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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. CAREY).

DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
April 18, 2023.

I hereby appoint the Honorable MIKE CAREY to act as Speaker pro tempore on this day.

KEVIN MCCARTHY,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 9, 2023, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with time equally allocated between the parties and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes, but in no event shall debate continue beyond 11:50 a.m.

RECOGNIZING ARTS EDUCATOR DEBORAH BOWERS KIPPLEY

The SPEAKER pro tempore. The Chair recognizes the gentleman from Nebraska (Mr. BACON) for 5 minutes.

Mr. BACON. Mr. Speaker, in honor of Women's History Month, I rise to recognize Deborah Bowers Kippley for her years of dedicated public service in the State of Nebraska. As an arts educator, Debbie's leadership, skills, and initiatives have benefited the minds of our youth for decades.

Debbie had a strong interest in the arts from an early age. In 1974, she graduated from Omaha Burke High School where she participated in band, orchestra, and art. She continued her education, obtaining a bachelor's degree in art education and elementary education from Hastings College.

After college, she toured with a Christian repertory theater company before being hired as an elementary arts teacher for Omaha Public Schools. During her time with OPS, Debbie participated in several Nebraska art-based programs. After 13 years with OPS, she wanted to start the elementary art program at Papillion La Vista Community Schools.

After obtaining her master of science from the University of Nebraska Omaha, she earned her doctorate in administration, curriculum and instruction from the University of Nebraska-Lincoln, concentrating on the variation of people's ability to create mental images and the effect this has on learning.

As someone who struggled with math, reading, and spelling during her elementary years, Debbie believes her inability to create mental images at that age was the cause of her struggles. Her conclusion was to enhance the five senses by using art in learning in her elementary teachings to better help students learn.

For the last nearly 40 years, Debbie has consistently given back to the community. Just a few of her accolades include Elementary Educator of the Year, president-elect and president of the Nebraska Art Teachers Association, and the Nebraska Art Teachers Association Roscoe Shields Award for her continued service to art education. She also assisted with the writing and creation of hundreds of thousands of dollars in grant money for the arts.

As a now-retired educator, Debbie continues to promote the arts by her work with the Congressional Art Competition for the Nebraska congressional districts, founded in 1998, and still manages the Papillion La Vista Arts Network, providing a theater experience for elementary and middle school students. Supervising art student teachers for the University of Nebraska Omaha is another task that she loves, and she is the president of the Papillion Downtown Business Association.

Debbie has always believed in the power of the arts to heal, encourage, and empower. This has been her mantra for all her years of educating young minds.

I salute and thank Debbie for her impression upon the community, a tremendous impact, which will be felt for many years to come.

LARGEST NUCLEAR SCANDAL IN AMERICAN HISTORY

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Ohio (Ms. KAPTUR) for 5 minutes.

Ms. KAPTUR. Mr. Speaker, in my home State of Ohio, the largest nuclear scandal in American history has been perpetuated on our public.

Ohio's only nuclear power is generated in northern Ohio, along Lake Erie by plants owned by Energy Harbor, previously known as FirstEnergy. For decades, FirstEnergy's customers have unknowingly paid for the outfall of this criminal company's nuclear malfeasance, careless management, and costly outages, and now criminality.

When a hole in the nuclear reactor head at Davis-Besse proved to be the size of a pineapple, jaws dropped too late here in Washington at the Nuclear Regulatory Commission.

Where were they?

When a switch failure triggered by FirstEnergy shut off power for 3 days across the entire Midwest; Northeast; and Ontario, Canada, costing our economy $10 billion and nine lost lives, those in the commercial nuclear power world should have understood there was a big problem at FirstEnergy.

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Where were they?

Neither the private sector nor the Federal Government did their jobs.

Nuclear power production requires excellence and vigilance. No excuses. No passing the buck.

FirstEnergy's business plan started to fail due to its huge repair costs resulting from its own mistakes. As the company sank into debt, rather than aspiring to excellence, it resorted to bribery, wire fraud, conspiracy, and racketeering. Thus, the largest commercial nuclear crimes in U.S. history are being litigated in Federal court in Cincinnati, Ohio.

Convictions for accepting FirstEnergy bribes have been levied against Ohio's former house Republican Speaker Larry Householder and former Ohio Republican Party chair, Matt Borges. They led a criminal scheme in which FirstEnergy bribed them with $61 million in dark money. Householder used it for personal expenses, reelecting himself, and a slate of willing Republican and Democratic legislators, to bend the law to serve FirstEnergy's financial interests.

Once in office, Householder led his handpicked politicians in a legislative bailout of FirstEnergy, foisting $1 billion plus in corporate nuclear energy and coal losses on Ohio's ratepayers. Never did Householder or his associates express any concern about FirstEnergy's nuclear mishaps, its awesome nuclear responsibility, and what really was required to restore operational excellence.

If FirstEnergy's plan had exploded and fried everything in its radius in northern Ohio, including my house, Mr. Householder would not have been affected. He lives too far south, as do most coconspirators to the bribery scheme. Even prevailing winds generally don't blow in their direction, but an explosion would have completely polluted Lake Erie.

FirstEnergy itself avoided fraud and criminal indictments by admitting its corporate guilt. Of course, nuclear malfeasance is not on trial, but it should be. Thus far, the court has ordered FirstEnergy to pay a historic $230 million settlement, the largest public fine in Ohio's history, although there were no fines for bigger crimes against the public interest by multiple nuclear endangerments.

FirstEnergy's management made huge blunders in nuclear operation. Were it not for the skilled union laborers who three times put their lives at risk for our region, a nuclear catastrophe along Lake Erie was indeed possible. At least three major nuclear incidents have occurred during my lifetime: 1985, 2002, 2003.

Davis-Besse plant records document the second and third as the worst nuclear incidents since Three Mile Island.

The ongoing criminal litigation ignores these massive nuclear close calls. Each major nuclear blunder translated into real threats to lives, safety, and health.

At what point does our Nation say no to a pattern of persistent commercial plant nuclear negligence and abysmal nuclear management?

The time is now as our region tries to pick up the pieces and rebuild advanced nuclear—but not by past standards.

The starting point to get effective safety monitoring in these two Ohio facilities begins by requesting the Federal Government's Government Accountability Office to perform thorough and independent nuclear safety audits of its aging nuclear facilities.

The next step is to require the Nuclear Navy, with independent experts, to complete a thorough engineering analysis of the plant's remaining physical infrastructure.

Next, specific individuals who were responsible for criminal activity at FirstEnergy must be identified and barred for life from working or contracting with the U.S. commercial nuclear industry, and we must also identify legal means to restore to ratepayers compensation for their losses.

As Admiral Hyman Rickover, father of the Nuclear Navy, said: ''Success teaches us nothing; only failure teaches.''

Let Ohio learn and let America learn, and let's do it right.

CALLING ATTENTION TO THE OPPRESSION OF POLITICAL OPPONENTS BY THE VIETNAMESE GOVERNMENT

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from California (Mrs. STEEL) for 5 minutes.

Mrs. STEEL. Mr. Speaker, I rise today to call attention to the Vietnamese Government's oppression of political opponents.

Last week, the Communist Party Government of Vietnam sentenced Nguyen Lan Thang to 6 years in prison for documenting protests and human rights abuses in Vietnam. Thang is a well-known advocate for freedom and democracy. He is a renowned blogger and contributor to Radio Free Asia. He should not be punished for criticizing communism.

This violation of the basic human rights of free expression is unacceptable and shows a worsening human rights situation in Vietnam.

According to Human Rights Watch, Vietnamese authorities have convicted at least 163 people since 2018 for exercising their rights to freedom of association or freedom of expression against Vietnam's Communist Party Government.

I have and will continue to call out the Communist Party of Vietnam for imprisoning journalists, human rights defenders, religious figures, and dissidents in Vietnam. The Chinese Communist Party has expertly influenced their neighbors, like Vietnam, hoping we will be silent in the face of these heinous acts.

I urge all my colleagues to join me in condemning Vietnam's continued horrific targeting of anyone who dissents from the oppressive Communist regime, and I urge Vietnam to release its political prisoners, including Mr. Thang and journalists like Pham Doan Trang.

We must come together, proclaim Communism as the evil that it is, and show the world that we will defend freedom.

TAX DAY

Mrs. STEEL. Mr. Speaker, today is tax day, the deadline for over 200 million Americans to file their taxes.

Over the past year, responsible, hardworking families across the Nation created a budget, sacrificed to stick to that budget, and paid what they must by law to the government.

Meanwhile, their government spent taxpayer dollars recklessly, resulting in a national deficit that is over $31 trillion. That is approximately $250,000 per taxpayer.

My friends on the other side of the aisle claimed that they would close the gap by raising taxes and hiring an army of 87,000 new IRS agents to increase audits, especially on hardworking families making less than $100,000 a year.

Collecting more taxes from hardworking Americans will not fix the Federal Government's irresponsibility.

While California suffers from the highest income tax rate in the country, the State's reckless spending resulted in a deficit of $22.5 billion.

High taxes and reckless spending will not solve our Nation's problems. That is why the House of Representatives passed my bill with Representative ADRIAN SMITH to defund the IRS's plan to hire 87,000 new agents. The IRS exists to serve the American people, not target them.

More taxes and more spending will only result in a higher deficit and a broken economy that will weigh on the backs of our children and grandchildren.

□ 1015

CELEBRATING THE EXTRAORDINARY CAREER OF JUDGE U.W. CLEMON

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Alabama (Ms. SEWELL) for 5 minutes.

Ms. SEWELL. Mr. Speaker, I rise today to honor the extraordinary career of a legal giant and civil rights activist, Alabama's first Black Federal judge, the Honorable U.W. Clemon, who celebrated his 80th birthday on April 9.

A native of Alabama, Judge Clemon was born in 1943. Despite spending much of his childhood in the segregated school system of Jefferson County, Clemon broke down barriers, graduating as a two-time valedictorian, first at Westfield High School in 1961 and then Miles College in 1965.

As a college student, Judge Clemon was a leading voice for civil rights. He marched in countless student demonstrations under the direction of Dr.

King and played a pivotal role in the Selective Buying Campaign to boycott segregated stores in downtown Birmingham.

Before graduating from Columbia Law School in 1968, Clemon clerked at the NAACP Legal Defense Fund, forming a lifelong association serving as local counsel on numerous civil rights lawsuits throughout Alabama.

Judge Clemon always understood the importance of the law in the fight for justice and equality. He quickly gained a reputation as an effective and fearless lawyer, taking on Coach Paul ''Bear'' Bryant to desegregate the all-White University of Alabama football team. He took on the U.S. Steel Corporation, which led to the desegregation of the American steel industry.

By 1974, Judge Clemon took his advocacy to the Alabama State Legislature, making history as one of the first two African Americans elected to the Alabama Senate since Reconstruction.

His tenure as a pioneering lawmaker and skilled attorney caught the attention of President Jimmy Carter, who appointed then-Senator Clemon to serve as Alabama's first Black Federal judge in 1980. He went on to serve on the Federal bench for 30 years until 2009.

Judge Clemon was a highly respected jurist inside and outside the courtroom. He was known as fair but tough. He demanded that lawyers before him represent their clients competently and effectively. Judge Clemon served as the Chief Judge for the United States District Court for the Northern District of Alabama from 1999 to 2006.

Despite retiring from the bench in 2009, Judge Clemon has remained a vibrant member of the Birmingham legal community where he continues to practice law, serving the underrepresented, vulnerable, and underserved.

He has received numerous awards, holds three honorary degrees, two street namings, and most recently, an elementary school was named in his honor.

On a personal note, Judge Clemon is a trusted adviser, counselor, and a loving father figure to me. My most formative legal experience was serving as a law clerk for Judge Clemon after graduating from law school in 1992.

