most private sector employers, state and local governments, and certain quasi-governmental entities, such as the U.S. Postal Service. These employees are governed by Department of Labor regulations at 29 C.F.R. 601 and part 825. The Secretary of Labor will not be promulgating FEPLA regulations because FEPLA does not extend PPL to private sector employees or other employees directly covered by FMLA title I. The Board has determined that these circumstances constitute good cause for modification of its substantive FMLA regulations in order to effectively implement FEPLA's rights and protections to Federal civilian employees in the legislative branch.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for proposing and approving substantive regulations provides that:

(1) the Board of Directors proposes substantive regulations and publishes a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopts regulations and transmits notice of such action (together with the regulations and a recommendation regarding the method for congressional approval of the regulations) to the Speaker of the House and President Pro Tempore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) there be final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384.

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedures as enumerated above and as required by statute. This Notice of Proposed Rulemaking is step (1) of the outline set forth above. The Board will review and respond to any comments received under step (2) of the outline above, and make any changes necessary to ensure that the regulations fully implement section 202 of the CAA and reflect the practices and policies particular to the legislative branch.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate and other employing offices?

No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees. *See* 2 U.S.C. 1312(e)(2).

Are these proposed regulations also recommended by the OCWR's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), these proposed regulations are also recommended by the Executive Director, the Deputy Executive Director for the Senate and the Deputy Executive Director for the House of Representatives.

Are these proposed substantive regulations available to persons with disabilities in an alternate format?

In addition to being posted on the OCWR's website (www.ocwr.gov), this Notice is also available in alternative formats. Requests for this Notice in an alternative format should be made to the Office of Congressional Workplace Rights, at 202–724–9250 (voice).

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the OCWR's proposed regulations set forth in this Notice are invited for a period of thirty (30) days following the date of the appearance of this Notice in the Congressional Record.

How do I submit comments?

Submission of comments must be made in writing to the Executive Director, Office of Congressional Workplace Rights, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided via e-mail to: Alexander Ruvinsky, Alexander.Ruvinsky@ocwr.gov. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission.

Am I allowed to view copies of comments submitted by others?

Yes. Copies of submitted comments will be available for review on the OCWR's public website at www.ocwr.gov.

Summary:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of 13 federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 202 of the CAA applies to employees covered by the CAA, the rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2611–2615. The above provisions of section 202 became effective on January 1, 1997. 2 U.S.C. 1312. The Board of Directors of the Office of Congressional Workplace Rights (OCWR) is now publishing proposed amended regulations to implement section 202 of the CAA, 2 U.S.C. 1301–1438, as applied to covered employees of the House of Representatives, the Senate, and certain congressional instrumentalities listed below.

The purpose of these amended regulations is to implement section 202 of the CAA. In this Notice of Proposed Rulemaking the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and certain congressional instrumentalities. Accordingly:

(1) *Senate*. It is proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the OCWR's Deputy Executive Director for the Senate.

(2) *House of Representatives*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the OCWR's Deputy Executive Director for the House of Representatives.

(3) *Certain congressional instrumentalities*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Congressional Workplace Rights; the Office of Technology Assessment; the Library of Congress; the Stennis Center for Public Service; the China Review Commission; the Congressional Executive China Commission; and the Helsinki Commission; and this proposal regarding these congressional instrumentalities is recommended by the OCWR Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

Section-by-Section Discussion of Proposed Changes to the FMLA Regulations

The following is a section-by-section discussion of the proposed revisions to the Board's substantive FMLA regulations that it adopted and submitted for publication in the Congressional Record on June 22, 2016. 162 Cong. Rec. H4128–H4168, S4475–4516 (daily ed. June 22, 2016). As noted above, because Congress has not acted on the Board's request for approval of its 2016 amendments, the Board will resubmit them for congressional approval when it submits its request for approval of its FEPLA amendments to its substantive FMLA regulations. Because the Board's 2016 amendments were adopted pursuant to the procedures for proposing and approving substantive regulations in section 304 of the CAA, 2 U.S.C. 1384, including providing a comment period of 60 days after publication of the proposed amendments in the Congressional Record, the Board is not soliciting additional comments on those adopted amendments, except as indicated below.

The Board's proposed amendments to its substantive FMLA regulations will provide more detail regarding the implementation of the statutory provisions summarized above. In order to implement FEPLA, the Board proposes to amend part 825 of its substantive regulations (Family and Medical Leave) by amending subparts A–C and adding a new subpart E (Paid Parental Leave). The Board is making changes in subparts A–C to establish how the FMLA provisions will now operate, since the appropriate substitution of paid parental leave for unpaid FMLA leave hinges on the standards for granting unpaid FMLA leave. Below we provide a section-by-section explanation of the proposed changes in subparts A–C and the proposed provisions in the new subpart E.

Part 825—Family and Medical Leave

825.1 Purpose and Scope.

The Board proposes to amend 825.1 to insert a new paragraph (c), which describes the FEPLA amendments to the FMLA provisions of the CAA; states that the Board is amending its substantive FMLA regulations pursuant to the CAA rulemaking procedures set forth at sections 202(d) and 304 of the CAA; and further states that because the Secretary of Labor has not promulgated FEPLA regulations under FMLA title I, the Board has determined that these circumstances constitute good cause for modification of its substantive FMLA regulations in order to effectively implement FEPLA's rights and protections to Federal civilian employees in the legislative branch.

SUBPART A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

825.100 The Family and Medical Leave Act.

The Board proposes to amend paragraph (b) of 825.100 to clarify that the authority of an employing office, disbursing or other financial office to recover the premiums for maintaining coverage under a group health plan is subject to 825.504, which provides that paid parental leave applies to covered employees in the legislative branch without regard to such limitations.

825.102 Definitions.

The Board proposes to amend 825.102 to: (1) add definitions of *birth*, *family and medical leave*, and *placement*; and (2) amend the definitions of *covered employee* and *eligible employee*. The new definition of *placement* clarifies that it refers to a *new* placement. Thus, the term excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent. This definition of *placement* is consistent with Department of Labor FMLA guidance at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2005_08_26_1A_FMLA.pdf. If a foster child is later adopted, the placement has already occurred; there is no new placement with a family that would warrant another use of FMLA leave for the same child. The proposed definitions of *birth* and *placement* clarify that the terms may refer to an anticipated birth or placement. This aligns with 825.120 and 825.121, which provide that unpaid FMLA leave based on birth or placement of a child may be used prior to the actual birth or placement. The revised definition of *family and medical leave* includes new language addressing leave to care for covered servicemembers.

The amended definition of *covered employee* includes any employee of the Library of Congress; the Stennis Center for Public Service; the China Review Commission; the Congressional Executive China Commission; or the Helsinki Commission. The amended definition of *eligible employee* adds a new paragraph (1), which clarifies that for purposes of births or placements, an eligible employee is any covered employee as defined in the CAA, irrespective of whether the employee meets the length of service requirements in paragraph (2). Paragraph (3) of that definition,

which concerns eligibility for unpaid FMLA leave for reasons other than births or placements, is amended to clarify that, for purposes of determining whether a covered employee has been employed by any employing office for at least 12 months and for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, any service on active duty by a member of the National Guard or Reserves shall be counted as time during which such employee has been employed by an employing office.

825.104 Covered employing offices.

The Board proposes to amend 825.104 to: (1) designate paragraphs (1)–(4) as paragraphs (a)–(d); and (2) amend paragraph (d) to include the Library of Congress; the Stennis Center for Public Service; the China Review Commission; the Congressional Executive China Commission; or the Helsinki Commission.

825.110 Eligible employee, general rule.
825.111 Eligible employee, birth or placement.

The Board proposes to: (1) amend 825.110 to create a general rule for eligibility for unpaid FMLA leave for reasons other than births or placements; and (2) add a new 825.111 to create a rule for eligibility for unpaid FMLA leave for births or placements. The amendments to 825.110 clarify that its provisions are subject to the exceptions set forth at 825.111; and they provide that for purposes of determining whether a covered employee has been employed by any employing office for at least 12 months and for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, any service on active duty by a member of the National Guard or Reserves shall be counted as time during which such employee has been employed by an employing office.

The new 825.111 clarifies that, for purposes of births or placements, an eligible employee is any covered employee as defined in the CAA, irrespective of whether the employee meets the length or hours of service requirements in the general rule at 825.110.

825.112 Qualifying reasons for leave, general rule.

The Board proposes to amend subparagraph (a)(2) of 825.112 to clarify that employing offices are required to grant leave to eligible employees for the placement of a son or daughter with the employee for adoption or foster care, including the care of such son or daughter.

825.120 Leave for pregnancy or birth.

The Board proposes to amend subparagraph (a)(1) of 825.120 to clarify that FMLA leave for pregnancy or the birth of a son or daughter includes leave for the care of the newborn child. The Board proposes to amend subparagraph (a)(2) to add a sentence stating that leave for a birth or placement must be concluded by the expiration of the 12-month period beginning on the date of birth. Finally, the Board proposes to add a new subparagraph (7) stating that leave taken because of a birth includes leave necessary for an employee who is the birth mother to recover from giving birth, or for an employee who is the other parent to care for the birth mother during her recovery period, even if the employee is not involved in caring for the son or daughter during portions of that recovery period.

825.121 Leave for adoption or foster care.

The Board proposes to amend paragraph (a) of 825.121 to clarify that FMLA leave for placement with the employee of a son or daughter for adoption or foster care includes leave to care for the newly placed child.

SUBPART B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT

825.207 Substitution of paid leave, generally.
825.208 Substitution of paid leave—special rule for paid parental leave.

The Board proposes to: (1) amend 825.207 to create a general rule for substitution of paid leave for unpaid FMLA leave for reasons other than births or placements; and (2) add a new 825.208 to create a rule for substitution of paid leave for unpaid FMLA leave for births or placements. The amendments to 825.207 clarify that its provisions are subject to the exceptions set forth at 825.208.

The new paid leave substitution rules, which concern birth events and the placement of a child for adoption or foster care, are now addressed in a new 825.208. 825.208 provides that paid parental leave may be substituted for unpaid FMLA leave based on a birth or placement event as provided in the new subpart E.

Paragraph (b) of 825.208 addresses the possibility of substituting paid annual, vacation, personal, family, medical, or sick leave for unpaid FMLA leave based on a birth or placement. If an employee has not already (before birth or placement) begun a 12-month FMLA period (as established under 825.200), the employee could have no more than 12 weeks of unpaid FMLA leave between the date of birth or placement and the date that is 12 months after the date of birth or placement. Thus, using the 12 weeks of paid parental leave would completely replace any unpaid FMLA leave for birth or placement purposes, and there would be no opportunity to substitute paid annual, vacation, personal, family, medical, or sick leave. However, if an employee has a 12-month FMLA period in progress at the time of birth or placement, that 12-month FMLA period would end after birth or placement but before the date that is 12 months after the birth or placement. When that 12-month FMLA period ends, the employee will be eligible to start a new 12-month FMLA period, and the employee will be able to use up to 12 weeks of unpaid FMLA leave during that period. If that new FMLA period begins during the 12-month period following the birth or placement, it would be possible for the employee to use more than 12 weeks of unpaid FMLA leave for birth or placement purposes before the date that is 12 months after the date of birth or placement. In that case, a maximum of 12 weeks of paid parental leave may be substituted for unpaid FMLA leave taken in either FMLA period, since FEPLA provides for only 12 weeks of paid parental leave in connection with any given birth or placement. However, an employee would be able to substitute available paid annual, vacation, personal, family, medical, or sick leave, as appropriate, for any remaining unpaid FMLA leave.

Paragraph (c) of 825.208 sets forth various general rules related to an employee's entitlement to substitute paid leave. An employee is entitled to elect whether or not to substitute paid leave for unpaid FMLA leave, subject to applicable law and regulation. Thus, an employing office may not deny an employee's election to make a substitution permitted under this section. Nor may an employing office require an employee to substitute paid leave for FMLA leave without pay. Subparagraph (c)(4) adds a statement, not previously included in the FMLA regulations, indicating that an employee may request to use annual leave or sick leave without invoking family and medical leave, and, in that case, the agency exercises its normal authority with respect to approving or disapproving the timing of when the leave may be used. In general, an employing office has the right to deny the scheduling of an employee's leave requested outside of an FMLA request, but if the employee's scheduling of FMLA leave is approved, the employee's request to substitute annual leave for FMLA leave without pay may not be denied.

Paragraph (d) of 825.208 addresses an employee's obligation to generally give advance notice of the employee's election to substitute paid leave for unpaid FMLA leave. The general rule is that retroactive substitution is not allowed. However, subparagraphs (d)(2) through (d)(4) set forth limited exceptions. Paragraph (d)(4) addresses the retroactive substitution of paid parental leave and links to 825.505, which allows retroactive substitution only if an employee is physically or mentally incapacitated.