I learned so much serving as his law clerk. I learned more about the practice of law and saw firsthand what justice looks like by witnessing him in his courtroom. Sitting with him in his chambers was always an educational experience. The judge tested my knowledge, stretched my legal acumen, challenged my views, and inspired me to be a better lawyer and person.

I know that I now serve as Alabama's first Black Congresswoman because I was blessed by a transformative experience clerking for Alabama's first Black Federal judge.

I thank his loving family, his wife of 50 years, Ms. Barbara, and his two children, Michelle and Isaac, for sharing him with so many of us.

I ask my colleagues to join me in celebrating the 80th birthday and the extraordinary career of an exceptional jurist, lawmaker, public servant, and wonderful counselor, Judge U.W. Clemon, whose life's work stands as a testament to the power of one person to change the world.

May the seeds that Judge Clemon sowed continue to bear fruit for generations to come.

Happy birthday, Judge.

REMEMBERING DEPUTY SHERIFF JOSH OWEN

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Minnesota (Mrs. FISCHBACH) for 5 minutes.

Mrs. FISCHBACH. Mr. Speaker, on Saturday night, Pope County Deputy Sheriff Josh Owen was tragically shot and killed in the line of duty. He and two other law enforcement officers were responding to a domestic violence call in Cyrus, Minnesota, when the suspect opened fire. It was his 44th birthday.

Deputy Owen spent nearly 12 years with the sheriff's office and recently received a Distinguished Service Award for his actions responding to a house fire.

He is pictured here with his K9 partner, Karma.

He was also a military veteran serving with the Minnesota National Guard and deploying to Iraq for 22 months.

Josh leaves behind a wife, Shannon, and a 10-year-old son, Rylan.

Those of us with ties to law enforcement, who see loved ones risking their lives every day to protect and serve others, share their pain.

Josh's colleagues placed a squad car on the front lawn of the sheriff's office on Sunday, and the community has made it into a memorial to pay their respects to this outstanding member of the community and show his family how loved he was.

Yesterday, there was a procession to bring his body home. Law enforcement agencies from across the State turned out to honor their fallen brother. This is a devastating, heartbreaking reminder that our men and women of law enforcement put their communities above all else every single day.

I am praying for Deputy Owen's family and for Pope County and Minnesota law enforcement communities as they mourn the loss of this hero and continue to serve and protect us every day.

GUN REFORM NOW

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from North Carolina (Ms. ADAMS) for 5 minutes.

Ms. ADAMS. Mr. Speaker, today, I rise because too often in our schools the sounds of students talking and lockers clanking in hallways are giving way to silence and violence.

Today, I rise because desks that should be covered in gum are too often covered in blood, the blood of students and their teachers.

Today, I rise because three 9-year-old children and three adults are dead in Tennessee, as well as the person who killed them.

Tennessee State representatives Justin Jones, Justin Pearson, and Gloria Johnson wanted to bring attention to this tragedy. They wanted to honor the victims of the mass shooting at The Covenant School with action instead of insulting their memories with silence. From the floor of the Tennessee House, they led the public gallery in chants of ''no more silence,'' ''we have to do better,'' and ''gun reform now.''

Tennessee Republicans were so afraid of this message that they expelled Justin Jones and Justin Pearson, the two Black representatives, for their actions.

These two courageous young men knew, as we do, that we cannot wait to be saved from the gun epidemic. They knew there would be more dead.

Unfortunately, since the mass shooting in Nashville on March 27, over 900 additional people were killed by gun violence in our country, 22 in Tennessee alone.

It really makes me sick. It makes me livid that we continue to accept the status quo and that we are comfortable living in a country where at any time our friends, our families, our neighbors, even our children and our grandchildren, can die a horrible death because they were in the wrong place at the wrong time when the wrong person had a gun.

We will be judged if we don't act, not only by history, not only by our God, but by our children who will inherit our country with this metastasized gun cancer still attached.

I am a Christian. As someone who knows and reads and lives Scripture, I can tell you beyond a doubt that the AR–15, the assault rifle, is the golden calf of Washington, D.C. Too many people in the people's House worship this idol and treat it with reverence. However, just like in Scripture, if we continue to worship this idol, the result will be physical and spiritual death.

I stand with representatives Justin Pearson and Justin Jones in saying: No more silence. We have to do better. Gun reform now. No more silence. We have to do better. Gun reform now.

WOTUS RULE SHOULD BE REPEALED

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. LAMALFA) for 5 minutes.

Mr. LAMALFA. Mr. Speaker, today, the House will vote to decide whether to overturn another bad decision by President Biden.

His veto of H.J. Res. 27, which overturned the EPA's and Army Corps of Engineers' overreaching definition of

''waters of the United States,'' in yet another rule change to that law, keeps the new expanded definition of WOTUS in place.

This change to one of most abused and litigated Federal statutes on the books allows the EPA to regulate every single ditch, every little puddle, every ephemeral stream in America, as if they were somehow the Mississippi River or the Sacramento River, in my home State.

Of course, this is ludicrous, as our Nation's commerce, agriculture, and natural beauty are not dependent on a farmer's self-made ditch or irrigation canal or these ephemeral streams.

With the expanded WOTUS rule, the Federal Government can now regulate almost any activity, from farming to landscaping, which occurs on private property.

Treating Americans' private property as sacrosanct has been a core principle of this Nation for over two centuries.

Our Founders would be horrified to see a United States Government agency, headquartered here in Washington, D.C., granting itself broad power to regulate every single American on their own land.

We have seen the EPA abuse WOTUS before to regulate everything from farming to home building. Ridiculous interpretations on whether you can even plant a fallow field back to a wheat crop that previously had one without a permit can often take 3 years because there is no motivation from the Army Corps or other regulators to get the job done and tell the farmer: Yes, you may farm your ground the way you did it once before. They sued them for it, they fined them, and basically put them out of business over a farming activity that has occurred.

Another example is the couple that are being sued over WOTUS, and it is being used as a weapon to prevent a married couple from building their dream home near the shore of a lake, all within the rules.

I guarantee you, when the Clean Water Act and the Environmental Protection Act were passed in the early seventies by this Congress, they did not have the intent, nor would they have gotten away with, passing legislation that would have been so far-reaching as this.

These are about, yes, clean water. They are about protecting species and some of the habitat for them, not every possible piece of ground in the world that might host one, even though they don't currently.

They would not have been able to pass that through Congress because people would have run them out of here on a rail. Yet, through court interpretations over time, rulemaking, and guidance, this is where we have gotten to. The administration, and the previous Democratic administration, have been hyperaggressive in putting waters of the United States rules in place that have little to do with what the measurement used to be, that it was a navigable stream.

Well, ''navigable'' used to mean you could actually drive a boat up and down that particular river or what have you. Now, if you can float a rubber duck in it for a half hour after a rain in a pond or a stream or what have you, then they seem to believe that should be a good enough definition for ''navigable waterways.''

It is ridiculous. With the increasing cost of food to Americans and fewer food choices on our shelves, and even empty shelves in this country, this is the move they make, to restore to previous aggressive limits of waters of the United States and take away the ability to farm our products, already safely, already reliably, already ecologically sound.

This is not needed under the Biden interpretation or the previous Obama interpretation. These are property rights, and these are land rights that are a cornerstone of our country's founding. Indeed, it is a way to take more control and put Washington, D.C., and put bureaucrats in greater charge of things that used to be good rural issues, rural values, which are keeping food on the table for Americans, thereby positioning us to be independent of having to import food, which keeps us strong.

Food is strategic. Food is a security issue. We are seeing our security dissipate rapidly under the weight of crazy regulations like this and others that are so negatively affecting our ability to produce energy in this country. WOTUS is used to stop that, too. If we don't produce our own energy, are we going to import more from the Saudis or other areas?

We have seen these embargoes twice in our past. It doesn't work very well. Energy is the core for everything in a civilized society. As we see our energy dissipating along domestic production, we are seeing the high cost of everything.

WOTUS needs to be repealed, and I hope the House does that today.

□ 1030

LIBERTY AND JUSTICE FOR ALL

The SPEAKER pro tempore. The Chair recognizes the gentleman from Texas (Mr. GREEN) for 5 minutes.

Mr. GREEN of Texas. Mr. Speaker, and still I rise.

And still I rise as a proud, unbought, unbossed, unafraid, liberated Democrat.

I rise today, Mr. Speaker, in the name of liberty and justice for all. Liberty and justice for all, not the name of liberty and justice for people of color, for people who happen to be of a different hue, but in the name of liberty and justice for all and, more specifically, in the name of liberty and justice for Ralph Yarl and Kaylin Gillis.

Mr. Speaker, I rise in the name of liberty and justice for them because our country should be in mourning today. A life was needlessly lost, and no one of great notoriety, or a person who happens to have been a Congressperson, or a person holding some prominent position in society. They were not persons who were out in Hollywood making motion pictures; just an ordinary citizen who lost their life, and we ought to be in mourning.

We ought to be in mourning because the young man was shot for ringing a doorbell. His sin was he was ringing a doorbell. He was a person of color, yes. Apparently, according to at least one statement by an official, there is something to do here with race. But he was ringing a doorbell, and he was shot twice—once in the head.

The young woman that I speak of was White. She went into the wrong driveway, and she was shot.

Is this where we are in this country? People are going to be killed for ringing the wrong doorbell? Going to be murdered for pulling up in a driveway? Innocently, I might add.

Is this where we are?

We ought to be in mourning today. These lives matter. We ought not allow this to happen without some sort of special occasion, something that speaks to them, some sort of way of commemorating this.

We have gotten to the point now where it is just a life lost. Tomorrow there will be more. The day after that, even more.

What is wrong with us?

Can not we see where we are headed? We stand on the eve of destruction and don't know it. We are going to destroy ourselves.

Mr. Speaker, we have the power to do something about this. We cannot allow constitutional carry, meaning just get a gun and not have to take any sort of test. You don't have to prove that you are a person who can manage this level of lethality. You can buy a gun because you have the money to buy it. Then only God knows what you will do with it.

I am not contending that I know the history of these two persons. That is not it. But I am saying to you that if we don't get a handle on what we are doing with this level of lethality by placing these weapons in the hands of people willy-nilly, we are going to see more of this. It can be your child next.

Do not assume that it cannot happen to you. It can be your daughter. These were the children of somebody, and they deserve life, liberty, and the pursuit of happiness.

I am totally, completely, and absolutely antithetical to this notion of constitutional carry, where you can just buy a gun because you have the money to buy it. We ought to have red flag laws in this country. We ought to be able to decide whether or not we are going to allow people to have lethality that can, at a moment's notice, take tens of lives.

Gun manufacturers ought to be held accountable for placing this level of

lethality within the communities. At some point, gun manufacturers are going to lose this immunity they have to being held accountable. The Congress never should have given it to them.

This is a sad day in the history of this country. Two people—it doesn't matter about their color—two people were shot because they happened to be in the wrong place in the presence of persons with lethality.

CELEBRATING FAITH MONTH

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana (Mr. JOHNSON) for 5 minutes.

Mr. JOHNSON of Louisiana. Mr. Speaker, this week, we are observing the second annual celebration of Faith Month.

Concerned Women for America and other sponsors are encouraging legislators across our country to give public display of our personal faith freely and openly. What a great exercise this is.

Of course, even though there is a dangerous trend today to discourage the display or depiction of the exercise of our faith in the public square—certainly, there is a move to keep religion out of politics and to rigidly enforce the so-called separation of church and state—the Founders of this country would have certainly supported our efforts here today.

Indeed, this common misunderstanding about the separation concept—and it is an important one—is one that is useful for us to address. I think today is a good day to do it. In fact, it is one of my favorite subjects. It is a topic that I have debated and written and taught university courses on for about 25 years, about a quarter of a century. For two of those decades, I was in the courts defending religious freedom cases. I learned during that time that I really believe that this is among the most misunderstood subjects in our entire culture.