825.213 Employing office recovery of benefit costs.

The Board proposes to amend paragraph (a) of 825.213 to clarify that the authority of an employing office, disbursing or other financial office to recover the premiums for maintaining coverage under a group health plan is subject to 825.504, which provides that paid parental leave applies to covered employees in the legislative branch without regard to such limitations.

SUBPART C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.300 Employing office notice requirements.

The Board proposes to amend subparagraph (c)(iii) of 825.300 to add a requirement that the employing office's rights and responsibilities notice to the employee include, where applicable, notice of the employee's right to substitute paid parental leave for unpaid FMLA leave for a birth or placement.

The Board also proposes to amend subparagraph (d)(6) of 825.300 to clarify that the employing office must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement, and, if applicable, the employee's paid parental leave entitlement.

SUBPART D—ADMINISTRATIVE PROCESS

825.400 Administrative process, general rules.

The Board proposes to amend 825.400 to omit obsolete references to the OCWR's administrative dispute resolution procedures, which were significantly amended by the CAA of 1995 Reform Act of 2018, Pub. L. No. 115–397. The revised 825.400 refers to the Board's revised Procedural Rules, which apply to matters filed with the OCWR on or after June 19, 2019.

SUBPART E—PAID PARENTAL LEAVE

The Board proposes to amend part 825 of its substantive FMLA regulations to add a new subpart E.

825.500 Purpose, applicability, and employing office responsibilities.

Paragraph (a) of 825.500 addresses the purpose of the new subpart E.

Subparagraph (b)(1) of 825.500 provides that subpart E applies to employees to whom subpart B (Employee Leave Entitlements under the Family and Medical Leave Act, as made Applicable By The Congressional Accountability Act) applies. Subparagraph (b)(2) provides that the OCWR will defer to supplemental regulations on PPL issued by the Library of Congress pursuant to the authority in 29 USC 2617, provided those supplemental regulations are consistent with the regulations herein. Subparagraph (b)(3) clarifies that the PPL provisions of the FMLA apply to births or placements occurring on or after October 1, 2020.

Paragraph (c) of 825.500 clarifies that the head of an employing office is responsible for the proper administration of subpart E, including the responsibility of informing employees of their entitlements and obligations.

825.501 Definitions.

Paragraph (a) of 825.501 provides that the definitions in the FMLA regulations in subpart B are applicable in subpart E, except that, to the extent any definitions of terms have been further revised in paragraph (b), the provisions of that paragraph shall apply for purposes of subpart E.

Paragraph (b) provides definitions of additional terms used in subpart E—*employing office, child, paid parental leave*, and *unpaid FMLA leave*. The definition of *paid parental leave* makes clear that paid parental leave is a type of leave that is used when an employee has a ''parental'' role. A parent who does not maintain a continuing parental role with respect to a newly born or placed child would not be eligible for paid parental leave once the parental role has ended.

825.502 Leave entitlement.

825.502 sets forth various rules related to the entitlement to paid parental leave. Paragraph (a) provides that an employee may elect to substitute available paid parental leave for any unpaid FMLA leave granted based on the occurrence of a birth or placement.

Paragraph (b) of 825.502 states that the paid parental leave that is available for substitution is 12 administrative workweeks in connection with the birth or placement involved. In other words, an employee can receive up to 12 administrative workweeks of paid parental leave for each birth or placement event. Paid parental leave continues to be available only as long as the employee has a continuing parental role with respect to the newly born or placed child. Because paid parental leave is substituting for unpaid FMLA leave, use of paid parental leave is constrained by the use of unpaid FMLA leave, which is limited to 12 weeks in any 12-month FMLA period (as established under 825.200). Paragraph (b) explains that, with respect to FMLA leave under 825.200(a) that is limited to a total of 12 weeks in any 12-month period, any use of unpaid FMLA leave for a purpose other than birth or placement may affect an employee's ability to use the full 12 weeks of paid parental leave during the 12-month period following a birth or placement. In other words, an employee will be able to use the full amount of paid parental leave only to the extent that there are 12 weeks of available unpaid FMLA leave granted based on birth or placement. For example, if an employee uses 6 consecutive weeks of unpaid FMLA leave based on the employee's own serious health condition, the employee could only use 6 weeks of unpaid FMLA leave based on birth or placement (for which paid parental leave could be substituted) during the 12-month period that began when the employee commenced using unpaid FMLA leave based on the employee's serious health condition.

We note that the 12-week entitlement to paid parental leave under FEPLA is applied on a per-employee basis without regard to movements between different employing offices during the 12-month period following a birth or placement. As long as the employee is covered by the FMLA provisions of the CAA while serving in different employing offices, the employee would be limited to a total of 12 weeks of paid parental leave per qualifying birth or placement. However, if an employee has received paid parental leave benefits in connection with a given birth or placement under a different paid parental leave authority applicable to Federal employees (e.g., the paid parental leave benefit for executive branch employees in 5 USC 6382) and moves to a position covered by the title II paid parental leave authority during the 12-month period following birth or placement, there is no basis for limiting or offsetting title II paid parental leave benefits based on receipt of leave benefits under another authority.

Subparagraph (c)(1) of 825.502 provides that an employing office may not require an employee to use annual leave or sick leave for a birth or placement before allowing the employee to use paid parental leave. Subparagraph (c)(1) also clarifies that an employee may request to use annual leave or sick leave without invoking unpaid FMLA leave for a birth or placement under subpart B. As discussed earlier in connection with 825.208, if a request to use paid annual, vacation, personal, family, medical, or sick leave without invoking FMLA leave is granted by the employing office, an employee can preserve entitlement to use unpaid FMLA leave at another time and to substitute paid parental leave for that unpaid FMLA leave. If the request is granted, the employing office exercises its normal authority with respect to approving or disapproving the timing of when the leave may be used. Subparagraph (c)(2) clarifies that an employee with a seasonal work schedule may not use PPL during the off-season period designated by the employing office—the period during which the employee is scheduled to be released from work and placed in nonpay status. In other words, paid parental leave cannot be used as a basis for extending a seasonal employee's work season.

Paragraph (d) of 825.502 provides that, if an employee has any unused balance of paid parental leave remaining at the end of the 12-month period following the birth or placement involved, the entitlement to the unused leave expires at that time. The unused leave may not be rolled over for use in a future period, nor may a payment be made to the employee for unused paid parental leave that has expired. Paid parental leave may not be considered annual leave for purposes of making a lump-sum payment for annual leave or for any other purpose.

825.503 Pay during leave.

Paragraph (a) of 825.503 provides that the pay an employee receives when using paid parental leave shall be the same pay the employee would receive if the employee were using annual leave. In other words, agency payroll systems will apply the same rules they apply in determining what pay continues during annual leave.

Paragraph (b) provides that the pay received during paid parental leave may not include Sunday premium pay. This is consistent with the statutory bar in section 624 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277, div. A, §101(h), October 21, 1998).

825.504 Work obligation.

Paragraph (a) of 825.504 clarifies that under FEPLA, legislative branch employees using PPL are not subject to the limitations that apply in the executive branch whereby employees may be required to agree in writing to work for the executive branch agency for at least 12 weeks after returning from leave.

Paragraph (b) clarifies that under FEPLA, PPL applies to covered employees in the legislative branch without regard to the limitations that may apply in the executive branch, state and local governments, and private sector, whereby an employer may recover the premiums for maintaining coverage under a group health plan if the employee fails to return from PPL.

825.505 Cases of employee incapacitation.

825.505 provides that the application of paid parental leave in cases where an employee is incapacitated at the time the use of paid parental leave would be permissible. Paragraph (a) allows the employee to retroactively use paid parental leave. This provision allows for the retroactive election to use paid parental leave under the FMLA if the employing office determines that an otherwise eligible employee who could have made an election during a past period to substitute paid parental leave was physically or mentally incapable of doing so during that past period. Upon this determination, the employing office must allow the employee, when no longer incapacitated, to make an election to substitute paid parental leave for applicable unpaid FMLA leave. The employee must make this election within 5 workdays of returning to work.

Paragraph (b) allows an employee's personal representative to elect, on behalf of the employee, to substitute paid parental leave for applicable unpaid FMLA leave (i.e., approved FMLA leave based on birth or placement of a child). If an employing office determines that an otherwise eligible employee is physically or mentally incapable of making an election to substitute paid parental leave, the employing office must, upon the request of the employee's personal representative, provide conditional approval of substitution of paid parental leave for applicable unpaid FMLA leave on a prospective basis.

825.506 Cases of multiple children born or placed in the same time period.

825.506 addresses the application of paid parental leave in cases in which an employee has multiple children newly born or placed in the same time period. Paragraph (a) provides that if an employee has multiple children born or placed on the same day, that event will be treated as a single event triggering a single entitlement of up to 12 weeks of paid parental leave during the 12-month period following the event.

Paragraph (b) provides that, if an employee has one or more births or placements during the 12-month period following the date of an earlier birth or placement, each subsequent birth or placement event will result in a 12-month period commencing on the date of birth or placement with its own 12-week limit. Any use of paid parental leave during a given 12-month period will count toward that period's 12-week limit. Thus, when such 12-month periods overlap, any use of paid parental leave during the overlap will count toward each affected 12-month period's 12-week limit. For example, if an employee has a child born on June 1 and another child placed for adoption on October 1 of the same year, each event would generate entitlement to substitute up to 12 weeks of paid parental leave during the separate 12-month periods beginning on the date of the birth and on the date of the placement. Those two 12-month periods would be June 1–May 31 and October 1–September 30, respectively. The overlap period for these two 12-month periods would be October 1–May 31. If the employee substitutes paid parental leave during that overlap period, that amount of paid parental leave would count towards both the 12-week limit associated with the birth event and the 12-week limit associated with the placement event.

825.507 Records and reports.

825.507 provides that an employing office must maintain an accurate record of an employee's usage of paid parental leave.

SUBPART G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

825.702 Interaction with anti-discrimination laws, as applied by section 201 of the CAA.

The Board proposes to amend paragraph (f) of 825.702 to delete the parenthetical phrase ''(and, therefore, not an ''eligible'' employee under FMLA, as made applicable by the CAA).'' It remains the case that under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities, as stated in paragraph (f). However, as a result of FEPLA, an employee employed for less than 12 months is now an ''eligible'' employee for purposes of unpaid FMLA leave for births and placements. *See* 825.111.

REGULATIONS PROPOSED BY THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE EXTENDING RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL ACT OF 1996, AS AMENDED

Part 825—Family and Medical Leave

825.1 Purpose and scope.

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611–2615) to covered employees. (The term ''covered employee'' is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). *See* 825.102 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors (Board) of the Office of Congressional Workplace Rights, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA].''

(c) On December 20, 2019, Congress enacted the Federal Employee Paid Leave Act (subtitle A of title LXXVI of division F of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, December 20, 2019) (FEPLA). FEPLA amended the FMLA to allow most civilian Federal employees, including eligible employees in the legislative branch, to substitute up to 12 weeks of paid parental leave (PPL) for unpaid FMLA leave granted in connection with the birth of an employee's son or daughter or for the placement of a son or daughter with an employee for adoption or foster care.

In order to implement FEPLA in the legislative branch, the Board is amending its substantive FMLA regulations pursuant to the CAA rulemaking procedures set forth at sections 202(d) and 304 of the CAA. The Secretary of Labor has not promulgated FEPLA regulations, however, because FEPLA does not extend PPL to private sector employees or other employees directly covered by FMLA title I. The Board has determined that these circumstances constitute good cause for modification of its substantive FMLA regulations in order to effectively implement FEPLA's rights and protections to Federal civilian employees in the legislative branch.

(d) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

(e) Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to recommend to Congress a method of approval for these regulations. As the Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, it therefore recommends that the adopted regulations be approved by concurrent resolution of the Congress.

SUBPART A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT

825.100 The Family and Medical Leave Act.

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows eligible employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months (*See* 825.200(b)) because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). In addition, eligible employees of a covered employing office may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. Subject to 825.504, the employing office or a disbursing or other financial office may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office generally has a right to advance notice from the employee. In addition, the employing office may require an employee to submit certification to substantiate that the leave is due to the serious health condition of the employee or the employee's covered family member, due to the serious injury or illness of a covered servicemember, or because of a qualifying exigency. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (*See* 825.312 and 825.313)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

825.101 Purpose of the FMLA.

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employing offices, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employing offices as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

825.102 Definitions.

For purposes of this part:

ADA means the Americans with Disabilities Act (42 U.S.C. 12101 et seq., as amended), as made applicable by the Congressional Accountability Act.

Birth means the delivery of a child. When the term ''birth'' under this subpart is used in connection with the use of leave before birth, it refers to an anticipated birth.

CAA means the Congressional Accountability Act of 1995 (Pub. Law 104–1, 109 Stat. 3, 2 U.S.C. 1301 et seq., as amended).

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99–272, title X, section 10002; 100 Stat. 227; 29 U.S.C. 1161–1168).

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. *See also* 825.126(a)(2).

Continuing treatment by a health care provider means any one of the following:

(1) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical

therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(iii) The requirement in paragraphs (i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) The term ''extenuating circumstances'' in paragraph (i) means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. *See also* 825.115(a)(5).

(2) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. 825.120.

(3) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B). *See also* 825.126(a).

Covered employee as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Congressional Workplace Rights; (9) the Library of Congress; (10) the Stennis Center for Public Service; (11) the Office of Technology Assessment; (12) the China Review Commission; (13) the Congressional Executive China Commission; or (14) the Helsinki Commission.

Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

Eligible employee as defined in the CAA, means:

(1) For purposes of leave under subparagraphs (a)(1) or (a)(2) of section 85.112 [or subsections (A) or (B) of section 102(a)(1) of the FMLA], a covered employee as defined in the CAA.

(2) For purposes of leave under subparagraphs (a)(3)–(6) of section 825.112 [or subsections (C)–(F) of section 102(a)(1) of the FMLA], a covered employee who has been employed for a total of at least 12 months in any employing office on the date on which any FMLA leave is to commence, except that an employing office need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, unless:

(i) The break in service is occasioned by the fulfillment of the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., covered service obligation (the period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by any employing office, but this section does not provide any greater entitlement to the employee than would be available under the USERRA, as made applicable by the CAA); or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (e.g., for purposes of the employee furthering his or her education or for childrearing purposes); and

(3) Who, on the date on which any FMLA leave is to commence, has met the hours of service requirement by having been employed for at least 1,250 hours of service with an employing office during the previous 12-month period, *except that*:

(i) An employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining whether the employee met the hours of service requirement (accordingly, a person reemployed following absence from work due to or necessitated by USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12-month period to meet the hours of service requirement);

(ii) To determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations; and

(iii) Any service on active duty (as defined in 29 U.S.C. 2611(14)) by a covered employee who is a member of the National Guard or Reserves shall be counted as time during which such employee has been employed in an employing office for purposes of paragraph (3) of this section.

Employ means to suffer or permit to work.

Employee means an employee as defined by the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity. See the definition of *Teacher* in this section.

Employee of the Capitol Police means any member or officer of the Capitol Police.

Employee of the House of Representatives means an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under the definition of covered employee above.

Employee of the Office of the Architect of the Capitol means any employee of the Office of the Architect of the Capitol or the Botanic Garden.

Employee of the Senate means any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs

(3) through (9) under the definition of covered employee above.

Employing Office, as defined by the CAA, means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Congressional Workplace Rights, the Library of Congress, the Stennis Center for Public Service, the Office of Technology Assessment, the China Review Commission, the Congressional Executive China Commission, and the Helsinki Commission.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. *See also* 825.209(a).

Family and medical leave means an employee's entitlement to 12 workweeks (or 26 workweeks in the case of leave under 825.127) of unpaid leave for certain family and medical needs, as prescribed under the FMLA, as made applicable by the CAA.

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.), as made applicable by the CAA.

FMLA means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq., as amended), as made applicable by the CAA.

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) The FMLA, as made applicable by the CAA, defines health care provider as:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Department of Labor to be capable of providing health care services.

(2) Others ''capable of providing health care services'' include only:

(i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(ii) Nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(iii) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(iv) Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(3) The phrase ''authorized to practice in the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See the definition of *Teacher* in this section.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Invitational travel authorization (ITA) or *Invitational travel order* (ITO) mean orders issued by the Armed Forces to a family member to join an injured or ill servicemember at his or her bedside. *See also* 825.310(e).

Key employee means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite. *See also* 825.217.

Mental disability: See the definition of *Physical or mental disability* in this section.

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993. *See also* 825.127.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See also* 825.127(d)(3).

Office of Congressional Workplace Rights means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. *See also* 825.127(b)(1).

Parent means a biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents ''in law.''

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See also* 825.127(d)(2).

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., as amended, provide guidance for these terms.

Placement means a new placement of a son or daughter with an employee for adoption or foster care. For example, this excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent. When the term ''placement'' is used under this subpart in connection with the use of leave before placement has occurred, it refers to a planned or anticipated placement.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and

Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation. *See also* 825.126(a)(2)(i).

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or continuing treatment by a health care provider as defined in 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 825.113 are met.

Serious injury or illness means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* 825.127(c).

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See also* 825.127(d)(1).

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See also* 825.126(a)(5).

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

825.103 [Reserved]

825.104 Covered employing offices.

The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term employing office means:

(a) The personal office of a Member of the House of Representatives or of a Senator;

(b) A committee of the House of Representatives or the Senate or a joint committee;

(c) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(d) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Congressional Workplace Rights, the Library of Congress, the Stennis Center for Public Service, the China Review Commission, the Congressional Executive China Commission, the Helsinki Commission, and the Office of Technology Assessment.

825.105 [Reserved].

825.106 Joint employer coverage.

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when:

(1) An employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) Two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

825.107 [Reserved]

825.108 [Reserved]

825.109 [Reserved]

825.110 Eligible employee, general rule.

(a) Subject to the exceptions provided in 825.111, an eligible employee is a covered employee of an employing office who:

(1) Has been employed by any employing office for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12–month period immediately preceding the commencement of the leave.

(b) Any service on active duty (as defined in 29 U.S.C. 2611(14)) by a covered employee who is a member of the National Guard or Reserves shall be counted as time during which such employee has been employed in

an employing office for purposes of paragraph (a)(1) and (2) of this section.

(c) The 12 months an employee must have been employed by any employing office need not be consecutive months, provided:

(1) Subject to the exceptions provided in paragraph (c)(2) of this section, employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by any employing office for at least 12 months.

(2) Employment periods preceding a break in service of more than seven years must be counted in determining whether the employee has been employed by any employing office for at least 12 months where:

(i) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by any employing office. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (e.g., for purposes of the employee furthering his or her education or for childrearing purposes).

(3) If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months.

(4) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employing office (e.g., Federal Employees' Compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as at least 12 months, 52 weeks is deemed to be equal to 12 months.

(5) Nothing in this section prevents employing offices from considering employment prior to a continuous break in service of more than seven years when determining whether an employee has met the 12-month employment requirement. However, if an employing office chooses to recognize such prior employment, the employing office must do so uniformly, with respect to all employees with similar breaks in service.

(d)(1) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached.

(2) Except as provided in paragraph (c)(3) of this section, whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA), as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices as defined by the CAA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked under the FLSA's principles, as made applicable by the CAA (2 U.S.C. 1313), may be used.

(3) An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12 month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(4) In the event an employing office does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from the overtime requirements of the FLSA, as made applicable by the CAA and its regulations, the employing office has the burden of showing that the employee has not worked the requisite hours. An employing office must be able to clearly demonstrate, for example, that full time teachers (*See* 825.102 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not covered or eligible for FMLA leave.

(e) The determination of whether an employee meets the hours of service requirement for any employing office and has been employed by any employing office for a total of at least 12 months, must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be FMLA leave. See 825.300(b) for rules governing the content of the eligibility notice given to employees.

(f) If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, so long as the prior employing office properly designated the leave as FMLA under these regulations or other applicable requirements.

825.111 Eligible employee, birth or placement.

For purposes of leave under subparagraphs (a)(1) or (a)(2) of 825.112 [or subsections (A) or (B) of section 102(a)(1) of the FMLA]:

(a) an eligible employee is a covered employee of an employing office; and

(b) the eligibility requirements of section 825.110 shall not apply. *See also* 825.120–21.

825.112 Qualifying reasons for leave, general rule.

(a) Circumstances qualifying for leave. Employing offices covered by FMLA as made applicable by the CAA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child (*See* 825.120);

(2) For the placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter (*See* 825.121);

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (*See* 825.113 and 825.122);

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job (*See* 825.113 and 825.123);

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status) (*See* 825.122 and 825.126); and

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (*See* 825.122 and 825.127).

(b) *Equal Application*. The right to take leave under FMLA, as made applicable by the CAA, applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) *Active employee*. In situations where the employing office/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

825.113 Serious health condition.

(a) For purposes of FMLA, *serious health condition entitling an employee to FMLA leave* means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or continuing treatment by a health care provider as defined in 825.115.

(b) The term incapacity means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

(c) The term treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

825.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 825.113(b), or any subsequent treatment in connection with such inpatient care.

825.115 Continuing treatment.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in paragraphs (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term *extenuating circumstances* in paragraph (a)(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.

(b) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. See also 825.120.

(c) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(d) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(e) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under paragraphs (b) or (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

825.116 [Reserved]
825.117 [Reserved]
825.118 [Reserved]

825.119 Leave for treatment of substance abuse.

(a) Substance abuse may be a serious health condition if the conditions of 825.113 through 825.115 are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

825.120 Leave for pregnancy or birth.

(a) *General rules.* Eligible employees are entitled to FMLA leave for pregnancy or birth of a son or daughter and to care for the newborn child as follows:

(1) Both parents are entitled to FMLA leave for the birth of their child.

(2) Both parents are entitled to FMLA leave to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. Leave for a birth must be concluded within this 12-month period. If the employing office permits bonding leave to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, both parents are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newborn child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. *See* 825.124.

(6) Both parents are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122 (d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(7) Leave taken because of the birth of a son or daughter of the employee includes leave necessary for an employee who is the birth mother to recover from giving birth, or for an employee who is the other parent to care for the birth mother during her recovery period, even if the employee is not involved in caring for the son or daughter during portions of that recovery period.

(b) *Intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employing office agrees. For example, an employing office and employee may agree to a part-time work schedule after the birth. If the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced

leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child. *See* 825.202–825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.121 for rules governing leave for adoption or foster care. *See* 825.601 for special rules applicable to instructional employees of schools.

825.121 Leave for adoption or foster care.

(a) *General rules.* Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care and to care for the newly placed child as follows as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement. If the employing office permits leave for adoption or foster care to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, the employee is entitled to FMLA leave even if the adopted or foster child does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee's son or daughter or to care for the child after placement, for the birth of the employee's son or daughter or to care for the child after birth, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newly placed child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Use of intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employing office agrees. Thus, for example, the employing office and employee may agree to a part-time work schedule after the placement for bonding purposes. If the employing office agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child. See 825.202—825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.120 for general rules governing leave for pregnancy and birth of a child. *See* 825.601 for special rules applicable to instructional employees of schools.

825.122 Definitions of covered service member, spouse, parent, son or daughter, next of kin of a covered service member, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered service member, and parent of a covered service member.

(a) *Covered service member* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

(b) *Spouse* means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(c) *Parent.* Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section. This term does not include parents ''in law.''

(d) *Son or daughter.* For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

(1) *Incapable of self-care* means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) *Physical or mental disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., provide guidance for these terms.

(3) Persons who are ''in loco parentis'' include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(e) *Next of kin* of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See* 825.127(d)(3).

(f) *Adoption* means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. *See* 825.121 for rules governing leave for adoption.

(g) *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. *See* 825.121 for rules governing leave for foster care.

(h) Son or daughter on covered active duty or call to covered active duty status means

the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See* 825.126(a)(5).

(i) Son or daughter of a covered servicemember means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See* 825.127(d)(1).

(j) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See* 825.127(d)(2).

(k) *Documenting relationships.* For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The employing office is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

825.123 Unable to perform the functions of the position.

(a) *Definition.* An employee is unable to perform the functions of the position where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended and made applicable by Section 201(a) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) *Statement of functions.* An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the employing office can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of the FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier. *See* 825.306.

825.124 Needed to care for a family member or covered servicemember.

(a) The medical certification provision that an employee is needed to care for a family member or covered servicemember encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party. *See* 825.202–825.205 for rules governing the use of intermittent or reduced schedule leave.

825.125 Definition of health care provider.

(a) The FMLA, as made applicable by the CAA, defines *health care provider* as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Office of Congressional Workplace Rights to be capable of providing health care services.

(3) In making a determination referred to in subparagraph (a)(2), and absent good cause shown to do otherwise, the Office of Congressional Workplace Rights will follow any determination made by the Department of Labor (under section 101(6)(B) of FMLA (29 U.S.C. 2611(6)(B))) that a person is capable of providing health care services, provided the determination by the Department of Labor was not made at the request of a person who was then a covered employee.

(b) Others capable of providing health care services include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

825.126 Leave because of a qualifying exigency.

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

(1) *Covered active duty or call to covered active duty status* in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) *Deployment of the member with the Armed Forces to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of

the United States pursuant to one of the provisions of law identified in paragraph (a)(2) of this section.

(5) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* (i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.* (i) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(ii) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care.* For purposes of leave for parental care listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employing office and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period described in paragraph (e)(1) of this section may extend beyond the five-year period.