You see, most people today who insist upon a rigid separation of church and state are unaware that that phrase derives not from the Constitution itself, of course, but from a personal letter that Thomas Jefferson wrote to the Danbury Baptist Association in 1802. He explained that because ''religion is a matter which lies solely between man and his God,'' the language of the First Amendment is a vital safeguard of our ''rights of conscience.''

Jefferson said he revered ''that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and state.''

That is what he wrote in his letter to the Danbury Baptists, but Jefferson clearly did not mean that metaphorical wall was to keep religion from influencing issues of civil government. To the contrary, it was meant to keep the Federal Government from impeding the religious practice of citizens.

The Founders wanted to protect the church from an encroaching state, not the other way around. The majority of the Founders, having personally witnessed the abuses of the Church of England, were determined to prevent the official establishment of any single national denomination or religion.

Of course, we know that, but here is the point. They very deliberately listed religious liberty, the free exercise of religion, as the first freedom protected in the Bill of Rights because—here is the key—they wanted everyone to freely live out their faith as that would ensure a robust presence of moral virtue in the public square and the free marketplace of ideas.

Volumes written on this topic can be summarized probably best and most concisely by reference to the sentiments of our first two Presidents.

In his historic Farewell Address, President George Washington, of course, famously said: ''Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports.''

Our second President, John Adams, came next, and he said: ''Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.''

What these two Founders and their fellow patriots all understood from history was that there are many important rules and practices that can help build and sustain a healthy republic, but the key and essential foundation of a system of government like ours must be a common commitment among the citizenry to the principles of religion and morality.

The Founders acknowledged in the Declaration the self-evident truths that all men are created equal and that God gives all men the same inalienable rights. However, they knew that in order to maintain a ''government of the people, by the people, for the people,'' as Lincoln later articulated, in ''this nation, under God,'' those inalienable rights must be exercised in a responsible manner.

They thus believed in liberty that is legitimately constrained by a common sense of morality and a healthy fear of the creator who granted all men our rights.

The Founders understood that all men are fallen and that power corrupts. They also knew that no amount of institutional checks and balances and decentralization of power in civil authorities would be sufficient to maintain a just government if the men in charge had no fear of eternal judgment by a power higher than their temporal institutions.

A free society and a healthy republic depend upon religious and moral virtue because those convictions in the minds and hearts of the people make it possible to preserve their essential freedoms by emphasizing and inspiring individual responsibility and self-sacrifice and the dignity of hard work, the rule of law, civility, patriotism, the value of family and community, and the sanctity of every single human life.

They knew that this would be important, and without these virtues indispensably supported by religion and morality, every nation would ultimately fail.

Inscribed on the third panel of the Jefferson Memorial here in Washington is a sobering reminder to every American. It says: ''God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God?''

This a great time to preserve our faith. We can never back down. I thank the Concerned Women for America.

CHOOSE PROTECTING OUR TRANS CHILDREN OVER POLITICS

The SPEAKER pro tempore. The Chair recognizes the gentleman from New Jersey (Mr. MENENDEZ) for 5 minutes.

Mr. MENENDEZ. Mr. Speaker, I rise today to speak in opposition to H.R. 734, a bill that chooses politics over protecting our children, specifically our trans children.

With all the challenges we are facing as a country, with all the challenges so many working and middle-class families are facing, it is astonishing that we are here debating legislation that seeks to target our children.

I intentionally say ''our children'' because I do believe as legislators we should be concerned about every child in America, whether they live in a red or blue State, urban or rural community, and however they choose to identify.

Yet, Republicans, not just in this body but in legislatures across the country, have set their mark on trans children. When we speak of trans children, by most estimates, we are talking about 300,000 people in a country of 331 million, and even fewer who participate in school sports.

Just think about that. With all the power bestowed upon us, upon this august institution, Republicans are choosing to use that might to prevent trans children from participating in sports. They do so instead of working with Democrats to provide tangible solutions to the challenges that so many Americans are facing.

Why are we not voting today to make permanent the expanded child tax credit, which lifted 2.9 million children out of poverty?

Why are we not voting today on legislation that would make pre-K available to all families and, in doing so, alleviate one of the most significant burdens that working parents face each and every day?

Why are Republicans not focusing on these issues, debating and voting on real change for the majority of American families?

This week, Republicans will constantly talk about protecting our children, yet they won't work to solve the

gun violence epidemic that we have in our country, an epidemic that continues to be a stain on each and every one of us.

We have to acknowledge the complete absurdity that Republicans are more comfortable sending their children to school to participate in active shooter trainings than they are having their children play alongside a trans teammate.

The leading cause of death of children in this country, in our country, is gun violence. Yet, Republicans are here trying to prevent trans children from participating in sports.

The GOP's title of this bill is Protection of Women and Girls in Sports Act of 2023, but have we not asked ourselves about the children that this bill seeks to target? Who is protecting them?

When will we remember that we show our true strength by concerning ourselves with the most vulnerable amongst us?

We are supposed to be the ones who are guided by President Lincoln's encouragement to have faith that right makes might. Being on the side of those who others seek to marginalize is the right side of history and shows true strength.

Mr. Speaker, on the topic of strength, let me be clear about one thing. Every single trans individual in this country who continues to be their true and authentic self in the face of constant bigotry and hate has more strength and courage than anyone who chooses to vote for this bill.

As the Book of John reminds us: ''If anyone has material possessions and sees a brother or sister in need but has no pity on them, how can the love of God be in that person? Dear children, let us not love with words or speech but with actions and in truth.''

As a father, I know that the single greatest gift that we can give our children is the love, support, and encouragement they need to be the truest and most authentic versions of who they are because we as adults know that this life is hard and that giving our kids that support is the least we can do.

Instead of trying to make life just a little easier, especially for those individuals who have found the bravery to be open about who they are, Republicans are trying to put out their inner light by making them feel different, by ostracizing them from their peers.

As I have said before and will say so long as it needs to be said, I love every single trans individual in this country because they are my brothers, my sisters, my neighbors, and my fellow Americans.

This bill is wrong. Targeting the trans community is wrong, and I won't stand for it.

Mr. Speaker, I am a ''no'' on H.R. 734, and I urge my colleagues to do the same.

□ 1045

CONGRATULATING THE 2023 GRADUATING CLASS OF THE COLLEGE OF OSTEOPATHIC MEDICINE AT TOURO UNIVERSITY NEVADA

The SPEAKER pro tempore (Mrs. SPARTZ). The Chair recognizes the gentlewoman from Nevada (Mrs. LEE) for 5 minutes.

Mrs. LEE of Nevada. Madam Speaker, I rise today to congratulate the 2023 graduating class of the College of Osteopathic Medicine at Touro University Nevada.

This week is National Osteopathic Medicine Week, and I cannot think of a better way to celebrate than by highlighting the incredible success of our future doctors of osteopathic medicine.

Not only did these graduates achieve a 100 percent residency match rate, but I am also proud to say that 50 of them will be staying in Nevada where they will help fill critical healthcare needs in our State by helping combat our dire shortage of physicians.

Nevada ranks 48th in the Nation in doctors per capita. These future healthcare providers will fill in the gaps across our healthcare system from family medicine and pediatrics to emergency medicine, neurology, and psychiatry.

Too many Nevadans in rural and underserved communities do not have access to specialists in their area, which significantly restricts their ability to access healthcare services.

I am so proud that these doctors will be filling those critical needs, and I congratulate Touro University.

CELEBRATING THE 75TH ANNIVERSARY OF THE NEVADA AIR NATIONAL GUARD

Mrs. LEE of Nevada. Madam Speaker, I rise today to celebrate the Nevada Air National Guard for their 75 years of service to Nevada and the entire country.

In that time, our servicemembers have supported national security, combat operations, and humanitarian efforts across the globe.

The Nevada Air National Guard began as a small fighter squadron comprised of World War II-era P–51 Mustangs. Its units have since evolved: flying in the Korean war, aerial reconnaissance throughout the Cold War, and numerous deployments to Afghanistan and Iraq.

Here at home, the Nevada Air National Guard has also carried out significant humanitarian operations such as Operation Haylift, a daring supply drop to farmers and miners trapped by winter storms in 1948.

Today, the Nevada Air National Guard is perhaps best known for its continued use of our military's workhorse, the C–130, which, among other impressive capabilities, has been routinely deployed for firefighting operations with the U.S. Forest Service.

In 2021 alone, the Nevada Air National Guard made 331 flights, dropping more than 8 million pounds of fire retardant to help contain wildfires, preserve our public lands, and save lives.

Looking ahead, I look forward to working with the Nevada Air National Guard on their priorities, including a well-deserved upgrade to their fleet of C–130s, as they take on an even better 75 years ahead.

From Carson City to Reno and the 232nd Combat Training Squadron at Nellis Air Force Base, I again thank everyone who has made Nevada Air National Guard strong for the past 75 years. Our State and country are safer because of it.

RESTRICTING ABORTION

Mrs. LEE of Nevada. Madam Speaker, I rise today to speak about the frightening recent developments concerning the personal freedoms of millions of Americans.

A single judge in Texas has dramatically restricted decades-long access to safe and effective abortion medication in all 50 States.

Anti-choice extremists have made it clear that this is not the end. They did not stop at overturning Roe v. Wade. They will not stop at preventing women from accessing FDA-approved medications like mifepristone.

They have made it clear about their intention to restrict control and ban a woman's right to choose with Federal legislation. From the courts to Congress, a woman's right to choose is under attack. We will not be intimidated, and I am doing everything in my power to stop this.

My home State of Nevada, where voters decided by a 2-to-1 margin in 1990 to protect a woman's right to choose and just last fall voted to reject the extremist politicians leading this crusade to ban abortion nationwide, has made it clear where it stands.

I have made it clear that I am here to represent my district and my State.

Last week, I joined hundreds of my pro-choice colleagues in signing on to an amicus brief that has been filed with the Supreme Court, asking the Court to reverse the Texas judge's radical decision.

I am not giving up and neither should you. I support choice. The majority of Nevadans support choice. The majority of Americans support choice.

It is time for Congress and the courts to do the same.

ISSUES OF CONCERN

The SPEAKER pro tempore. The Chair recognizes the gentleman from Tennessee (Mr. COHEN) for 5 minutes.

Mr. COHEN. Madam Speaker, I am the only Democrat Congressperson from Tennessee, so in some ways I represent the entire State on issues of concern to Democrats and people of progress.

Tennessee and New York, unfortunately, have been shameful in their conduct recently in the way they relate to government and in the lack of the way they relate to meaningful gun reform to protect our citizens from mass shootings.

In Tennessee there was the Tennessee Three. Three legislators who went to

the well to protest the fact that after a murder, a terrorist act killing six citizens at the Covenant Presbyterian Church, there was no response from the supermajority Republicans in the general assembly, nor at the time from the Republican Governor.

They went to the well, while the galleries were full of people protesting the lax gun reform laws or gun laws in Tennessee, to protest and say, we should have some gun laws to protect our children and to protect people all over our country who are victims of mass shootings.

They expelled two of the members and tried to expel three for simply raising an issue that otherwise would not be raised by a supermajority and that was favored by a majority of the people in Tennessee by far—red flag laws.

No more weapons of war should be sold, the weapons that people used to do mass shootings at Covenant Presbyterian Church; in Louisville, at the bank; and almost everywhere where there are mass shootings in this country.

That was shameful for the Tennessee General Assembly to try to expel three and to expel two, and not to take up gun reform.

Governor Lee later took up gun reform and said he was for red flag laws, but a red flag law was proposed this week, and it didn't even get a motion or a second.

In New York, the House Judiciary Committee adjourned to New York, a recess there, to have a hearing yesterday allegedly concerning a State official, the DA, Mr. Bragg, and his record that they call pro-crime and anti-victim.

What they really went to New York to do was to act as Donald Trump's public relations firm and defense firm, something the United States Congress is not empowered to do for any individual. They are not empowered to go into another jurisdiction where federalization laws say that the States have their own prosecutors, and the Federal Government is not supposed to go in and ask for information that they can then give to the defense, and attack Mr. Bragg.