(i) For an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable prior to the effective date of this Final Rule, the period between October 28, 2009 and the effective date of this Final Rule shall not count towards the determination of the five-year period for covered veteran status.

(c) A serious injury or illness means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

(2) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(d) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(1) Son or daughter of a covered servicemember means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(2) Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.''

(3) Next of kin of a covered servicemember means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employing office is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to 825.122(k).

(e) An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

(1) The single 12-month period described in paragraph (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employing office to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in paragraph (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described in paragraph (e) of this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employing office is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section, the employing office must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employing offices may retroactively designate leave as leave to care for a covered servicemember pursuant to 825.301(d).

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

SUBPART B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT

825.200 Amount of Leave.

(a) Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status (or has been notified of an impending call or order to covered active duty).

(b) An employing office is permitted to choose any one of the following methods for determining the 12–month period in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(1) The calendar year;

(2) Any fixed 12-month leave year, such as a fiscal year or a year starting on an employee's anniversary date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave under paragraph (a) begins; or

(4) A ''rolling'' 12-month period measured backward from the date an employee uses any FMLA leave as described in paragraph (a).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12

weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the ''rolling'' 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employing offices using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of the leave would be FMLA-protected.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section for the leave entitlements described in paragraph (a) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days' notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved]

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period for the leave entitlements described in paragraph (a), the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An employing office shall determine the single 12-month period in which the 26 weeks of leave entitlement described in this paragraph occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins. *See* 825.127(e)(1).

(g) During the single 12-month period described in paragraph (f), an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *See* 825.127(e)(3).

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employing office's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in 825.205.

(i)(1) If employing offices jointly employ an employee, and if they designate a primary employing office pursuant to 825.106(c), the primary employing office may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided that the alternative chosen is applied consistently and uniformly to all employees of the primary employing office including the jointly employed employee.

(2) If employing offices fail to designate a primary employing office pursuant to 825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employing office of the employee for purposes of the application of paragraphs (d) and (e) of this section.

825.201 Leave to care for a parent.

(a) *General rule*. An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by the FMLA. *See* 825.122(c) for definition of parent.

(b) *Same employing office limitation*. Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. *See* also 825.127(d).

825.202 Intermittent leave or reduced leave schedule.

(a) *Definition*. FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) *Medical necessity*. For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the certification of a serious injury or illness, if required by the employing office, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. *See* 825.306, 825.310. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition or of a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she does not receive treatment by a health care provider. *See* 825.113 and 825.127.

(c) *Birth or placement*. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule

only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. *See* 825.204 for rules governing transfer to an alternative position that better accommodates intermittent leave. *See* also 825.120 (pregnancy) and 825.121 (adoption and foster care).

(d) *Qualifying exigency.* Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

825.203 Scheduling of intermittent or reduced schedule leave.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. *See* 825.202. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations.

825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave.

(a) *Transfer or reassignment.* If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *See* 825.601 for special rules applicable to instructional employees of schools.

(b) *Compliance.* Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and Federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced scheduled leave.

(c) *Equivalent pay and benefits.* The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) *Employing office limitations.* An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited acts provisions of the FMLA, as made applicable by the CAA.

(e) *Reinstatement of employee.* When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he or she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

(a) *Minimum increment.* (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employing office must account for the leave using an increment no greater than the shortest period of time that the employing office uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employing office may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. *See also* 825.205(a)(2) for the physical impossibility exception, and 825.600 and 825.601 for special rules applicable to employees of schools. If an employing office uses different increments to account for different types of leave, the employing office must account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employing office accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. If an employing office accounts for use of leave in varying increments at different times of the day or shift, the employing office may also account for FMLA leave in varying increments, provided that the increment used for FMLA leave is no greater than the smallest increment used for any other type of leave during the period in which the FMLA leave is taken. If an employing office accounts for other forms of leave use in increments greater than one hour, the employing office must account for FMLA leave use in increments no greater than one hour. An employing office may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employing office that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employing office wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employing office is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave. *See* 825.214.

(b) *Calculation of leave.* (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth (1/5) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight hour days works four-hour days under a reduced leave schedule, the employee would use one half (1/2) week of FMLA leave each week. Where an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employing office may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of 12 workweeks of leave, or 26 workweeks in the case of military caregiver leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the use of leave. *See also* 825.601 and 825.602 on special rules for schools.

(2) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(3) If an employee's schedule varies from week to week to such an extent that an employing office is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours worked over the 12 months prior to

the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(c) *Overtime.* If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48–hour workweek, or one-sixth (1/6) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

825.206 Interaction with the FLSA, as made applicable by the Congressional Accountability Act.

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, and as exempt under regulations issued by the Board, at part 541, providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the salary basis requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of covered employing offices who are eligible for FMLA leave, and to leave which qualifies as FMLA leave. Hourly or other deductions which are not in accordance with the Board's FLSA regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's FLSA regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, e.g., leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition or serious injury or illness; or for leave which is more generous than provided by the FMLA, as made applicable by the CAA. Employing offices may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, as made applicable by the CAA, or may take such deductions, treating the employee as an hourly employee and pay overtime premium pay for hours worked over 40 in a workweek.

825.207 Substitution of paid leave, generally.

(a) Generally, FMLA leave is unpaid leave. However, under the circumstances described in this section, the FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute accrued paid leave for unpaid FMLA leave. Subject to 825.208, if an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employing office, and accrued pursuant to established policies of the employing office, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employing office's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employing office's normal leave policy. When an employee chooses, or an employing office requires, substitution of accrued paid leave, the employing office must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. *See* 825.300(c). If an employee does not comply with the additional requirements in an employing office's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. Employing offices may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

(b) If neither the employee nor the employing office elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above in 825.112 through 825.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(e) The FMLA, as made applicable by the CAA, provides that a serious health condition may result from injury to the employee on or off the job. If the employing office designates the leave as FMLA leave in accordance with 825.300(d), the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the provision for substitution of the employee's accrued paid leave is not applicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree, to have paid leave supplement workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds of an employee's salary. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a light duty job. As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. *See also* 825.210(f), 825.216(d), 825.220(d), 825.307(a) and 825.702 (d)(1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(f) Under the FLSA, as made applicable by the CAA, an employing office always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

825.208 Substitution of paid leave—special rule for paid parental leave.

(a) This section provides the basis for determining the periods of unpaid leave for which paid parental leave may be substituted under subpart E of this part, which must be read with this subpart to establish eligibility. This section addresses substitution of accrued paid leave for unpaid FMLA leave:

(1) For birth of a son or daughter, and to care for the newborn child (*See* 825.120);

(2) For the placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter (*See* 825.121);

(b) *Leave connected to birth or placement.* (1) For unpaid family and medical leave taken under 825.120 or 825.121 (which correspond to 29 U.S.C. 2612(A) or (B), respectively) an employee may elect to substitute—

(i) Up to 12 workweeks of paid parental leave in connection with the occurrence of a birth or placement, as provided in subpart E of this part; and

(ii) Any additional paid annual, vacation, personal, family, medical, or sick leave provided by the employing office to such employee.

(c) *Employee entitlement to substitute.* (1) An employee is entitled substitute paid leave for leave without pay under this subpart, as permitted in this section.

(2) An employing office may not require that an employee first use all or any portion of the leave described in paragraph (b)(1)(ii) of this section before being allowed to use the leave described in paragraph (b)(1)(i) of this section.

(3) An employing office may not require an employee to substitute paid leave for leave without pay.

(4) An employee may request to use annual leave or sick leave without invoking family and medical leave, and, in that case, the employing office exercises its normal authority with respect to approving or disapproving the timing of when the leave may be used.

(d) *Notification by employee and retroactive substitution.* (1) An employee must notify the employing office of the employee's election to substitute paid leave for leave without pay under this section prior to the date such paid leave commences (i.e., no retroactive substitution), except as provided in paragraphs (d)(2) through (d)(4) of this section.

(2) An employee may retroactively substitute annual leave or sick leave for leave without pay granted under this subpart covering a past period of time, if the substitution is made in conjunction with the retroactive granting of leave without pay.

(3) An employee may retroactively substitute transferred (donated) annual leave for leave without pay granted under this subpart.

(4) An employee may retroactively substitute paid parental leave for applicable leave without pay granted under this subpart, as provided in 825.505 and subject to the requirements governing paid parental leave in subpart E of this part. If the employee's leave without pay was not granted on a prospective basis under this subpart, the retroactive substitution of paid parental leave may not be made unless the leave without pay period has been retroactively designated as leave under this subpart.

825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of group health plan is set forth in 825.102. For purposes of FMLA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. *See* 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for key employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12–month period.

(g) If a key employee (*See* 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

825.210 Employee payment of group health benefit premiums.

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment (i.e., prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. *See* 825. 300(c).

(e) An employing office may not require more of an employee using unpaid FMLA leave than the employing office requires of other employees on leave without pay.

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking FMLA leave. *See* 825.207(e).

825.211 Maintenance of benefits under multi-employer health plans.

(a) A multi-employer health plan is a plan to which more than one employing office is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employing offices.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employing offices party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use banked hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in 825.209(f) of this part, group health plan coverage must be maintained for an employee on FMLA leave until:

(1) The employee's FMLA leave entitlement is exhausted;

(2) The employing office can show that the employee would have been laid off and the employment relationship terminated; or

(3) The employee provides unequivocal notice of intent not to return to work.

825.212 Employee failure to pay health plan premium payments.

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a group health plan. *See* 825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. *See* 825.215(d)(1)(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employing office terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employing office may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

825.213 Employing office recovery of benefit costs.

(a) In addition to the circumstances discussed in 825.212(b), and subject to the exceptions provided in 825.504, an employing office may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a key employee who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employing office. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional forms developed for this purpose. *See* 825.306(b), 825.310(c)–(d) and Forms A, B, and F. If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable premiums as would be calculated under COBRA, excluding the two percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (e.g., unpaid wages, vacation pay, etc.), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

825.214 Employee right to reinstatement.

General Rule. On return from FMLA leave, an employee is entitled to be returned to the

same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. *See also* 825.106(e) for the obligations of employing offices that are joint employers.

825.215 Equivalent position.

(a) *Equivalent position.* An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) *Conditions to qualify.* If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent Pay.* (1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employing office's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or nondiscretionary, made to employees consistent with the provisions of paragraph (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

(d) *Equivalent benefits.* Benefits include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire work force, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. *See* 825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, 825.209 addresses health benefits.)

(e) *Equivalent terms and conditions of employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) *De minimis exception.* The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

825.216 Limitations on an employee's right to reinstatement.

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work for one employing office for a specific time period, and after that time period has ended, the work was assigned to another employing office, the successor employing office may be required to restore the employee if it is a successor employing office.

(b) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees (key employees, as defined in 825.217(c)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in 825.312.

(c) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers'

compensation, the employee has no right to restoration to another position under the FMLA. The employing office's obligations may, however, be governed by the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA. *See* 825.702.

(d) An employee who fraudulently obtains FMLA leave from an employing office is not protected by the job restoration or maintenance of health benefits provisions of the FMLA, as made applicable by the CAA.

(e) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA, as made applicable by the CAA, on this basis unless the FMLA leave was fraudulently obtained as in paragraph (d) of this section.

825.217 Key employee, general rule.

(a) A key employee is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term salaried means paid on a salary basis, within the meaning of the Board's FLSA regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313), regarding employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA.

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year- to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, e.g., benefits or prerequisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be key employees.

825.218 Substantial and grievous economic injury.

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a key employee threatens the economic viability of the employing office, that would constitute substantial and grievous economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute substantial and grievous economic injury.

(d) FMLA's substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA, as made applicable by the CAA. *See* also 825.702.

825.219 Rights of a key employee.

(a) An employing office that believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

825.220 Protection for employees who request leave or otherwise assert FMLA rights.

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA, as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA, as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA, as made applicable by the CAA. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employing office to avoid responsibilities under FMLA, for example:

(1) [Reserved]

(2) Changing the essential functions of the job in order to preclude the taking of leave; or

(3) Reducing hours available to work in order to avoid employee eligibility.

(c) The FMLA's prohibition against interference prohibits an employing office from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies. *See* 825.215.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot trade off the right to take FMLA leave against some other benefit offered by the employing office. Except for settlement agreements covered by 1414 and/or 1415 of the Congressional Accountability Act, this does not prevent the settlement or release of FMLA claims by employees based on past employing office conduct without the approval of the Office of Congressional Workplace Rights or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. *See* 825.702(d). An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

(e) Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA, or regulations.

SUBPART C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.300 Employing office notice requirements.

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA, as made applicable by the CAA, are available from the Office of Congressional Workplace Rights and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA, as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (c), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Congressional Workplace Rights to provide such guidance.