The facts were well-pointed out that New York is a safe city, and safer than most of the major cities in Mr. JORDAN's State of Ohio. They attacked Mr. Bragg and said he was supported by George Soros.

What does that have in common with Tennessee?

The people they went after were minorities.

Mr. Bragg, the first African-American-elected DA in the borough of Manhattan and in Tennessee the two youngest members of the general assembly who happened to be African American, a minority group by far in Tennessee and the Tennessee General Assembly.

They accused Mr. Bragg of being supported by George Soros, which he was. We know that is a trope for anti-Semitism. They go after a minority religion, a minority DA, and try to appeal to their base and try to help Donald Trump. That is shameful, as well.

Shame on the Judiciary Committee of this House. Shame on the General Assembly of Tennessee.

Do your job. Protect your citizens. Pass meaningful laws to restrict weapons of war and impose red flag laws, so we can stop people from committing crimes—mass murders in this country, which have become too commonplace. Let's uplift our political dialogue to where we don't attack minorities to get away with obfuscating our real purpose, which is supporting Donald Trump, who committed two of the worst crimes in this country: one, trying to steal the 2020 election and telling people it was a steal, fraudulently, and getting campaign contributions; and, two, in 2016—if Mr. Bragg is right—covering up payments to a porn star to win the 2016 election illegally.

Madam Speaker, the worst crime in New York was 9/11. Then there was the Central Park Five. Five Black youths who were alleged and convicted of killing a jogger in Central Park. This was back, I think, in the 20th century.

Mr. Trump took out full-page newspaper ads in three papers and said all of those five should get the death penalty. They got sentences, they didn't get the death penalty. Later they were exonerated, and it was shown that somebody else committed the crimes—but not after they spent 41 years in prison, an average of 8 years a piece, and not after the State had to pay $41 million for their time in prison.

Did Donald Trump apologize?

No, he doesn't apologize. Shameful.

RECESS

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

Accordingly (at 10 o'clock and 56 minutes a.m.), the House stood in recess.

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at noon.

PRAYER

The Chaplain, the Reverend Margaret Grun Kibben, offered the following prayer:

Today, most merciful God, we remember those 6 million Jews and other minorities who cried to You, fearing that in the face of the horrendous genocide of the Holocaust, You had forsaken them. For years You seemed so far from saving them, so distant from their cries of anguish.

Yet, amidst the horrific experiences, the heartbreak of innocent lives lost, the threat of torture and cruel suffering, nevertheless, they held fast to You and to their Jewish faith. They did not disavow their divine heritage, even in the face of death. Even now, as the Jewish community recites Kaddish for the generations lost, they proclaim their belief in the Sun even when it isn't shining.

Use this annual commemoration to inspire in us such faith in the face of adversity, but at the same time remind us, warn us, how seductive is the desire for power, how natural the inclination toward hate, how insidious the culpability of apathy. Lead us not into the hands of our enemies, neither allow us to perpetuate or ignore the injustice to our neighbor.

Remind us that You will not forsake Your people. You will not hide Your face from us, for in You do we find strength to live justly. In You do we find reason to live rightly.

In Your most holy and merciful name, we pray.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House the approval thereof.

Pursuant to clause 1 of rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Ohio (Mr. BALDERSON) come forward and lead the House in the Pledge of Allegiance.

Mr. BALDERSON 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.

ANNOUNCEMENT BY THE SPEAKER

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

PROTECTING WOMEN AND GIRLS' SPORTS

(Mrs. KIGGANS of Virginia asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KIGGANS of Virginia. Mr. Speaker, I rise today as a former female athlete, mother of two daughters who are athletes, lifelong runner, and former coach of girls' sports teams. This week we will vote on a bill to protect women and girls' sports. I led a similar bill in the Virginia Senate and look forward to supporting this measure in the U.S. House.

I feel passionately about this issue and want to convey how important it is to protect women's sports for future generations.

This bill is not about discriminating against any group of people, but rather protecting the benefits of allowing biological girls to push themselves and bond over a shared physical goal. Allowing women to excel in a physical activity promotes teamwork, sportsmanship, and self-confidence. Women's sports offer opportunities for young girls to discover their strengths and teach them that hard work pays off.

Title IX protected these opportunities and allowed young women in this country to compete and win in fair fields of play. Biological men and women are physically different and should be respected for those differences.

Failing to acknowledge these differences takes away opportunities for girls and women to succeed on the playing field. We cannot allow this to happen.

I am proud to support the Protection of Women and Girls in Sports Act, and I strongly urge all of my colleagues to do the same.

GRATEFUL FOR THE OPPORTUNITY TO CORRECT A MISTAKE

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

Mr. GREEN of Texas. Mr. Speaker, and still I rise and I rise today, again, in the name of liberty and justice for all. More specifically, liberty and justice for Ralph Yarl and Kaylin Gillis as promised in our Pledge of Allegiance.

Mr. Speaker, earlier today in making a floor speech concerning these two persons who were victims of gun violence, I incorrectly indicated that both lost their lives.

Miraculously, Mr. Yarl did not lose his life for which I am grateful and for which I want to make the RECORD clear. I want people to know that if I make a mistake, I am going to correct my mistake in the same venue where I made it. I made a mistake, and I am grateful that I have had the opportunity to correct it.

A BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

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

Mr. YAKYM. Mr. Speaker, I rise in support of legislation I am introducing today: A balanced budget amendment to the U.S. Constitution. This is the first bill I am introducing as a Member of Congress, and it is because I believe we need to get our fiscal house in order as it is the issue of our time.

For the first time ever, we risk passing off to our kids and grandkids a country with fewer opportunities and less freedoms than the ones we inherited, and our out-of-control debt is the reason why.

What was a problem a decade ago is quickly becoming a full-blown crisis. We didn't get into this mess because anyone thinks that the path that we are on is sustainable. We got here because Congress has lacked the political will to do anything about it. That is why we need to fundamentally reform how this place operates in order to get the outcomes that Americans deserve.

States across America are required to balance their books. In Indiana, we make responsible spending choices and exercise fiscal discipline every single day. It is high time we brought that same Hoosier common sense to Washington, and a balanced budget amendment is the way to do it.

I encourage my colleagues to support my legislation and join me in the fight to restore fiscal responsibility.

UNSAFE CONDITIONS FOR POSTAL WORKERS

(Mr. HIGGINS of New York asked and was given permission to address the House for 1 minute.)

Mr. HIGGINS of New York. Mr. Speaker, day in and day out, our dedicated letter carriers and postal workers deliver to America for America, but processing and delivering the mail should never leave these workers stranded, threatened, or at risk of losing their lives.

However, that is what appears to have happened during a massive winter storm that hit Buffalo and western New York in December. After numerous personal accounts of unsafe conditions for postal employees, we are calling on the Office of Inspector General in coordination with the Occupational Safety and Health Administration to investigate.

Weather emergencies happen, especially in Buffalo in the wintertime. We need a clear process to protect America's postal workers when they do.

100 DAYS OF VICTORIES

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

Mr. CLINE. Mr. Speaker, last fall the American people voted for a Republican-led House majority to reverse course from the failures of the Pelosi-led House of the 117th Congress.

In just the first 100 days, House Republicans have kept our promises by passing the Parents Bill of Rights and the REIN IN Inflation Act, repealing funding for Biden's IRS army, and unleashing American energy with H.R. 1, while preserving our SPR and protecting it from China.

We have also restored the people's House back to its rightful owners and ensured our colleagues show up for work by ending proxy voting, held the government accountable, defended life, and forced the President to end the COVID National Emergency once and for all.

As a catalyst for these results and continued victories, we have secured the most transparent, open, and Member-driven rules package in the House's history.

Change has come to the people's House, and it is here to stay.

CONFRONTING AN UNPRECEDENTED FOOD SECURITY CRISIS

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

Mr. MCGOVERN. Mr. Speaker, the world is confronting an unprecedented food security crisis. The World Food Program reports that a record 349 million people across 79 countries face acute food insecurity.

The COVID–19 pandemic flattened economies, fractured supply chains, and caused huge spikes in inflation. Then came Russia's invasion of Ukraine, one of the world's most important breadbaskets.

During Global Child Nutrition Month, I am not just hopeful that tackling these challenges is possible; I am confident that we can. That is because the U.S. Government, our farmers, and NGOs have responded to the crisis with historic investments, expanding global food, nutrition, and agricultural programs, including Food For Peace, McGovern-Dole, Feed the Future, USAID's nutrition, maternal and child health programs, and the Bill Emerson Humanitarian Trust.

Mr. Speaker, it is easy to turn on the news and become overwhelmed, but the U.S. has not only been ready to provide support to those who are hungry, we have been at the forefront. Each of these proven programs deserves our support, and I call upon my colleagues to increase funding for these programs in the annual appropriations bills. There are lives in the balance. We can end hunger now.

PAYING TRIBUTE TO DELAWARE COUNTY SHERIFF RUSS MARTIN

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

Mr. BALDERSON. Mr. Speaker, today, I rise to pay tribute to my dear friend, Delaware County Sheriff Russ Martin, who officially retired this week from his post as Delaware County Sheriff after nearly 34 years of dedicated public service in law enforcement.

Sheriff Martin first began his career in law enforcement as a dispatcher while attending Bowling Green State University. He later became a police officer for the city of Delaware and then served 8 years as the city's chief of police.

In 2012, he was first appointed to the Delaware County Sheriff. As Delaware County Sheriff, he added police body cameras, restored the department's cold case unit, and advocated for life-saving equipment to empower citizens and to support first responders.

Fitting for a man who teaches courses on leadership and ethics, Sheriff Martin's own legacy is one marked by compassion, integrity, and devotion.

On behalf of Ohio's 12th Congressional District, I wish Sheriff Martin the very best as he embarks on new adventures, alongside his loving family as a grandfather, father, husband, volunteer, and champion for law enforcement.

HONORING FRAM VIRJEE AND HIS WIFE ON THEIR RETIREMENT

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

Mr. CORREA. Mr. Speaker, I rise today to honor Cal State Fullerton's president Fram Virjee and his spouse and partner of 37 years, Julie. I congratulate both of them on their upcoming retirement after more than 5 years at Cal State Fullerton.

As president of Cal State Fullerton, the largest university today in California, Fram and his great partner, Julie, have been part of the Titan community. Under both their leaderships, Cal State Fullerton is today the largest university in California and is number one in graduating women in California. Today, Cal State Fullerton is the number four best bang for your buck university in the United States.

Before coming to Cal State Fullerton, Fram served as executive vice chancellor, general counsel, and secretary to the board of trustees of the Cal State University system. Before coming to Cal State University, Fram was a partner at O'Melveny and Myers.

Fram and Julie are involved in a lot of nonprofits, and they both founded and have supported the Yambi Rwanda, a nonprofit dedicated to improving the lives of Rwandans.

Mr. Speaker, I congratulate, President Fram Virjee and Julie on their retirement. I am sure it is not going to be their retirement. As a Cal State Fullerton alumnus, I am proud to consider them both very good friends. Go Titans.

HOLOCAUST REMEMBRANCE DAY 2023

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

Mr. KEAN of New Jersey. Mr. Speaker, I rise to recognize Yom HaShoah, a solemn day where people of all faiths have come together to honor the over 6 million Jews who lost their lives during the Holocaust.

Today, we remember the atrocities committed by Nazi Germany and reaffirm our commitment to never forget the lessons of one of the darkest chapters in human history.

It is also a day to recognize the survivors who have borne witness to the horrors of genocide and have shown us the strength of the human spirit in the face of unimaginable evil.

It is our responsibility to ensure that future generations learn the lessons of the Holocaust. We must teach our children a full and accurate history so that these acts of hate and intolerance never happen again.

As we observe Holocaust Remembrance Day, let's honor the memory of those who perished, celebrate the resilience of those who survived, and recommit ourselves to creating a world where hate and intolerance have no place.

□ 1215

PROTECTING AMERICANS' RIGHT TO LIFE

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

Ms. PLASKETT. Mr. Speaker, we have now concluded 100 days of Congress, yet my colleagues across the aisle continue to prioritize political grievances and political theater at the cost of the American people. Many are more concerned about policing women's and girls' bodies than they are about protecting the lives of all American citizens.

The recent attempt to deny women access to FDA-approved medication because of its use in medical abortions is yet another attack on Americans' personal freedom.

This week H.R. 734 coming to the floor is a threat to young girls across this Nation and their right to privacy. The GOP claims that they are taking action to protect our children, yet they fail to address one of the greatest threats to our children: gun violence.

This weekend, in my home of the Virgin Islands, gun violence riddled our streets, taking the lives of young people in a place that does not manufacture guns and has strict gun laws. Most of the guns that are confiscated in these actions are brought in illegally from places that do not have strict gun laws.

Instead of pursuing an agenda aimed at violating Americans' rights, please, let's work on protecting Americans' right to life outside the womb. I strongly urge my Republican colleagues to reevaluate their priorities for the sake of the American people.

RECOGNIZING THE LIFE OF CHARLES VERNON PARKER

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

Mr. GOSAR. Mr. Speaker, I rise today to recognize the life of Charles Vernon Parker of Austin, Texas, known as Charlie to his friends and family.

Over the last three decades, Charlie Parker has been a leader in the business community, construction, real estate, and many other areas. Charlie's companies have completed massive projects across the United States, providing jobs and opportunities to dozens of Americans.

Beyond Charlie's vast accomplishments in the business world, he has been one of our Nation's greatest advocates and leaders in the area of drug and alcohol addiction recovery.

As a person in long-term recovery, Charlie has been clean and sober since 1984. In the three decades since, he has traveled the world with his wife and best friend, Katie, as one of the most sought-after addiction recovery motivational speakers.

To date, thousands of men across the world attribute their freedom from addiction to Charlie Parker.

Charlie Parker served on the board of directors of Austin Recovery and was a large benefactor of dozens of charitable organizations and an active member of his Christian church.

Recently diagnosed with a terminal illness, Mr. Parker is spending his final chapter still actively working with the men he mentors and being a force for God and a force for good every day in our Nation, as well as spending time with his loved ones: his daughters, Sadie and Grace; his grandchildren; and his loving wife, Katie.

Thank you, Mr. Speaker, for allowing me to commemorate the life of Charles Vernon Parker.

Thank you, Charlie, for a life well lived.

CONGRATULATING THE WOODBRIDGE HIGH SCHOOL JROTC ROBOTICS TEAM

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

Ms. SPANBERGER. Mr. Speaker, I rise today to recognize the Woodbridge High School JROTC robotics team, which is competing in the JROTC National Championship in Dallas.

In its very first year of existence, this team has already earned an invitation to compete against teams across the country. After a season of climbing the rankings, quickly learning about the skills needed to win, and placing in statewide competitions, their hard work has paid off.

Woodbridge High's team is the only JROTC VEX robotics team in the entire Commonwealth. Today, they are not only making Woodbridge proud, they are making all Virginians proud.

These Virginia cadets overcame the odds. Their determination, their innovation, and their ability to rise above adversity make them fierce competitors, and it puts them on a pathway to success as future leaders of our communities, our Commonwealth, and our country.

These results are a testament to Virginia's JROTC students, their instructors, and their parents.

Mr. Speaker, I congratulate the Vikings and wish them the best of luck at nationals.

CELEBRATING 50 YEARS OF SYRACUSE UNIVERSITY PROJECT ADVANCE

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

Mr. WILLIAMS of New York. Mr. Speaker, 50 years ago, Syracuse University made a commitment to high school students to help prepare them for college. It also made a commitment to educators to help them continue to grow in their profession, and it made a commitment to the education community as a whole to continue important research.

The Syracuse University Project Advance is an enhanced concurrent enrollment project that is serving over 200 other partner schools. It has helped more than 750 educators become Syracuse University adjuncts.

We celebrate 50 years of the Syracuse University Project Advance program today. As a supporter of choice in education, I applaud SU for their continued efforts locally to provide programs that give students access to the tools necessary for their careers and prepare them for college.

The Syracuse University Project Advance increases dialogue between a major local university and our local high schools. It offers innovative courses, and it allows students the option to stay local and be prepared for the next chapters in their lives right in their hometowns.

HONORING THE MEMORY OF MILES ISBELL

(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, today, I honor the memory of Miles Isbell. Today would have been Miles' 12th birthday.

At the age of 9, Miles was diagnosed with brain cancer. While undergoing treatment, he refused to stop living his life to the fullest extent possible. He stayed active in school while undergoing treatment. He became a real-life trouper and outspoken candidate for cancer research while, in one night, raising $3 million for a brain cancer research facility.

Last September, the players on the San Francisco Giants baseball team wore pediatric cancer bracelets in Miles' honor. They brought him to several games, and he was able to meet several of the team's star players.

Miles had a tenacity that few of us could match. Despite the difficulty of his diagnosis and treatments, he never once uttered the word ''cancer.'' Indeed, this hat says: ''Smiles for Miles.''

Sadly, he passed away on October 21, 2022. The mark he left behind is indelible. He touched many lives. He showed everyone around him what courage and strength in the face of darkness looks like. May we honor his memory and remember his bravery.

Miles is now resting peacefully in the arms of the Lord. We in northern California mourn his passing. He will be missed every day. I can think of no better person to honor on this floor.

THE SUCCESS OF HOUSE REPUBLICANS

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

Mr. WILSON of South Carolina. Mr. Speaker, yesterday, I was grateful to join Speaker KEVIN MCCARTHY and other Republican colleagues in addressing the media to mark the first 100 days of the House majority and to present success with the Commitment to America. This includes a strong economy, a nation that is safe, a future built on freedom, and an accountable government.

Highlights so far include defunding Joe Biden's army of 87,000 IRS agents, eliminating the military vaccine mandate, establishing the bipartisan committee to strengthen America against the Chinese Communist Party, protecting America's Strategic Petroleum Reserve, passing the Parents Bill of Rights Act, and also passing the Lower Energy Costs Act.

In conclusion, God bless our troops who successfully protected America for 20 years, as the global war on terrorism continues moving from the Afghanistan safe haven to America.

America supports the people of Russia oppressed by war criminal Putin, as we see by the persecution of Vladimir Kara-Murza, who, as has been exposed by today's Washington Post, is fighting for a free Russia. We shall remember Vladimir Kara-Murza.

PROVIDING FOR CONSIDERATION OF H.R. 734, PROTECTION OF WOMEN AND GIRLS IN SPORTS ACT OF 2023, AND PROVIDING FOR CONSIDERATION OF H.J. RES. 42, DISAPPROVING THE ACTION OF THE DISTRICT OF COLUMBIA COUNCIL IN APPROVING THE COMPREHENSIVE POLICING AND JUSTICE REFORM AMENDMENT ACT OF 2022

Mrs. HOUCHIN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 298 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 298

Resolved, That at any time after adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 734) to amend the Education Amendments of 1972 to provide that for purposes of determining compliance with title IX of such Act in athletics, sex shall be recognized based solely on a person's reproductive biology and genetics at birth. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce or their respective designees. After general debate the bill shall be considered for amendment under the five-minute rule. In lieu of the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 118-3. That amendment in the nature of a substitute shall be considered as read. All points of order against that amendment in the nature of a substitute are waived. No amendment to that amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

SEC. 2. Upon adoption of this resolution it shall be in order to consider in the House the joint resolution (H.J. Res. 42) disapproving the action of the District of Columbia Council in approving the Comprehensive Policing and Justice Reform Amendment Act of 2022. All points of order against consideration of the joint resolution are waived. The joint resolution shall be considered as read. All points of order against provisions in the joint resolution are waived. The joint resolution shall be debatable for one hour equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Accountability or their respective designees. The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit (if otherwise in order).

The SPEAKER pro tempore (Mr. DUNN of Florida). The gentlewoman from Indiana is recognized for 1 hour.

Mrs. HOUCHIN. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New Mexico (Ms. LEGER FERNANDEZ), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mrs. HOUCHIN. Mr. Speaker, I ask unanimous consent that all Members

may have 5 legislative days to revise and extend their remarks.

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

There was no objection.

Mrs. HOUCHIN. Mr. Speaker, House Resolution 298 provides for consideration of two measures, H.R. 734 and H.J. Res. 42.

The rule provides for H.R. 734, the Protection of Women and Girls in Sports Act, to be considered under a structured rule, with 1 hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce or their designees, and provides for one motion to recommit.

The rule also provides for consideration of H.J. Res. 42, disapproving the action of the District of Columbia Council in approving the Comprehensive Policing and Justice Reform Amendment Act of 2022, under a closed rule, with 1 hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Accountability or their designees.

Mr. Speaker, I rise in support of this rule and in support of the underlying pieces of legislation.

The Protection of Women and Girls in Sports Act would reaffirm the principle of fairness in opportunity within Title IX by specifying that sex shall be recognized based solely on a person's reproductive biology and genetics at birth.

□ 1230

Mr. Speaker, I am going to say something I never thought I would have to say on the House floor, in Congress, or anywhere for that matter, but here it is: women and men are different. That is not meant to be controversial, mean-spirited, outlandish, or anything other than the factual statement that it is.

Perhaps I can be more specific, Mr. Speaker. Women and men are physically different. Women and men have different physical characteristics, and that is okay. That is why Title IX exists: to ensure that despite these differences, women and men have the same opportunities.

Saying women and men are different does not lack empathy for people who struggle with their identity. However, because some people struggle with their identity should not and does not change facts.

Speaking of the facts, I would be remiss if I did not include some for the House to consider, specifically in the context of athletics, one study coming from the Duke University School of Law's Center for Sports Law and Policy. They note the various differences between male and female athletes leads to a 10 to 12 percent performance gap between the sexes in athletic competition.

Mr. Speaker, I ask unanimous consent to submit for the RECORD the results of this study.

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

There was no objection.

COMPARING ATHLETIC PERFORMANCES: THE BEST ELITE WOMEN TO BOYS AND MEN

(Doriane Lambelet Coleman and Wickliffe Shreve)

If you know sport, you know this beyond a reasonable doubt: there is an average 10–12 percent performance gap between elite males and elite females. The gap is smaller between elite females and non-elite males, but it's still insurmountable and that's ultimately what matters. Translating these statistics into real world results, we see, for example, that:

Just in the single year 2017, Olympic, World, and U.S. Champion Tori Bowie's 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys. (Yes, that's the right number of zeros.)

The same is true of Olympic, World, and U.S. Champion Allyson Felix's 400 meters lifetime best of 49.26. Just in the single year 2017, men and boys around the world outperformed her more than 15,000 times.

This differential isn't the result of boys and men having a male identity, more resources, better training, or superior discipline. It's because they have an androgenized body.

The results make clear that sex determines win share. Female athletes—here defined as athletes with ovaries instead of testes and testosterone (T) levels capable of being produced by the female, non-androgenized body—are not competitive for the win against males—here defined as athletes with testes and T levels in the male range. The lowest end of the male range is three times higher than the highest end of the female range. Consistent with females' far lower T levels, the female range is also very narrow, while the male range is broad.

These biological differences explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance. There is no other physical, cultural, or socioeconomic trait as important as testes for sports purposes.

The number of men and boys beating the world's best women in the 100 and 400 meters is far from the exception. It's the rule. To demonstrate this, we compared the top women's results to the boys' and men's results across multiple standard track and field events, just for the single year 2017. Our data are drawn from the International Association of Athletics Federations (IAAF) website which provides complete, worldwide results for individuals and events, including on an annual and an all-time basis.