(b) *Eligibility notice.* (1) When an employee requests FMLA leave, or when the employing office acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employing office must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. See 825.110 for definition of an eligible employee. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. See 825.127(c) and 825.200(b). All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

(2) The eligibility notice must state whether the employee is eligible for FMLA leave as defined in 825.110. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employing office and the hours of service with the employing office during the 12-month period. Notification of eligibility may be oral or in writing; employing offices may use Form C to provide such notification to employees.

(3) If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (e.g., if the employee has not met the hours of service requirement in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the employing office must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

(c) *Rights and responsibilities notice.* (1) Employing offices shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided pursuant to paragraph (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying (*See* 825.300(c) and 825.301) and the applicable 12-month period for FMLA entitlement (*See* 825.127(c), 825.200(b), (f), and (g));

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of covered active duty or call to covered active duty status, and the consequences of failing to do so (*See* 825.305, 825.309, 825.310, 825.313);

(iii) If applicable, the employee's right to substitute paid parental leave for unpaid FMLA leave for a birth or placement (*See* 825.208) and the employee's right to substitute paid leave generally, whether the employing office will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave (*See* 825.207);

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (*See* 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) The employee's status as a key employee and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (*See* 825.218);

(vi) The employee's right to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave (*See* 825.214 and 825.604); and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (*See* 825.213, 825.504).

(2) The notice of rights and responsibilities may include other information—e.g., whether the employing office will require periodic reports of the employee's status and intent to return to work—but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employing office shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(5) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA, as made applicable under the CAA.

(6) A prototype notice of rights and responsibilities may be obtained in Form C, or from the Office of Congressional Workplace Rights. Employing offices may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) *Designation notice.* (1) The employing office is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employing office has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), the employing office must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employing office determines that the leave will not be designated as FMLA-qualifying (e.g., if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employing office must notify the employee of that determination. Subject to 825.208, if the employing office requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employing office has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employing office may provide the employee with the designation notice at that time.

(3) If the employing office will require the employee to present a fitness-for-duty certification to be restored to employment, the

employing office must provide notice of such requirement with the designation notice. If the employing office will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employing office must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. *See* 825.312. If the employing office's handbook or other written documents (if any) describing the employing office's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (e.g., by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation), the employing office is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is contained in Form D which may be obtained from the Office of Congressional Workplace Rights. If the leave is not designated as FMLA leave because it does not meet the requirements of the FMLA, as made applicable by the CAA, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement. The designation notice may be distributed electronically so long as it otherwise meets the requirements of this section and the employing office can demonstrate that the employee (who may already be on leave and who may not have access to employing office-provided computers) has access to the information electronically.

(5) If the information provided by the employing office to the employee in the designation notice changes (e.g., the employee exhausts the FMLA leave entitlement), the employing office shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employing office must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement and, if applicable, the employee's paid parental leave entitlement. If the amount of leave needed is known at the time the employing office designates the leave as FMLA-qualifying, the employing office must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employing office must provide notice of the amount of leave counted against the employee's FMLA leave entitlement and, if applicable, paid parental leave entitlement, upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement and, if applicable, paid parental leave entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) *Consequences of failing to provide notice.* Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). 825.301 Designation of FMLA leave.

(a) *Employing office responsibilities.* The employing office's decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the employing office has acquired knowledge that the leave is being taken for a FMLA-qualifying reason, the employing office must notify the employee as provided in 825.300(d).

(b) *Employee responsibilities.* An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in 825.302 or 825.303 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine whether the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employing office denies the employee's request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employing office is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) *Disputes.* If there is a dispute between an employing office and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(d) *Retroactive designation.* If an employing office does not designate leave as required by 825.300, the employing office may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by 825.300 provided that the employing office's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employing office and an employee can mutually agree that leave be retroactively designated as FMLA leave.

(e) *Remedies.* If an employing office's failure to timely designate leave in accordance with 825.300 causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). For example, if an employing office that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employing office's actions. However, if an employee took leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employing office's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously-ill son or daughter if the leave had been designated timely.

825.302 Employee notice requirements for foreseeable FMLA leave.

(a) *Timing of notice.* An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days' notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employing office for such information.

(b) As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in

the individual case. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

(c) *Content of notice.* An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), and that the requested leave is for one of the reasons listed in 825.126(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employing office has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. *See* 825.305. An employing office may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. See 825.309, 825.310. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employing office may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(d) Complying with the employing office policy. An employing office may require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employing office's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employing office's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA-protected leave may not be delayed or denied where the employing office's policy requires notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section.

(e) *Scheduling planned medical treatment.* When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. For example, if an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider. *See* 825.203 and 825.205.

(f) Intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition or a serious injury or illness. An employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. *See* 825.304.

825.303 Employee notice requirements for unforeseeable FMLA leave.

(a) *Timing of notice.* When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employing office as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employing office's usual and customary notice requirements applicable to such leave. *See* 825.303(c). Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employing office promptly after ensuring the child has used the inhaler.

(b) *Content of notice.* An employee shall provide sufficient information for an employing office to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), that the requested leave is for one of the reasons listed in 825.126(b), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the employing office has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in ''sick'' without providing more information will not be considered sufficient notice to trigger an employing office's obligations under the FMLA, as made applicable by the CAA. The employing office will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries office regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(c) *Complying with employing office policy.* When the need for leave is not foreseeable, an employee must comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved. If an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

825.304 Employee failure to provide notice.

(a) *Proper notice required.* In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Congressional Workplace Rights to the

employing office in a manner suitable for posting.

(b) *Foreseeable leave—30 days.* When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employing office may delay FMLA coverage until 30 days after the date the employee provides notice. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) *Foreseeable leave—less than 30 days.* When the need for FMLA leave is foreseeable fewer than 30 days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employing office two weeks' notice but instead only provided one week's notice, then the employing office may delay FMLA-protected leave for one week (thus, if the employing office elects to delay FMLA coverage and the employee nonetheless takes leave one week after providing the notice (i.e., a week before the two week notice period has been met) the leave will not be FMLA-protected).

(d) *Unforeseeable leave.* When the need for FMLA leave is unforeseeable and an employee fails to give notice in accordance with 825.303, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For example, if it would have been practicable for an employee to have given the employing office notice of the need for leave very soon after the need arises consistent with the employing office's policy, but instead the employee provided notice two days after the leave began, then the employing office may delay FMLA coverage of the leave by two days.

(e) *Waiver of notice.* An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements. If an employing office does not waive the employee's obligations under its internal leave rules, the employing office may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with 825.303(a).

825.305 Certification, general rule.

(a) *General.* An employing office may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employing office may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification, as described in 825.309 and 825.310, respectively. An employing office must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by 825.300(c). An employing office's oral request to an employee to furnish any subsequent certification is sufficient.

(b) *Timing.* In most cases, the employing office should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employing office within 15 calendar days after the employing office's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employing office provides more than 15 calendar days to return the requested certification.

(c) *Complete and sufficient certification.* The employee must provide a complete and sufficient certification to the employing office if required by the employing office in accordance with 825.306, 825.309, and 825.310. The employing office shall advise an employee whenever the employing office finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employing office receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employing office receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employing office must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employing office are not cured in the resubmitted certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. A certification that is not returned to the employing office is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) *Consequences.* At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employing office with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employing office to support the employee's FMLA request. This provision will apply in any case where an employing office requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness-for-duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient. *See* 825.306, 825.307, 825.308, and 825.312.

(e) *Annual medical certification.* Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year (as defined in 825.200), the employing office may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 825.307, including second and third opinions.

825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *Required information.* When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employing office may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (*See* 825.123(b));

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in 825.124, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, as described in 825.124 and 825.203(b), which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) The Office of Congressional Workplace Rights has developed two optional forms (Form A and Form B) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements, as made applicable by the CAA. (*See* Forms A and B.) Optional Form A is for use

when the employee's need for leave is due to the employee's own serious health condition. Optional Form B is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Forms A and B are modeled closely on Form WH–380E and Form WH–380F, as revised, which were developed by the Department of Labor (*See* 29 C.F.R. Part 825). The employing office may use the Office of Congressional Workplace Rights's forms, or Form WH–380E and Form WH–380F, as revised, or another form containing the same basic information; however, no information may be required beyond that specified in 825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employing office from following the applicable workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employing office may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employing office informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant to such policy or plan may be considered in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave. *See* 825.207(a).

(d) If an employee's serious health condition may also be a disability within the meaning of the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

(e) While an employee may choose to comply with the certification requirement by providing the employing office with an authorization, release, or waiver allowing the employing office to communicate directly with the health care provider of the employee or his or her covered family member, the employee may not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

(a) *Clarification and authentication.* If an employee submits a complete and sufficient certification signed by the health care provider, the employing office may not request additional information from the health care provider. However, the employing office may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employing office has given the employee an opportunity to cure any deficiencies as set forth in 825.305(c). To make such contact, the employing office must use a health care provider, a human resources professional, a leave administrator, or a management official. An employee's direct supervisor may not contact the employee's health care provider, unless the direct supervisor is also the only individual in the employing office designated to process FMLA requests and the direct supervisor receives specific authorization from the employee to contact the employee's health care provider. For purposes of these regulations, authentication means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.

Clarification means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employing offices may not ask health care providers for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, (*See* 45 CFR parts 160 and 164), which governs the privacy of individually-identifiable health information created or held by HIPAA-covered entities, must be satisfied when individually-identifiable health information of an employee is shared with an employing office by a HIPAA-covered health care provider. If an employee chooses not to provide the employing office with authorization allowing the employing office to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employing office may deny the taking of FMLA leave if the certification is unclear. *See* 825.305(d). It is the employee's responsibility to provide the employing office with a complete and sufficient certification and to clarify the certification if necessary.

(b) *Second Opinion.* (1) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA, as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) *Third opinion.* If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a third opinion in order to render a sufficient and complete third opinion.

(d) *Copies of opinions.* The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

(e) *Travel expenses.* If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable ''out of pocket'' travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) *Medical certification abroad.* In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employing office with a written translation of the certification upon request.

825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *30-day rule.* An employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) *More than 30 days*. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employing office must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employing office must wait 40 days before requesting a recertification. In all cases, an employing office may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employing office would be permitted to request recertification every six months in connection with an absence.

(c) *Less than 30 days*. An employing office may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employing office to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employing office to request a recertification more frequently than every 30 days; or

(3) The employing office receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employing office to request a recertification in less than 30 days.

(d) *Timing*. The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) *Content*. The employing office may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in 825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. *See* 825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employing office may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

825.309 Certification for leave taken because of a qualifying exigency.

(a) *Active Duty Orders*. The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member (See 825.126(a)), an employing office may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employing office once. A copy of new active duty orders or other documentation issued by the military may be required by the employing office if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member;

(b) *Required information*. An employing office may require that leave for any qualifying exigency specified in 825.126 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) The Office of Congressional Workplace Rights has developed an optional form (Form E) for employees' use in obtaining a certification that meets FMLA's certification requirements. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form E, or Form WH–384 (developed by the Department of Labor), or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section. (d) Verification. If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the employing office may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employing office may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employing office. An employing office also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested and the employee's permission is not required.

825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) *Required information from health care provider*. When leave is taken to care for a covered servicemember with a serious injury or illness, an employing office may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (''DOD'') health care provider;

(2) A United States Department of Veterans Affairs (''VA'') health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider; or

(5) Any health care provider as defined in 825.125.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator) or an authorized VA representative. An employing office may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(i) A DOD health care provider;

(ii) A VA health care provider;

(iii) A DOD TRICARE network authorized private health care provider;

(iv) A DOD non-network TRICARE authorized private health care provider; or

(v) A health care provider as defined in 825.125.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the

servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(i) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy;

(ii) In the case of a covered veteran, such medical facts must include:

(A) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(C) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(D) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in 825.124, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) Required information from employee and/or covered servicemember. In addition to the information that may be requested under 825.310(b), an employing office may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employing office of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces, the National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employing office may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employing office requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status. *See* 825.127(c)(2).

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) The Office of Congressional Workplace Rights has developed an optional form (Form F) for employees' use in obtaining certification that meets FMLA's certification requirements. (*See* Form F). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. Form F, or Form WH–385 (developed by the Department of Labor), or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employing office may seek authentication and/or clarification of the certification under 825.307. Second and third opinions under 825.307 are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of healthcare providers identified in section 825.310(a)(1–4). However, second and third opinions under 825.307 are permitted when the certification has been completed by a health care provider as defined in 825.125 that is not one of the types identified in 825.310(a)(1)–(4). Additionally, recertifications under 825.308 are not permitted for leave to care for a covered servicemember. An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) of the FMLA.

(e) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the Office of Congressional Workplace Rights's optional certification form (Form F) or an employing office's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employing office may request that the employee have one of the authorized health care providers listed under 825.310(a) complete the Office of Congressional Workplace Rights optional certification form (Form F) or an employing office's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employing office may seek authentication and clarification of the ITO or ITA under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 during the period of time in which leave is supported by an ITO or ITA.