We have limited the analysis to those events where a direct performance comparison could be made. For instance, we included the 100 meters because both males and females compete over exactly the same distance; but we excluded the shot put because males and females use a differently weighted shot.

As surprising as those numbers may be to many people, the comparison is staggering when we count the number of times males outperformed the best female's result in each event in 2017.

Not only did hundreds and thousands of males outperform the best results of the elite females, they did so thousands and tens of thousands of times. (Yes, again, that's the right number of zeros.)

QUESTIONS ABOUT SEX IN SPORT AND SPORTS POLICIES

These data and comparisons explain why competitive sport has traditionally separated biological males (people with male bodies) from biological females (people with female bodies), and also why legal measures like Title IX in the United States require institutions to set aside and protect separate and equal funding, facilities, and opportunities for women and girls.

Still, society is being pushed in this period to reconsider both importance of separate sport compared to other values, and the way the girls' and women's category is protected. As a result, the conversation includes four general categories of policy options:

1. Keeping girls' and/or women's sport only for females.

2. Keeping the two categories but allowing males to compete in girls' and women's events (a) where they identify as girls and women, and/or (b) because they want the opportunity for some other reason, e.g., they are swimmers and their high school has a girls' but not a boys' swim team.

3. Keeping the two categories but allowing males to compete in girls' and women's events only if they identify as such and they transition their testosterone levels to within the female—ovarian—range.

4. Erasing the categories—no divisions by ''male'' and ''female'' however these are defined—and featuring only ''open'' sports and events where everyone competes together, or else in sports and events based on different classifications like height or weight.

Our goal in developing and presenting the data and comparisons is to provide some of the facts necessary to evaluate these options and to help answer the overarching question: what would happen if we stopped classifying athletes on the basis of sex or else allowed exceptions to that rule? More specifically, we hope that the data and comparisons are useful as people think about the following questions:

How important is sport, its particular events, and goals?

Should societies and sports governing authorities continue to be committed to equal sports events and opportunities for boys and girls, men and women?

Are there good reasons to ensure that biological females (people with female bodies) are included and visible in competitive sport, and if so, does it matter how they are visible? For example, is it enough that they are given an opportunity to participate at some point in development sport, or is it important that they are competitive for the win so that we see them in championships and on the podium?

In general, the goals of the identity movement are to ensure that people who are trans and intersex are fully and equally included in society's important institutions on the basis of their identity, not their (reproductive) biology. In cases of conflict between the goals of the identity movement and sports' traditional goals for girls' and women's sport, what should our priority be: equal opportunity in sport for girls and women or the ability of each individual to participate in sports on their own terms?

Should our priorities depend on the sporting context, for example, is or should the priority be different in elementary school, junior high school, high school, college, and professional sport?

If we want to have it all—to respect everyone's gender identity and still to support girls' and women's sport by making a place for athletes with female bodies in competition—what's the best way forward? What's the best compromise position? Ultimately, this is the most important question for sports policymakers in this period.

A. Is it acceptable to include everyone but still to classify on the basis of sex, like we do already on the basis of weight in wrestling and boxing? For example, could the Olympic

Committee have required Bruce Jenner—before he became Caitlyn and transitioned physically—to compete as a man in the men's decathlon?

B. Would it have been more or less acceptable to have required Jenner to compete in the men's decathlon, but not to prescribe how she expresses her identity as a woman?

C. If Jenner before her physical transition had wanted to compete in the women's heptathlon, would it have been acceptable for the Olympic Committee to have required her first to transition physically, at least her testosterone levels, so that—although she would still be competing with a lot of developed male traits useful for athletics—all competitors would compete on equal footing in terms of steroid levels?

D. If none of these options strikes the right balance between the two important competing interests, is there another option that does?

Mrs. HOUCHIN. Mr. Speaker, now we will hear that this bill is a distraction or that it does nothing to address school safety issues, but I couldn't disagree more.

We have seen women, strong women, women like Riley Gaines, speak to the real harm female athletes experience from the issues we are discussing today. For those who don't know, Riley is a former college competitive swimmer—just like my own girls at home who are swimmers.

I had the chance to speak with Riley just last week. She shared stories on how this problem has been branded on the left as taking away inclusiveness, when in reality it is taking away opportunities from our female athletes. Women are becoming collateral damage.

Riley told me stories about her competitor, a biological male, sharing locker rooms and showers with teammates. She told me how a year later one teammate who was quiet at the time wrote letters to her about how the experience still traumatizes her.

Riley also shared a story of how when that same biological male competitor won, she was asked to step away from the medal podium photo. The sport she loved had been reduced to a photo op. That is not progress. It is quite the opposite.

Riley reminded me that her story is not unique. In fact, I have a list provided by Concerned Women for America where they documented over 100 instances of women needing the type of protection that H.R. 734 would provide.

So what do we know after all of this debate?

We know that women and girls like Riley have to face legitimate safety and privacy concerns associated with sharing locker rooms with competitors of the opposite sex. Women and girls have to face physical safety concerns.

For example, there is a story of a biological male in North Carolina participating in women's volleyball. This biological male spiked the ball so forcefully into the face of a female competitor that he seriously injured the young girl and caused lasting damage to her.

There is the story of Tamikka Brents, an MMA fighter, who had her skull fractured and a concussion within 2 minutes of fighting a transitioned fighter, Fallon Fox.

Women and girls have to face the lack of a level playing field and stolen opportunities that come with it. As Riley speaks so eloquently about, the fact is that these biological men steal championships and associated opportunities from women. She would know.

Prior to transitioning, Lia Thomas, her competitor, was ranking in the mid-500s in the men's competition. After transitioning and competing against biological women, Lia Thomas finished first.

If this does not illustrate the unfairness of allowing biological males to compete in women's sports, I don't know what will.

These women are Olympians and college all-Americans.

We also have to face the fact that biological men competing in sports meant for women and girls has the effect of discouraging them. These sports that are meant for women and girls and having to compete against men, is discouraging.

Now they must face the inherent unfairness of competing against biological men.

We know that sports participation has incredibly positive benefits for participants, both from a physical and also from a mental health perspective.

Since this phenomenon of biological men participating in women's sports is relatively new, it is a problem that will only continue to get worse if we don't act to stand up on their behalf.

Speaking of problems that will get worse if we don't act, I want to turn now to H.J. Res. 42. This resolution would disapprove of the District of Columbia Council's Comprehensive Policing and Justice Reform Amendment Act of 2022.

Plain and simple, H.J. Res. 42 is about backing the blue.

In January of this year, the D.C. Council passed the Comprehensive Policing and Justice Amendment Reform Act, effectively making the job of our police officers even harder. Mayor Bowser declined to sign or veto it, which allowed it to continue in the process ultimately reaching here, the Congress, for disapproval.

Mr. Speaker, I ask unanimous consent to submit for the record four letters of support for H.J. Res. 42 disapproving of the D.C. Council's decision.

One letter is from the National Fraternal Order of Police. One letter is from the National Association of Police Organizations. One letter is from the United States Capitol Police Labor Committee. Finally, one letter is from the Commonwealth of Virginia's attorney general.

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

There was no objection.

NATIONAL FRATERNAL ORDER OF POLICE,
Washington, DC, 28 March 2023.

Hon. KEVIN O. MCCARTHY,
Speaker of the House, House of Representatives, Washington, DC.
Hon. STEVEN J. SCALISE,
Majority Leader, House of Representatives, Washington, DC.
Hon. HAKEEM S. JEFFRIES,
Minority Leader, House of Representatives, Washington, DC.
Hon. KATHERINE M. CLARK,
Minority Whip, House of Representatives, Washington, DC.

DEAR MR. SPEAKER AND REPRESENTATIVES JEFFRIES, SCALISE, AND CLARK: I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for H.J. Res. 42, a resolution disapproving the adoption of the Comprehensive Policing and Justice Reform Amendment Act (CPJRAA) by the Washington, D.C. City Council. On January 19, 2023, the D.C. Council enacted the CPJRAA without the signature of Mayor Muriel E. Bowser.

The Fraternal Order of Police is the union that represents the men and women of the Washington, D.C. Metropolitan Police Department (MPD). These officers have made it clear to us and to the residents of the city that the CPJRAA would negatively impact the department's officers and the safety of the public in the District of Columbia. The D.C. Council seeks to strip MPD officers of their right to bargain collectively with the city over disciplinary procedures—a right which all other public employees have. The legislative action also repeals the requirement that the MPD commence discipline against their officers within 90 business days, which will result in abusively long disciplinary investigations that violate the Constitutional rights of these officers. The PCJRRA also provides for the disclosure of disciplinary records which will include personally identifiable information—placing these officers in jeopardy.

Irresponsible legislative actions like this contribute to the recruitment and retention crisis in the District and around the nation. In the last three years, the MPD has lost 1,191 officers—nearly one-third of the department. Of these, 40 percent were resignations—men and women who just walked away from their law enforcement careers in the District of Columbia. We believe that this type of attrition is directly attributable to the appalling way these officers have been treated by the City Council.

We urge the House to adopt H.J. Res 42 and disapprove of the PCJRAA.

On behalf of the more than 364,000 members of the Fraternal Order of Police, we strongly urge all Members of the U.S. House of Representatives to support and pass H.J. Res. 42 to protect the safety of the public in Washington, D.C. and the rights of the officers that keep the District safe. If I can provide any additional information in support of this resolution, please do not hesitate to contact me or Executive Director Jim Pasco in our Washington, D.C. office.

Sincerely,

PATRICK YOES,
National President.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.,
Alexandria, VA, March 30, 2023.

Hon. KEVIN MCCARTHY,
House of Representatives, Washington, DC.
Hon. HAKEEM JEFFRIES,
House of Representatives, Washington, DC.

DEAR SPEAKER MCCARTHY AND MINORITY LEADER JEFFRIES: On behalf of the National

Association of Police Organizations (NAPO) and the over 241,000 sworn law enforcement officers we represent across the country, I am writing to advise you of our concerns with the Comprehensive Policing and Justice Reform Amendment Act (CPJRAA) that was enacted by the Council of the District of Columbia on January 19, 2023, and our subsequent support for H.J. Res. 42.

The CPJRAA will negatively impact the Metropolitan Police Department (MPD) and the City it serves. The underlying message of this act is that law enforcement officers cannot be trusted. It strips the men and women of the MPD of their right to bargain over accountability or disciplinary issues. This creates substandard collective bargaining rights for the officers, setting them apart from their fellow public servants in the District, who are allowed to bargain over disciplinary issues.

Further, the CPJRAA undermines officers' Constitutional rights, including the right to due process, a right we give to all citizens. This is incredibly concerning. Without guidelines and procedures to protect officers' due process, officers are too often subjected to the whim of their departments or local politics during internal investigations and administrative hearings. The CPJRAA also violates officers' right to privacy by disclosing officer disciplinary records, without regard to personal identifiable information, which risks putting officers and their families in harm's way.

NAPO is concerned the CPJRAA will exacerbate the current hiring and retention crisis the MPD is facing. With the City Council not respecting or trusting the officers who serve and protect their citizens, it will hinder recruitment and impact officer morale. Therefore, we support H.J. Res. 42, disapproving of the CPJRAA. If we can provide any assistance, please feel free to contact me.

Sincerely,

WILLIAM J. JOHNSON, ESQ.,
Executive Director.

UNITED STATES CAPITOL POLICE
LABOR COMMITTEE,
Washington, DC.

DEAR UNITED STATES HOUSE OF REPRESENTATIVES: On behalf of the United States Capitol Police Labor Committee, I am writing you urgently asking your support for the new House Resolution, set to disapprove the Comprehensive Policing Amendment Act of 2022, with special attention to Subsection P.

The officers and members of the Capitol Police Labor Committee and the DC Police Union both fully support removing any form of physical neck restraints and the expansion of the mandatory training with rules to prevent the hiring of previously fired bad cops.