(3) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employing office may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employing office may also require an employee to provide documentation, such as a veteran's Form DD–214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employing office, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. *See* 825.305(b). In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.311 Intent to return to work.

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

825.312 Fitness-for-duty certification.

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employing office) in the fitness-for-duty certification process as in the initial certification process. *See* 825.305(d).

(b) An employing office may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employing office may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employing office must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by 825.300(d), and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employing office satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job. Following the procedures set forth in 825.307(a), the employing office may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) The designation notice required in 825.300(d) shall advise the employee if the employing office will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notice required in paragraph (d) of this section. If an employing office provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. *See* 825.313(d).

(f) An employing office is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employing office is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. If an employing office chooses to require a fitness-for-duty certification under such circumstances, the employing office shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employing office can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employing office advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employing office may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. Reasonable safety concerns means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employing office should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

(h) Requirements under the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, apply. After an employee returns from FMLA leave, the ADA requires any medical examination at an employing office's expense by the employing office's health care provider be job-related and consistent with business necessity. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his or her job or to his/her impairment. If an employee's serious health condition may also be a disability within the meaning of the ADA, as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA.

825.313 Failure to provide certification.

(a) *Foreseeable leave.* In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by 825.305, then an employing office may deny FMLA coverage until the required certification is provided. For example, if an employee has 15 days to provide a certification and does not provide the certification for 45 days without sufficient reason for the delay, the employing office can deny FMLA protections for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

(b) *Unforeseeable leave.* In the case of unforeseeable leave, an employing office may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employing office can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

(c) *Recertification.* An employee must provide recertification within the time requested by the employing office (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employing office may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

(d) *Fitness-for-duty certification.* When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (*See* 825.312(a)) if the employing office has provided the required notice (*See* 825.300(e)); the employing office may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for

a serious health condition at the time FMLA leave is concluded, the employee may be terminated. *See also* 825.213(a)(3).

SUBPART D—ADMINISTRATIVE PROCESS

825.400 Administrative process, general rules.

(a) The Procedural Rules of the Office of Congressional Workplace Rights set forth the procedures for considering and resolving alleged violations of the laws made applicable by the CAA, including the FMLA. The Rules include procedures for filing claims and participating in administrative dispute resolution proceedings at the Office of Congressional Workplace Rights, including procedures for the conduct of hearings and for appeals to the Board of Directors. The Procedural Rules also address other matters of general applicability to the dispute resolution process and to the operations of the Office.

(b) If an employing office has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 26 weeks of wages for the employee in a case involving leave to care for a covered servicemember or 12 weeks of wages for the employee in a case involving leave for any other FMLA qualifying reason. In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equaling the preceding sums may also be awarded as liquidated damages unless such amount is reduced by the court because the violation was in good faith and the employer had reasonable grounds for believing the employer had not violated the Act. When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion. When the employer is found in violation, the employee may recover a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

(c) The Procedural Rules of the Office of Congressional Workplace Rights are found at 165 Cong. Rec. H4896 (daily ed. June 19, 2019) and 165 Cong. Rec. S4105 (daily ed. June 19, 2019), and may also be found on the Office's website at www.ocwr.gov.

825.401 [Reserved]
825.402 [Reserved]
825.403 [Reserved]
825.404 [Reserved]

SUBPART E—PAID PARENTAL LEAVE

825.500 Purpose, applicability, and employing office responsibilities.

(a) *Purpose.* This subpart provides regulations to govern the granting of paid parental leave to eligible employees. Since paid parental leave may only be substituted for unpaid leave granted following a birth or placement under specific provisions of the Family and Medical Leave Act in title 29, United States Code—specifically, section 2612(a)(1)(A) and (B) in 5 U.S.C. chapter 29—this subpart links to subpart B (Family and Medical Leave) of this part.

(b) *Applicability.* (1) Except as otherwise provided in this paragraph (b), this subpart applies to employees to whom subpart B of this part applies, as provided in 825.111.

(2) The OCWR will defer to supplemental regulations on paid parental leave issued by the Library of Congress pursuant to the authority in 29 USC 2617, provided those supplemental regulations are consistent with the regulations in this subpart.

(3) This subpart applies to a birth or placement occurring on or after October 1, 2020.

(c) *Employing office responsibilities.* The head of an employing office having employees covered by this subpart is responsible for the proper administration of this subpart, including the responsibility of informing employees of their entitlements and obligations.

825.501 Definitions.

(a) *Applicability of subpart B definitions.* The definitions of terms in 825.102 are applicable in this subpart to the extent the terms are used, except that, to the extent any definitions of terms have been further revised in 825.501(b), the provisions of that section shall apply for purposes of this subpart.

(b) Other definitions. In this subpart—

Employing Office means an employing office as defined in 2 U.S.C. 1301(a)(9). When the term ''employing office'' is used in the context of an employing office making determinations or taking actions, it means the employing office head or management officials who are authorized (including by delegation) to make the given determination or take the given action.

Child means a son or daughter as defined in 825.102 whose birth or placement is the basis for entitlement to paid parental leave.

Paid parental leave means paid time off from an employee's scheduled tour of duty that is authorized under 2 U.S.C. 1312(d)(2)(A) and this subpart and that is granted to an employee who has a current parental role in connection with the child whose birth or placement was the basis for granting unpaid FMLA leave under 825.120 or 825.121. This leave is not available to an employee who does not have a current parental role.

Unpaid FMLA leave means leave without pay granted under the Family and Medical Leave Act (FMLA) regulations in subpart B of this part.

825.502 Leave entitlement.

(a) *Election.* An employee may elect to substitute available paid parental leave for any unpaid FMLA leave granted under 825.120 or 825.121 (which correspond to 29 U.S.C. 2612(a)(1)(A) or (B), respectively) in connection with the occurrence of a birth or placement. *See* 825.208.

(b) *Available paid parental leave.* (1) The paid parental leave that is available for purposes of paragraph (a) of this section is 12 workweeks in connection with the birth or placement involved.

(2) Since an employee may use only 12 weeks of unpaid FMLA leave in any 12-month period under 825.200(a), any use of unpaid FMLA leave not associated with paid parental leave may affect an employee's ability to use the full 12 weeks of paid parental leave. Notwithstanding paragraph (b)(1) of this section, an employee will be able to use the full amount of paid parental leave only to the extent that there are 12 weeks of available unpaid FMLA leave granted under the birth or placement provisions in 825.112(a)(1); or (2) during the 12-month period referred to in section 102(a)(1) of the FMLA (29 U.S.C. 2612(a)(1)) to which it relates. The availability of paid parental leave will depend on when the employee uses various types of unpaid FMLA leave relative to any 12-month period established under 825.200(b).

(c) *Leave usage.* (1) An employing office may not require an employee to use accrued paid annual, vacation, personal, family, medical, or sick leave as a condition to be met before the employee uses paid parental leave. An employee may request to use annual leave or sick leave without invoking unpaid FMLA leave under subpart B of this part, and, if the request is granted, the employing office exercises its normal authority with respect to approving or disapproving the timing of when the leave may be used.

(2) An employee with a seasonal work schedule may not use paid parental leave during the off-season period designated by the employing office—the period during which the employee is scheduled to be released from work and placed in nonpay status.

(d) *Treatment of unused leave.* If an employee has any unused balance of paid parental leave that remains at the end of the 12-month period following the birth or placement involved, the entitlement to the unused leave elapses at that time. No payment may be made for unused paid parental leave that has expired. Paid parental leave may not be considered annual leave for purposes of making a lump-sum payment for annual leave or for any other purpose.

825.503 Pay during leave.

(a) The pay an employee receives when using paid parental leave shall be the same pay the employee would receive if the employee were using annual leave.

(b) The pay received during paid parental leave may not include Sunday premium pay. (See section 624 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, div. A, 101(h), October 21, 1998.)

825.504 Work obligation.

Paid parental leave under this subpart shall apply without regard to:

(a) the limitations in subparagraphs (E), (F), or (G) of section 6382(d)(2) of title 5, United States Code (requiring employees of executive branch agencies to agree in writing to work for the executive branch agency for at least 12 months after returning from leave); or

(b) the limitations in 825.213 (permitting employing offices to recover an amount equal to the total amount of government contributions for maintaining such employee's health coverage if the employee fails to return from leave).

825.505 Cases of employee incapacitation.

(a) If an employing office determines that an otherwise eligible employee who could have made an election during a past period to substitute paid parental leave (as provided in 825.502) was physically or mentally incapable of doing so during that past period, the employee may, within 5 workdays of the employee's return to duty status, make an election to substitute paid parental leave for applicable unpaid FMLA leave under 825.502(a) on a retroactive basis. Such a retroactive election shall be effective on the date that such an election would have been effective if the employee had not been incapacitated at the time.

(b)(1) If an employing office determines that an otherwise eligible employee is physically or mentally incapable of making an election to substitute paid parental leave (as provided in 825.207), the employing office must, upon the request of a personal representative of the employee, provide conditional approval of substitution of paid parental leave for applicable unpaid FMLA leave on a prospective basis. The conditional approval is based on the presumption that the employee would have elected to substitute paid parental leave for the applicable unpaid FMLA leave.

825.506 Cases of multiple children born or placed in the same time period.

(a) If an employee has multiple children born or placed on the same day, the multiple-child birth/placement event is considered to be a single event that triggers a single entitlement of up to 12 weeks of paid parental leave under 825.502(b).

(b) If an employee has one or more children born or placed during the 12-month period following the date of an earlier birth or placement of a child of the employee, the provisions of this subpart shall be independently administered for each birth or placement event. Any paid parental leave substituted for unpaid FMLA leave during the 12-month period beginning on the date of a child's birth or placement shall count towards the 12-week limit on paid parental leave described in 825.502(b) applicable in connection with the birth or placement involved. The substitution of paid parental leave may count toward multiple 12-week limits to the extent that there are multiple ongoing 12-month periods beginning on the date of an applicable birth or placement, each of which encompasses the day on which the leave is used. Therefore, whenever paid parental leave is substituted during periods of time when separate 12-month periods (each beginning on a date of birth or placement) overlap, the paid parental leave will count toward each affected period's 12-week limit. For example, if an employee has a child born on June 1 and another child placed for adoption on October 1 of the same year, each event would generate entitlement to substitute up to 12 weeks of paid parental leave during the separate 12-month periods beginning on the date of the birth and on the date of the placement, respectively. Those two 12-month periods would be June 1–May 31 and October 1–September 30. The overlap period for these two 12-month periods would be October 1–May 31. If the employee substitutes paid parental leave during that overlap period, that amount of paid parental leave would count towards both the 12-week limit associated with the birth event and the 12-week limit associated with the placement event.

825.507 Records.

Record of usage of paid parental leave. An employing office must maintain an accurate record of an employee's usage of paid parental leave.

825.508 [Reserved]

SUBPART F—SPECIAL RULES APPLICABLE TO EMPLOYEES OF SCHOOLS

825.600 Special rules for school employees, definitions.

(a) Certain special rules apply to employees of local educational agencies, including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA, as made applicable by the CAA (and these special rules). The usual requirements for employees to be eligible do apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

825.601 Special rules for school employees, limitations on intermittent leave.

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. Periods of a particular duration means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (See 825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met.

825.602 Special rules for school employees, limitations on leave near the end of an academic term.

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

(b) For purposes of these provisions, academic term means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA, as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

825.603 Special rules for school employees, duration of FMLA leave.

(a) If an employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

825.604 Special rules for school employees, restoration to an equivalent position.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of ''established school board policies and practices, private school policies and practices, and collective bargaining agreements.'' The ''established policies'' and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to an equivalent position must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. See 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee

may not be restored to a position requiring additional licensure or certification.

SUBPART G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

825.700 Interaction with employing office's policies.

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA, as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

825.701 [Reserved]

825.702 Interaction with anti-discrimination laws, as applied by section 201 of the CAA.

(a) Nothing in the FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act and as made applicable by the CAA). FMLA's legislative history explains that FMLA is ''not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990 [as amended] or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA] . . . or the Federal government itself. The purpose of the FMLA, as applied by the CAA, is to make leave available to eligible employees and [employing offices] within its coverage, and not to limit already existing rights and protection.'' S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes (double relief may not be awarded for the same loss; when remedies coincide a claimant may be allowed to utilize whichever avenue of relief is desired. *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 445 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), as made applicable by the CAA, the employing office must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights, as made applicable by the CAA. ADA's ''disability'' and FMLA's ''serious health condition'' are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. *See* 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. *See* 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* 825.207(e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA, as made applicable by the CAA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office may not be denied maternity

leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. *See* 825.110(b)(2)(i) and (c)(2) and 825.802(c).

(h) For further information on Federal antidiscrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Congressional Workplace Rights.