But we must ask you to intervene and send this bad bill back to the DC City Council, as the whole of the bill is untenable and dangerous. Subtitle P is especially concerning for Capitol Police in the wake of the January 6th insurrection. While certainly drafted by the DC Council with good intentions, Subtitle P would have likely forced much of our backup and support to arrive to the scene of the insurrection without riot gear or appropriate less-lethal options for their safety, or ours. The language of the act is too wide, unclear, and dangerous to our ability to protect peace in the District and at the United States Capitol.

Additionally, as the President of a labor organization and a believer in the rights of collective bargaining, I must ask you as an ally of labor to look closely at Subtitle L. Subtitle L in the act would strip certain rights of collectively bargain away from one class of employee within the District, denying them rights that make up the foundation of the labor movement. Fair and transparent investigations, discipline, and appeal are necessary and just matters of collective bargaining. They're mandatory sectors of public section employee relations and clear rights of collective bargaining. This threat to collective bargaining is a dangerous pandora's box and I must ask for your help.

The Comprehensive Policing and Justice Act of 2022 must be sent back to the D. C. City Council so these issues can be reviewed, negotiated, and resolved. Congress has the right and responsibility to take action here to prevent these dangerous subtitles from becoming law, threatening our safety and stripping away the rights of labor.

GREGG PEMBERTON,
Chairman, DC Police Union.

GUS PAPATHANASIOU,
Chairman, FOP-USCP Union.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
Richmond, VA, April 6, 2023.

Hon. MURIEL BOWSER,
Washington, DC.
Hon. PHIL MENDELSON,
Hon. KENYAN R. MCDUFFIE,
Washington, DC.

DEAR MAYOR BOWSER AND CITY COUNCIL MEMBERS: It has become painfully apparent that Washington, D.C., can protect neither its residents nor the thousands of Virginians who commute daily to the city for work or entertainment. As the chief law enforcement officer for the Commonwealth of Virginia, I feel responsible for the safety of all 8.642 million Virginians.

Unfortunately, due to the proximity of our communities, D.C.'s crime problem has become Virginia's crime problem.

I refuse to stand by quietly as you continue to deny, reject, and refuse to address your very prevalent crime spike that is impacting D.C. residents and its visitors and commuters. Your unwillingness to enforce your laws and hold violent offenders responsible puts your residents and mine at risk.

Over the weekend, Christy Bautista, an innocent young woman from Virginia, was murdered in the supposed safety of her hotel room less than an hour after checking in to attend a concert in your city. A Capitol Hill staffer was brutally attacked in broad daylight. Over the summer, a young Arlington woman was harassed on the metro, and countless Virginians have been murdered in D.C. over the last three years, including Aaron Bourne, Kenithy Manns, Christian Gabriel Monje, and Ahmad Clark.

Yet, D.C. Council Chairman Mendelson recently denied that D.C. had a crime crisis. According to the Metropolitan Police Department, D.C. has seen two consecutive years of over 200 homicides—a distinction the city hasn't reached in nearly two decades. In addition, carjackings have been steadily rising for the last five years. Homicides in Washington, D.C., have increased by 31 percent since this time last year, sexual assault increased by 84 percent, and motor vehicle theft has increased by 107 percent. In general, crime in 2023 has risen by 23 percent.

Washington, D.C., is dealing with a crime explosion. Actions speak louder than words—and the only actionable items taken by Washington D.C. leadership have been ways to lessen criminal penalties, further fostering an environment for criminal activity. There is no deterrent for illegal behavior in Washington, D.C., as these repeat offenders know they will either not be charged or let back on the streets in no time.

That's why we lost Christy Bautista. D.C.'s lenient policies and perspectives are responsible for her murderer's release when he should have been in custody. An innocent woman lost her life to someone who should have been in jail.

Her murder is a tragedy that should have never happened.

To keep our communities safe—Washington D.C. and Northern Virginia—we need to work together to address the issue of rising crime. But that means acknowledging it is a problem and committing to finding a solution rather than sweeping it under the rug.

Our nation's Capital should be a beacon of hope and freedom for the entire world, not known as a place where attending a concert can end one's life. I urge the city's leadership to address the scourge of violent crime that is growing more intolerable by the day.

Sincerely,

JASON S. MIYARES.

Mrs. HOUCHIN. Mr. Speaker, it is this last letter from Virginia's attorney general that makes an important point. I am quoting directly from the letter, ''Unfortunately, due to the proximity of our communities, D.C.'s crime problem has become Virginia's crime problem.''

What happens in the Nation's Capital certainly has consequences for our neighboring communities, but I would also argue that it has consequences across the country. The decisions made here often affect decisions around the country and in other major cities.

Therefore, we must think carefully when we review legislation that would allow outside groups to target individual officers and make it more difficult for those officers to do their jobs. We certainly don't want that to catch on.

D.C., as of this month compared to last year, has had total crime rise 23 percent, seen homicides increase by 31 percent, and sexual abuse crimes rise a staggering 84 percent.

Why we would be trying to implement measures alienating law enforcement officers is beyond me. We should be doing everything we can to show law enforcement officers that we stand with them, especially in areas where crime is on the rise and out of control. We should make it easier, not harder, for them to do their jobs.

Mr. Speaker, I urge my colleagues to support this rule, our female athletes, and police officers here in the Nation's Capital and around the Nation.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I thank the gentlewoman from Indiana for yielding me the customary 30 minutes.

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

Mr. Speaker, today we consider a rule for two bills that do not address the most pressing issues in our country. Over the last 2 weeks in New Mexico, I spent my time in my beautiful, large district in classrooms, meeting with healthcare providers, learning from Tribal leaders, and talking to students and their parents.

They shared their worries about poor access to healthcare, about affordable housing, their worries about whether we were going to target Social Security and Medicare in this House.

They talked to me about the epidemic of gun violence. Let's talk about that epidemic. There have been at least 145 mass shootings so far this year. More kids die from gun violence than from any other cause. Americans want Congress to pass meaningful gun safety laws so our kids can be safe and cared for in our schools.

What are we getting out of the Education and the Workforce Committee?

We are getting book banning and now sports banning. You know what? Books and sports don't kill kids, guns do.

I have behind me here just some of the names of the many children who have died in their classrooms and in their schools.

Parents are scared. Students are terrified of being killed at school, a place where they should be safe and ready to learn. Kids should be able to go to a 16th birthday party and come home again.

But the bills this rule makes in order won't fix the scourge of gun violence in this country. While kids are dying from gun violence, the answer from the House Republican majority is to bully trans girls with H.R. 734 and undermine D.C.'s local laws. That is not okay.

Today, I stand in strong solidarity with some of the most vulnerable students in our schools, trans girls. Trans kids deserve to be understood. They deserve to be loved. They deserve an opportunity to play on a team and make friends.

Today, the Republican majority has brought up yet another bill that is meant to divide us and to get people angry and upset over things that are not key to whether they can have what they want their kids to accomplish in school.

H.R. 5, which the Republican majority passed in March, was about banning books. H.R. 734, which we are debating this week, is about bullying kids.

The problem is this: When you bully these kids it can lead to their death. I am worried that this bill will lead to rising suicide rates among the most vulnerable kids in our schools.

Studies have proven that when we welcome trans kids with compassion and kindness they are less likely to attempt suicide.

Studies have shown that the problem isn't whether a kid is trans or not, it is are they accepted? At a time when trans kids face alarming rates of behavioral and mental health issues and 53 percent of trans kids have considered suicide, my colleagues have chosen to use fear to score political points.

Mr. Speaker, 1 in 25 American kindergartners won't live to adulthood. Imagine that. Imagine going into a kindergarten class, like I did several times in my district, looking out at that class and thinking, which one of those precious children will not make it to adulthood?

That is the issue we should be addressing, both gun violence and addressing behavioral and mental health, and providing the resources that they need.

You know what? The rate of children not making it is twice as much for Hispanics and over three times as much for Black students.

Do we go after that in this bill?

No, we don't.

Sports and books are what H.R. 734 goes after, not guns and violence.

There is already a mechanism in place to address the fairness in playing sports that has been raised on the other side of the aisle. There is already a way of addressing those distinctions in playing sports. The NCAA and Olympics put these in place decades ago.

The Olympics already has a manual for what you should do, and it was done in 2003.

Here in the United States we already have something done by the NCAA. The NCAA adopted a student athlete participation policy that will cover the concerns that some people may have.

Women in sports, I will tell you—they say they are doing this for women.

Guess what? Women in sports who compete, they don't want this bill. They understand it is not about sports but about making people angry.

We have the statements of women's rights and gender justice organizations in support of full and equal access to participation in athletics for transgender people, and it is signed by numerous women's sports organizations. One after another they have lined up to say, no, this bill is bad for women in sports.

You know what? I want to make sure here in Congress that we lead with compassion. We are all human. We all have within our families, within our communities, people who are lesbian, who are gay, who are trans, who are many, many different aspects of who they are, who they actually are and authentically are.

Why are you willing to sacrifice those beautiful kids of ours? Why? I just don't understand it.

You know what? Trans kids deserve to live.

The rule also makes in order H.J. Res. 42, which disapproves of the District of Columbia's Comprehensive Police and Justice Reform Amendment Act. The D.C. Council, elected by D.C. residents, passed this bill through democratic process.

D.C., just like those in Kentucky and other local jurisdictions—it is the local jurisdictions which should have the right to enact laws through their democratic process without congressional interference.

We should not be having congressional interference into local matters, like protecting our citizens and like having a police force that is responsible to those citizens.

□ 1245

Just because Congress can intervene in D.C. affairs, doesn't mean that it should.

The D.C. reform bill includes many of the reforms that both Republican and Democratic States and localities have passed, things like banning choke holds, things like using body cameras. That is available in red districts, in red States, in red cities, and in blue cities. In New Mexico we have those things.

So let's stop interfering in D.C.'s affairs. Let's put forward legislation in contrast that addresses the needs of all Americans.

Mr. Speaker, I urge my colleagues to oppose the rule, and I reserve the balance of my time.

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

Mr. Speaker, Democrats have had ample opportunities to work with Republicans during the 117th Congress on bills that protect students in schools, including H.R. 7966, the STOP II Act, sponsored by Representative RICHARD HUDSON of North Carolina, that would have increased funding for school resource officers and mental health guidance counselors and would have provided Federal grants for better securing our schools; and H.R. 7942, the Securing Our Students Act, sponsored by Representative BURGESS Owens of Utah, that would have allowed school district to use unspent COVID–19 emergency relief funds to improve school buildings and strengthen security.

Unfortunately, the Democrat then-majority blocked these bills from coming to the House floor.

In addition, the House recently passed H.R. 5 which includes provisions ensuring the rights of parents to be informed about violent incidents in school and ensuring that school boards cannot censor the voices of parents who are expressing concerns about any such violent incidents.

This is not about bullying kids. It is about fairness. It is about standing up for biological women and girls when no one on the left seems to care about that.

Our colleagues across the aisle have even said it is okay for biological males to share locker rooms and showers with biological females even if they don't consent.

If supposed groups that support women oppose this bill, then they don't support women. We aren't saying that they can't participate in sports with children or biological males that might have a different identity. We are not saying they can't participate in sports. We are saying they must compete according to their biological sex.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. LANGWORTHY).

Mr. LANGWORTHY. Mr. Speaker, I rise in support of the rule which provides consideration of legislation to protect women and girls in athletics, and the resolution to curb the reckless anti-cop, pro-crime policies being carried out by the D.C. Government.

I would be remiss to not point out the irony that my colleagues across the aisle have twisted themselves into a knot trying to malign a bill that seeks to protect a fair playing field for

women and girls, a historically marginalized group, but it is telling about how far out of the mainstream some of these policies have become.

Ensuring that biological female athletes can compete fairly and honestly with other biological female athletes is the epitome of common sense. For the self-described party of science to ignore the biological realities between men and women is convenient and willful ignorance.