ENROLLED BILLS SIGNED

Cheryl L. Johnson, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 8247. An Act to make certain improvements relating to the transition of individuals to services from the Department of Veterans Affairs, suicide prevention for veterans, and care and services for women veterans, and for other purposes.

H.R. 8276. An Act to authorize the President to posthumously award the Medal of Honor to Alwyn C. Cashe for acts of valor during Operation Iraqi Freedom.

BILLS PRESENTED TO THE PRESIDENT

Cheryl L. Johnson, Clerk of the House, reported that on October 20, 2020, she presented to the President of the United States, for his approval, the following bills:

H.R. 561. To amend title 38, United States Code, to improve the oversight of contracts awarded by the Secretary of Veterans Affairs to small business concerns owned and controlled by veterans, and for other purposes.

H.R. 1952. To amend the Intercountry Adoption Act of 2000 to require the Secretary of State to report on intercountry adoptions from countries which have significantly reduced adoption rates involving immigration to the United States, and for other purposes.

H.R. 3399. To amend the Nutria Eradication and Control Act of 2003 to include California in the program, and for other purposes.

H.R. 2359. To direct the Secretary of Veterans Affairs to submit to Congress a report on the Department of Veterans Affairs advancing of whole health transformation.

H.R. 4183. To direct the Comptroller General of the United States to conduct a study on disability and pension benefits provided to members of the National Guard and members of reserve components of the Armed Forces by the Department of Veterans Affairs, and for other purposes.

ADJOURNMENT

The SPEAKER pro tempore. Pursuant to section 4(b) of House Resolution 967, the House stands adjourned until 10 a.m. tomorrow for morning-hour debate and noon for legislative business.

Thereupon (at 9 o'clock and 12 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, November 17, 2020, at 10 a.m. for morning-hour debate.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

EC-5605. A letter from the Chief, Regulatory Coordination Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, transmitting the Department's Major interim final rule — Strengthening the H-1B Nonimmigrant Visa Classification Program [CIS No. 2658-20 DHS Docket No. USCIS-2020-0018] (RIN 1615-AC13) received November 4, 2020, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on the Judiciary.

EC-5606. A letter from the President of the United States, transmitting a notification of the intention to suspend the duty-free treatment accorded to Thailand under the Generalized System of Preferences program, pursuant to 19 U.S.C. 2462(d)(3); Public Law 93-618, Sec. 502(d)(3) (as added by Public Law 104-188, Sec. 1952(a)); (110 Stat. 1917) (H. Doc. No. 116—171); to the Committee on Ways and Means and ordered to be printed.

EC-5607. A letter from the Regulations Coordinator, Center for Consumer Information and Insurance Oversight, Department of Health and Human Services, transmitting the Department's Major final rule — Transparency in Coverage [CMS-9915-F] (RIN 0938-AU04) received November 5, 2020, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); jointly to the Committees on Energy and Commerce and Ways and Means.

EC-5608. A letter from the Regulations Coordinator, Center for Consumer Information and Insurance Oversight, Department of Health and Human Services, transmitting the Department's Major final rule — Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency [CMS-9912- IFC] (RIN 0938-AU35) received November 5, 2020, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); jointly to the Committees on Energy and Commerce and Ways and Means.

EC-5609. A letter from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting the Department's Major final rule — Medicare and Medicaid Programs; CY 2021 Home Health Prospective Payment System Rate Update, Home Health Quality Reporting Program Requirements, and Home Infusion Therapy Services and Supplier Enrollment Requirements; and Home Health Value-Based Purchasing Model Data Submission Requirments [CMS-1730-F, CMS-1744-IFC, and CMS-5531- IFC] (RIN 0938-AU06, 0938-AU31, and 0938-AU32) received November 5, 2020, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); jointly to the Committees on Energy and Commerce and Ways and Means.

EC-5610. A letter from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting the Department's Major final rule — Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program [CMS-1732-F] (RIN 0938-AU08) received November 5, 2020, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); jointly to the Committees on Energy and Commerce and Ways and Means.

EC-5611. A letter from the President of the United States, transmitting an Executive Order addressing the threat from securities investments that finance communist Chinese military companies, pursuant to 50 U.S.C. 1703(b); Public Law 95-223, Sec. 204(b); (91 Stat. 1627) and 50 U.S.C. 1621(a); Public Law 94-412, Sec. 201(a); (90 Stat. 1255) (H. Doc. No. 116—170); jointly to the Committees on Foreign Affairs and Financial Services, and ordered to be printed.

EC-5612. A letter from the Chair of the Board of Directors, Office of Congressional Workplace Rights, transmitting a Notice of Proposed Rulemaking regarding modifications to the rights and protections under the Family and Medical Leave Act of 1993 (FMLA), as required by 2 U.S.C. 1312, Congressional Accountability Act of 1995, as amended (CAA), for publication in the Congressional Record, pursuant to 2 U.S.C. 1384(b)(1); Public Law 104-1, Sec. 304(b)(1); (109 Stat. 29); jointly to the Committees on House Administration and Education and Labor.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. GRIJALVA: Committee on Natural Resources. H.R. 6237. A bill to amend the Indian Health Care Improvement Act to clarify the requirement of the Department of Veterans Affairs and the Department of Defense to reimburse the Indian Health Service for certain health care services (Rept. 116–569, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 5919. A bill to amend title 40, United States Code, to require the Administrator of General Services to enter into a cooperative agreement with the National Children's Museum to provide the National Children's Museum rental space without charge in the Ronald Reagan Building and International Trade Center, and for other purposes; with an amendment (Rept. 116–570). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 4499. A bill to amend the Public Health Service Act to provide that the authority of the Director of the National Institute on Minority Health and Health Disparities to make certain research endowments applies with respect to both current and former centers of excellence, and for other purposes (Rept. 116–571). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 4712. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to limitations on exclusive approval or licensure of orphan drugs, and for other purposes; with an amendment (Rept. 116–572). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 5668. A bill to amend the Federal Food, Drug, and Cosmetic Act to

modernize the labeling of certain generic drugs, and for other purposes; with an amendment (Rept. 116–573). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 2914. A bill to make available necessary disaster assistance for families affected by major disasters, and for other purposes; with an amendment (Rept. 116–574). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 4358. A bill to direct the Administrator of the Federal Emergency Management Agency to submit to Congress a report on preliminary damage assessment and to establish damage assessment teams in the Federal Emergency Management Agency, and for other purposes; with an amendment (Rept. 116–575). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 4611. A bill to modify permitting requirements with respect to the discharge of any pollutant from the Point Loma Wastewater Treatment Plant in certain circumstances, and for other purposes; with an amendment (Rept. 116–576, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 5953. A bill to amend the Disaster Recovery Reform Act of 2018 to require the Administrator of the Federal Emergency Management Agency to waive certain debts owed to the United States related to covered assistance provided to an individual or household, and for other purposes; with an amendment (Rept. 116–577). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 8326. A bill to amend the Public Works and Economic Development Act of 1965 to require eligible recipients of certain grants to develop a comprehensive economic development strategy that directly or indirectly increases the accessibility of affordable, quality child care, and for other purposes (Rept. 116–578, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 8408. A bill to direct the Administrator of the Federal Aviation Administration to require certain safety standards relating to aircraft, and for other purposes (Rept. 116–579). Referred to the Committee of the Whole House on the state of the Union.

Mr. DEFAZIO: Committee on Transportation and Infrastructure. H.R. 8266. A bill to modify the Federal cost share of certain emergency assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, to modify the activities eligible for assistance under the emergency declaration issued by the President on March 13, 2020, relating to COVID–19, and for other purposes; with an amendment (Rept. 116–580). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 2117. A bill to improve the health and safety of Americans living with food allergies and related disorders, including potentially life-threatening anaphylaxis, food protein-induced enterocolitis syndrome, and eosinophilic gastrointestinal diseases, and for other purposes, with an amendment (Rept. 116–581). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 6096. A bill to improve oversight by the Federal Communications Commission of the wireless and broadcast emergency alert systems (Rept. 116–582 Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 3878. A bill to amend the Controlled Substances Act to clarify the process for registrants to exercise due diligence upon discovering a suspicious order, and for other purposes, with an amendment Rept. 116–583 Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 4812. A bill to amend the Controlled Substances Act to provide for the modification, transfer, and termination of a registration to manufacture, distribute, or dispense controlled substances or list I chemicals, and for other purposes(Rept. 116–584, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 4806. A bill to amend the Controlled Substances Act to authorize the debarment of certain registrants, and for other purposes; with an amendment (Rept. 116–585 Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 5855. A bill to amend the Public Health Service Act to establish a grant program supporting trauma center violence intervention and violence prevention programs, and for other purposes (Rept. 116–586). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 2281. A bill to direct the Attorney General to amend certain regulations so that practitioners may administer not more than 3 days' medication to a person at one time when administering narcotic drugs for the purpose of relieving acute withdrawal symptoms, with amendments (Rept. 116–587, Pt. 1). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 8121. A bill to require the Consumer Product Safety Commission to study the effect of the COVID–19 pandemic on injuries and deaths associated with consumer products, and for other purposes; with amendments (Rept. 116–588). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 6624. A bill to support supply chain innovation and multilateral security, and for other purposes (Rept. 116–589). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 2610. A bill to establish a Senior Scams Prevention Advisory Council to collect and disseminate model educational materials useful in identifying and preventing scams that affect seniors; with amendments (Rept. 116–590). Referred to the Committee of the Whole House on the state of the Union.

Mr. PALLONE: Committee on Energy and Commerce. H.R. 6435. A bill to direct the Federal Trade Commission to develop and disseminate information to the public about scams related to COVID–19, and for other purposes (Rept. 116–591). Referred to the Committee of the Whole House on the state of the Union.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII, the Committee on the Judiciary discharged from further consideration. H.R. 2281 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on the Judiciary discharged from further consideration. H.R. 3878 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on Natural Resources discharged from further consideration. H.R. 4611 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on the Judiciary discharged from further consideration. H.R. 4806 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on the Judiciary discharged from further consideration. H.R. 4812 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on Transportation and Infrastructure discharged from further consideration. H.R. 6096 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on Energy and Commerce discharged from further consideration. H.R. 6237 referred to the Committee of the Whole House on the state of the Union.

Pursuant to clause 2 of rule XIII, the Committee on Financial Services discharged from further consideration. H.R. 8326 referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. HUDSON (for himself and Mr. PANETTA):

H.R. 8752. A bill to authorize the National Medal of Honor Museum Foundation to establish a commemorative work in the District of Columbia and its environs, and for other purposes; to the Committee on Natural Resources.

By Mr. KELLY of Pennsylvania:

H.R. 8753. A bill to amend the Help America Vote Act of 2002 to provide for the establishment of election integrity measures by States and to prohibit ballot harvesting in Federal elections; to the Committee on the Judiciary, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. SCANLON (for herself, Ms. ESCOBAR, and Ms. GARCIA of Texas):

H.R. 8754. A bill to require States to provide a minimum number of in-person, secured drop boxes in each county in the State at which individuals may drop off voted absentee ballots in elections for Federal office, and for other purposes; to the Committee on House Administration.

By Ms. SHERRILL (for herself, Mr. MCKINLEY, Mr. FITZPATRICK, Mr. RIGGLEMAN, Mrs. BEATTY, Mr. CARSON of Indiana, Mr. THOMPSON of Pennsylvania, Mr. KIM, Mr. MORELLE, Mr. RUSH, Mr. SIRES, Mr. KEVIN HERN of Oklahoma, Mr. TIMMONS, and Mr. TONKO):

H.R. 8755. A bill to amend title XVIII of the Social Security Act to expand the scope of

practitioners eligible for payment for telehealth services under the Medicare program, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ADERHOLT (for himself, Ms. SHALALA, Mr. FLEISCHMANN, Mr. FITZPATRICK, Mr. KING of Iowa, Mr. WEBER of Texas, Mr. LANGEVIN, Mr. LOUDERMILK, Mr. STAUBER, Mr. BACON, Ms. SEWELL of Alabama, Mr. LOWENTHAL, Mr. LAMALFA, Mr. WELCH, Mr. MITCHELL, Mr. COMER, Mr. SEAN PATRICK MALONEY of New York, Ms. CRAIG, Mr. SCHWEIKERT, Mrs. BEATTY, Ms. SHERRILL, Mr. PERLMUTTER, Mr. BROWN of Maryland, Mr. LAMBORN, Mr. LYNCH, Mr. MCHENRY, Mr. MARSHALL, Ms. BASS, Mr. HARDER of California, Mr. HICE of Georgia, Mr. OLSON, Mr. DAVID P. ROE of Tennessee, Mr. BALDERSON, Mr. CLOUD, Mr. JOHNSON of Louisiana, Mr. DEUTCH, Mr. GOHMERT, Mr. HASTINGS, and Mr. BISHOP of Utah):

H. Res. 1220. A resolution expressing support for the goals of National Adoption Month and National Adoption Day by promoting national awareness of adoption and the children waiting for adoption, celebrating children and families involved in adoption, and encouraging the people of the United States to secure safety, permanency, and well-being for all children; to the Committee on Education and Labor.

By Ms. BASS (for herself, Ms. NORTON, Ms. WATERS, Mr. BISHOP of Georgia, Mr. CLYBURN, Mr. HASTINGS, Ms. JOHNSON of Texas, Mr. RUSH, Mr. THOMPSON of Mississippi, Ms. JACKSON LEE, Mr. DANNY K. DAVIS of Illinois, Mr. MEEKS, Ms. LEE of California, Mr. CLAY, Mr. DAVID SCOTT of Georgia, Mr. BUTTERFIELD, Mr. CLEAVER, Mr. GREEN of Texas, Ms. MOORE, Ms. CLARKE of New York, Mr. JOHNSON of Georgia, Mr. CARSON of Indiana, Ms. FUDGE, Mr. RICHMOND, Ms. SEWELL of Alabama, Ms. WILSON of Florida, Mr. PAYNE, Mrs. BEATTY, Mr. JEFFRIES, Mr. VEASEY, Ms. KELLY of Illinois, Ms. ADAMS, Mrs. LAWRENCE, Ms. PLASKETT, Mrs. WATSON COLEMAN, Mr. EVANS, Ms. BLUNT ROCHESTER, Mr. BROWN of Maryland, Mr. LAWSON of Florida, Mr. MCEACHIN, Mr. HORSFORD, Mr. ALLRED, Mr. NEGUSE, Ms. OMAR, Ms. PRESSLEY, Mr. MFUME, Mr. MCGOVERN, Ms. SPEIER, Mr. CICILLINE, Mr. KIND, Mr. RASKIN, Mr. CASTRO of Texas, and Ms. JUDY CHU of California):

H. Res. 1221. A resolution urging the United States to uphold its commitments under international treaties related to refugees and asylum-seekers and halt deportations of Cameroonian citizens; to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BEYER:

H. Res. 1222. A resolution reaffirming the sense of the House of Representatives that the United States must lead the world in preventing further nuclear proliferation, while also reducing and eventually eliminating all nuclear weapons; to the Committee on Foreign Affairs.

By Ms. LEE of California (for herself, Miss GONZÁLEZ-COLÓN of Puerto Rico, Mr. GREEN of Texas, Ms. BARRAGÁN, Mrs. WATSON COLEMAN, Mr. CARSON of Indiana, Ms. SEWELL of Alabama, Mr. TRONE, Ms. WILSON of Florida, Ms. ROYBAL-ALLARD, Ms. MENG, Mr. HASTINGS, Mr. MCGOVERN, Mr. MCKINLEY, Ms. HAALAND, Mr. SMITH of Washington, Mr. SERRANO, Mr. JOHNSON of Georgia, Mr. ESPAILLAT, Mr. POCAN, Ms. BASS, and Ms. JUDY CHU of California):

H. Res. 1223. A resolution supporting the goals of World AIDS Day; to the Committee on Energy and Commerce, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the following statements are submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

By Mr. HUDSON:

H.R. 8762.

Congress has the power to enact this legislation pursuant to the following:

Article I Section 8

By Mr. KELLY of Pennsylvania:

H.R. 8753.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 4 and Section 8

By Ms. SCANLON:

H.R. 8754.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section VIII.

By Ms. SHERRILL:

H.R. 8755.

Congress has the power to enact this legislation pursuant to the following:

Clause 18 of Section 8 or Article 1 of the Constitution of the United States of America.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions, as follows:

H.R. 11: Mrs. MILLER.
H.R. 40: Mr. TRONE and Mrs. KIRKPATRICK.
H.R. 913: Mr. PHILLIPS and Ms. SPEIER.
H.R. 1002: Mr. LAHOOD.
H.R. 1274: Mr. SHERMAN.
H.R. 1321: Mr. WELCH.
H.R. 1573: Mr. TED LIEU of California.
H.R. 1880: Mr. SHERMAN.
H.R. 1966: Mr. RODNEY DAVIS of Illinois, Mr. MORELLE, Mr. MOOLENAAR, Mr. KEVIN HERN of Oklahoma, and Mr. GONZALEZ of Ohio.
H.R. 2117: Mr. TAYLOR.
H.R. 2235: Mr. KEVIN HERN of Oklahoma.
H.R. 2350: Mr. RODNEY DAVIS of Illinois, Mr. CUELLAR, Ms. BONAMICI, Mr. GUEST, Ms. SCHRIER, and Mr. LOWENTHAL.
H.R. 2610: Mr. TAYLOR.
H.R. 2741: Mrs. NAPOLITANO.
H.R. 2825: Mr. EVANS.
H.R. 2878: Mr. HUFFMAN.
H.R. 3229: Mr. BLUMENAUER.
H.R. 3472: Mr. SHERMAN.
H.R. 3654: Mr. BRENDAN F. BOYLE of Pennsylvania.
H.R. 3674: Ms. NORTON.
H.R. 3879: Ms. NORTON.
H.R. 4150: Mr. MCCAUL, Mr. WALBERG, and Mr. GONZALEZ of Texas.
H.R. 4499: Mr. TAYLOR.
H.R. 4681: Miss RICE of New York and Mr. GOHMERT.
H.R. 4712: Mr. TAYLOR.
H.R. 4729: Mr. SIRES.
H.R. 5212: Mr. KEVIN HERN of Oklahoma.
H.R. 5312: Mr. RESCHENTHALER.
H.R. 5343: Mr. PALLONE.
H.R. 5563: Mr. BLUMENAUER, Mr. CICILLINE, and Mr. CÁRDENAS.
H.R. 5586: Mr. TAYLOR.
H.R. 5605: Mr. BALDERSON.
H.R. 5668: Mr. TAYLOR.
H.R. 5774: Mr. JOYCE of Ohio.
H.R. 5957: Mr. FOSTER, Mr. JOHN W. ROSE of Tennessee, and Mr. POCAN.
H.R. 6104: Mr. RYAN.
H.R. 6179: Mr. BILIRAKIS.
H.R. 6239: Mrs. TRAHAN.
H.R. 6240: Mr. CARSON of Indiana and Ms. HAALAND.
H.R. 6334: Mr. COHEN and Mr. TAYLOR.
H.R. 6364: Mr. DESJARLAIS, Mr. DAVIDSON of Ohio, and Mr. ARMSTRONG.
H.R. 6495: Mr. CORREA.
H.R. 6606: Mr. TED LIEU of California.
H.R. 6644: Mr. CASTRO of Texas.
H.R. 6720: Mr. NADLER.
H.R. 6757: Mrs. NAPOLITANO.
H.R. 7029: Mr. NEGUSE.
H.R. 7066: Mrs. NAPOLITANO.
H.R. 7078: Mr. CARSON of Indiana.
H.R. 7225: Mrs. KIRKPATRICK.
H.R. 7483: Mr. LAMB and Mr. LARSEN of Washington.
H.R. 7521: Ms. SÁNCHEZ.
H.R. 7552: Mrs. LURIA.
H.R. 7566: Mr. SIRES.
H.R. 7761: Mr. NADLER.
H.R. 7854: Mr. JOYCE of Ohio and Mr. MORELLE.
H.R. 7935: Mr. PHILLIPS.
H.R. 7950: Mr. KILDEE.
H.R. 7990: Mr. TAYLOR.
H.R. 8044: Mr. DEFAZIO.
H.R. 8053: Ms. GARCIA of Texas.
H.R. 8099: Mr. SHERMAN.
H.R. 8141: Ms. SPANBERGER.
H.R. 8179: Mr. PANETTA and Mr. SEAN PATRICK MALONEY of New York.
H.R. 8242: Mr. THOMPSON of Mississippi.
H.R. 8254: Ms. STEVENS, Ms. VELÁZQUEZ, Mr. DESAULNIER, Mr. RYAN, Mr. AMODEI, Mr. KEVIN HERN of Oklahoma, Mr. DANNY K. DAVIS of Illinois, and Mr. RIGGLEMAN.
H.R. 8326: Ms. WATERS.
H.R. 8339: Ms. HOULAHAN.
H.R. 8346: Mr. BAIRD, Mr. KELLER, Mr. YOHO, Mr. FLORES, Mr. STEWART, and Mr. KEVIN HERN of Oklahoma.
H.R. 8361: Mr. FITZPATRICK.
H.R. 8363: Mr. AGUILAR, Mr. PHILLIPS, Ms. FRANKEL, and Ms. BONAMICI.
H.R. 8396: Mr. SIRES.
H.R. 8401: Ms. NORTON and Mrs. NAPOLITANO.
H.R. 8438: Ms. WATERS.
H.R. 8455: Ms. NORTON.
H.R. 8487: Mr. PENCE and Mrs. WAGNER.
H.R. 8500: Mr. MCGOVERN.
H.R. 8527: Mr. BANKS.
H.R. 8531: Ms. NORTON.
H.R. 8568: Mr. PANETTA.
H.R. 8614: Mr. BROOKS of Alabama, Mr. BANKS, Mr. GOSAR, Mr. DAVIDSON of Ohio, Mrs. WAGNER, and Mr. WESTERMAN.
H.R. 8626: Mr. MICHAEL F. DOYLE of Pennsylvania and Mr. KIM.
H.R. 8632: Mrs. NAPOLITANO, Ms. KUSTER of New Hampshire, and Mr. BROWN of Maryland.
H.R. 8633: Mr. NEAL.
H.R. 8662: Mr. PAYNE, Ms. SÁNCHEZ, Ms. SHERRILL, Mr. VAN DREW, Mr. RUPPERSBERGER, Mr. KILDEE, Mrs. MILLER, Mr. CUELLAR, Ms. STEVENS, Mr. BAIRD, Mr. POSEY, Mr. RASKIN, Mr. GALLEGO, Mr. LANGEVIN, and Mr. HILL of Arkansas.
H.R. 8675: Mr. POSEY and Mr. MOONEY of West Virginia.

H.R. 8690: Mr. MCGOVERN.

H.R. 8696: Mr. REED and Ms. JUDY CHU of California.

H.R. 8702: Mr. POSEY, Mrs. MCBATH, Mr. VAN DREW, Mr. RUPPERSBERGER, Mr. RYAN, Mr. FLEISCHMANN, Ms. ROYBAL-ALLARD, Mr. GONZALEZ of Ohio, Mrs. AXNE, Mr. BAIRD, Mrs. BEATTY, Mr. HARRIS, and Mr. YOUNG.

H.R. 8707: Mr. ALLRED.

H.R. 8712: Ms. JOHNSON of Texas.

H.R. 8744: Ms. SCHAKOWSKY, Mr. CARSON of Indiana, and Mr. RASKIN.

H.R. 8745: Ms. HAALAND.

H. Con. Res. 116: Ms. STEFANIK.

H. Res. 114: Mr. MCKINLEY.

H. Res. 256: Mr. SERRANO, Ms. LEE of California, and Mr. RUSH.

H. Res. 349: Mr. TAYLOR.

H. Res. 672: Mr. TAYLOR.

H. Res. 697: Mr. TAYLOR.

H. Res. 809: Mr. COHEN.

H. Res. 835: Mr. GOMEZ and Mr. CLEAVER.

H. Res. 1033: Mr. TAYLOR.

H. Res. 1102: Mr. SHERMAN and Mr. DOGGETT.

H. Res. 1110: Mr. LEVIN of Michigan.

H. Res. 1114: Ms. MCCOLLUM, Mr. GALLEGO, Mr. DANNY K. DAVIS of Illinois, Mr. MEEKS, Mr. LOWENTHAL, Mrs. CAROLYN B. MALONEY of New York, Mr. COSTA, Mrs. BEATTY, Mr. SAN NICOLAS, Mr. RASKIN, Mrs. LAWRENCE, Ms. SPEIER, Mr. MCGOVERN, and Ms. DELAURO.

H. Res. 1145: Mr. TAYLOR.

H. Res. 1147: Mr. CASTRO of Texas, Mr. HUFFMAN, and Mr. CORREA.

H. Res. 1165: Mr. BERA, Mr. MOOLENAAR, Mr. KELLER, and Mr. PERLMUTTER.

H. Res. 1207: Mr. TAYLOR.

H. Res. 1209: Mr. HUFFMAN and Mr. BRENDAN F. BOYLE of Pennsylvania.

H. Res. 1213: Mrs. HAYES, Ms. CASTOR of Florida, Mr. TED LIEU of California, Mrs. LURIA, Mrs. RADEWAGEN, Mr. LYNCH, Ms. HAALAND, and Ms. JUDY CHU of California.

H. Res. 1216: Mr. COOPER and Ms. OMAR.

H. Res. 1218: Ms. FINKENAUER and Mrs. AXNE.