What kind of message do we want to send to our young female athletes who work hard putting in the time, sweat, and tears into their sport only to find out that they lose a competition because the deck has been knowingly and purposefully stacked against them?

It is just plain wrong.

Achieving notoriety and fairness in female sports has come a long way over the last several decades in this country, but there is still a very long way to go. This bill would take us a half century backwards.

Everyone should have a right to compete in sports, but it can't come at a cost of trampling on the rights of women and girls to compete fairly.

I am proud to support this legislation that protects the original intent of Title IX: to prevent discrimination on the basis of sex.

Mr. Speaker, I urge my colleagues to support this legislation that respects the realities of natural biology and protects fair opportunities for women and girls to compete and to win.

Additionally, I would like to share my support for H.J. Res. 42. As a member of the Committee on Oversight and Accountability, I was present to question the leadership of the D.C. Council about the latest efforts to vilify and defund the police.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mrs. HOUCHIN. Mr. Speaker, I yield an additional 30 seconds to the gentleman from New York.

Mr. LANGWORTHY. It was shameful to see how the leadership of our Nation's Capital shrugged their shoulders at the alarming spikes in violent crime sweeping across the district. D.C. residents are fed up. Visitors to our Nation's Capital are fed up.

Americans deserve to be safe, not subjected to repeat offenders shooting up the Metro stop while they commute to work, as happened earlier this year. Our police officers and first responders deserve to be supported, not vilified. Where Congress can, under current law, it should act to preserve law and order and prevent these reckless actions from taking effect.

Mr. Speaker, I strongly support the rule, and I urge my colleagues to do the same.

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation would not protect kids. We must remember that this legislation could require female student athletes to be subjected to invasive genital examinations or forced to disclose their menstruation data.

What parent would want their child to go through that?

This is a grotesque violation of privacy and the complete opposite of protecting our children.

If Republicans really want to protect our girls, they should focus on real issues. The sexual abuse of female athletes and students goes unreported too often. The U.S. Center for SafeSport found that 93 percent of athletes experienced sexual harassment or unwanted contact and they were too afraid to report it. We must address the real issues that our children face.

With regards to the D.C. bill, Mr. Speaker, I yield 3 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank my friend for yielding.

Mr. Speaker, I strongly oppose this rule. I will have more to say tomorrow about the police accountability and transparency legislation enacted by the District of Columbia's local legislature, but I want to take this time to discuss democratic principles.

It is true that Congress has the constitutional authority to legislate on our local D.C. matters, but it is false that Congress has a constitutional duty, obligation, or responsibility to do so. Instead, legislating on local D.C. matters is a choice.

I remind my Republican colleagues, who claim to revere the Founders, what James Madison said in Federalist 43 about the residents of the Federal District: ''A municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them.''

The Supreme Court has held that Congress may delegate ''full legislative power'' on local D.C. matters.

D.C. disapproval resolutions are profoundly undemocratic and paternalistic legislation.

D.C.'s local legislature, the D.C. Council, has 13 members. The members are elected by D.C. residents. If D.C. residents do not like how the members vote, they can vote them down. This is called democracy.

Congress has 535 voting Members. The Members are elected by residents of the States. None are elected by or accountable to D.C. residents. If D.C. residents do not like how the Members vote—even on legislation that applies only to D.C.—they cannot vote them out of office.

The Revolutionary War was fought to give consent to the governed and to end taxation without representation. Yet nearly 700,000 D.C. residents cannot consent to any action taken by Congress, whether on national or local D.C. matters, while paying full Federal taxes. Indeed, D.C. pays more Federal taxes per capita than any State and more total Federal taxes than 23 States.

If the House cared about democratic principles or D.C. residents, it would be voting on my statehood bill, the Washington, D.C., Admission Act, instead. Congress has the constitutional authority to admit the State of Washington, D.C. The House is choosing not to. It is a choice.

Mr. Speaker, I will close by saying to all Members of the House: Keep your hands off of D.C.

Mrs. HOUCHIN. Mr. Speaker, we have heard our Democratic colleagues across the aisle talk about Republicans not caring about sexual abuse of female athletes and it is going underreported. But not a single Democrat voted for H.R. 5 which has language in it in the Parents Bill of Rights to inform parents of violent activity going on at school.

This provision was put in, in part, because of circumstances that happened in Loudoun County, Virginia, which kept a sexual assault by a trans student of a young female under wraps, including even transferring that student to another school where that student committed an additional sexual assault. Not a single Democrat voted for H.R. 5.

Mr. Speaker, I yield 4 minutes to the gentleman from Missouri (Mr. ALFORD).

Mr. ALFORD. Mr. Speaker, I rise today in strong support for the rules package of H.R. 734, the Protection of Women and Girls in Sports Act.

Here we are again, Mr. Speaker. This side of the aisle is advocating for sanity and humanity while that side of the aisle raises their hands saying: What are we doing here?

Just like in our debate where we had to denounce socialism on this floor, and just like our debate where we had to defend the lives of abortion survivors, we are here to protect America. We are here for the sanity and humanity of America.

Women's sports are meant for biological women and biological women alone. Let's follow the science. For generations, female athletes such as Lisa Leslie, Serena Williams, Katie Ledecky, Mia Hamm, and, most recently, Riley Gaines—who sat in this very gallery during our State of the Union Address and most recently was violently assaulted by a radical mob of activists—have fought tirelessly to tear down societal barriers in sports.

This movement, Mr. Speaker, is making a mockery—a mockery—of their brave dedication and overall progress for women in general.

Now my colleagues across the aisle want to insult the hours of blood, sweat, and tears that these women have invested into their sports and their careers. We are not going to stand for it. Enough is enough. The emperor has no clothes.

Some 50 years ago, Congress passed Title IX to give women the opportunity to compete at levels never seen before. Women broke barriers, and now this radical movement wants to break their spirit.

It is an insult to that legislation and to the progress society has made. It is

an insult—yes—that we are even here today having to debate this very issue. Women deserve protections and a fair playing field and a fair swimming pool.

Is that too much to ask for, Mr. Speaker?

This legislation will give them just that. H.R. 734 states that sex in the athletic context must be recognized based only on a person's reproductive biology and genetics at birth. It also clarifies that a recipient of Title IX funding is violating the prohibition against sex discrimination if a school allows a person whose sex is male to participate in a women's athletic activity.

Simply put, we cannot ignore the biological differences between a male and a female. To do so would be ignorant and a disservice to the sporting world.

Mr. Speaker, this is not about hate. This is about love. This is about love for our country, love for the advancement that women have made, and love for sanity.

Let's give women the protection that they deserve and the protection that they have earned.

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, all opposition to this bill is not radical. Indeed, the Republican Governor of Utah also opposed a similar bill, and in his veto message he talked about the fact that even though he might not understand what it means to be trans, even though he doesn't understand the science which might be conflicting, he said: I choose to err on the side of kindness and compassion.

He wanted to make sure that the children live, the few children in his State who play sports, the few trans children in his State who play sports, he said: Why are we heaping so much hatred on those children?

I want them to live.

The reason why that concern is so profound is because of the fact that transgender kids have an extremely high risk of suicidal behavior. In 2021, suicide was the second leading cause of death for kids ages 10–14 and 20–34. Nearly one in five trans kids attempted suicide that year. I want our trans kids to live.

Mr. Speaker, I yield 2½ minutes to the gentleman from Massachusetts (Mr. MCGOVERN), the distinguished ranking member of the Committee on Rules.

□ 1300

Mr. MCGOVERN. Mr. Speaker, our Rules Committee meeting last night was an embarrassment.

Republicans went on and on about locker rooms, the same creepy stereotypes they leaned on when they tried to stop gay marriage.

They went on and on about fairness, but no mention of the unfairness girls' sports teams face when it comes to unequal resources, unequal pay, and unequal treatment.

They went on and on about safety, but no mention of the number one reason America's schools are unsafe: gun violence. Our kids are being slaughtered, for God's sake. Does anybody on the other side even care?

Republicans claimed trans people don't even exist, which makes me wonder why they wasted all our time on their creepy obsession with controlling the lives of people they think aren't even real.

Republicans now believe Congress—Congress—should be empowered to pick and choose which kids should be allowed to play on the soccer team.

You can't make this stuff up.

What is next? A bill about who can play together at recess?

Republican hypocrisy is breathtaking. Republicans want to ban trans kids from sports, but they won't ban child marriage in States like West Virginia and Tennessee.

The same party systematically taking away women's reproductive rights across the country, the same party that won't lift a finger as our kids are massacred in our schools, that takes NRA blood money instead of addressing an actual problem like gun violence, now wants to use protecting girls as their sick excuse for targeting trans kids.

Enough is enough. Stop the fearmongering.

The truth is that this bill would mean more trans kids, already vulnerable as it is, would be bullied, beaten, and killed. It would deprive trans kids of the opportunity to learn about teamwork, discipline, and sportsmanship.

Finally, let me just say that the trans community deserves so much better than this. I hope they know that they have allies in Congress and across the country who care about them and who will fight for them. It shouldn't be a radical idea to respect people for who they are, and it shouldn't be a radical idea to love people for who they are.

I urge my Republican colleagues to stop the lies, stop the bigotry, stop the hate. Leave kids alone. I urge a ''no'' vote on this awful, rotten rule and a ''no'' vote on the underlying bill.

Mrs. HOUCHIN. Mr. Speaker, I flatly reject any talk of fearmongering on behalf of Republicans on this side of the aisle.

Talk about fearmongering, we have just heard from our colleagues on the other side of the aisle that, according to this bill, female student athletes will be subject to violative exams. Nothing in this bill talks about them being subject to exams, physical or otherwise, only that they compete in the sports according to their biological sex at birth.

Nothing in this bill prevents or says that transgender children cannot participate in sports. We are only saying that, out of fairness and safety for women and girls, students participate in sports according to their biological sex. We are not preventing anyone from participating in sports.

Mr. Speaker, again, I reiterate, the public safety legislation that Republicans proposed in the 117th Congress that our colleagues on the other side of the aisle opposed—bills that would increase funding for school resource officers and mental health counselors, Federal grants to secure schools, Securing Our Students Act, allowing districts to claw back unspent COVID–19 funds to improve school buildings and strengthen security—those bills were flatly rejected from the Democrat-held majority at the time. Those bills would have done exactly what they suggest that they want to do now. Maybe if we bring those bills back, we will get their support.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, we can actually point to two accomplishments that we did on this House floor when Democrats were in charge. The Democratic leadership in Congress helped us lead to pass the Bipartisan Safer Communities Act. It was bipartisan, but we had very few Republicans. That would have provided the kind of resources we need in our schools to help our children.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. SORENSEN).

Mr. SORENSEN. Mr. Speaker, every day I hear from parents who worry about their children's safety in school, from bullying to gun violence. Yet, instead of addressing the issues that are relevant today, we are debating a bill that takes away certain kids' ability to learn, like how to be a part of a team, how to build friendships, how to set goals, and how to work with one another. Every child in America should learn this.

It is hard to be a kid today. It is hard to go to school. It is hard to make friends. It is hard to fit in. We need to give kids the opportunity to be healthy and happy and to have joy.

This isn't about protecting sports. This is about every child setting their own goals, being a part of their team and overcoming challenges, and being, finally, proud of who they are and what they can achieve.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield an additional 15 seconds to the gentleman from Illinois.

Mr. SORENSEN. Mr. Speaker, stop the nonsense. Let's get back to work and solve the real problems, which is what the people back home sent us here to do.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield 2 minutes to the gentlewoman from Vermont (Ms. BALINT).

Ms. BALINT. Mr. Speaker, I rise in opposition to this bill and to speak clearly and directly on H.R. 734, which Republicans are ironically calling the Protection of Women and Girls in Sports Act. This bill is undeniably an attack on our kids and does nothing of substance to protect girls.

Bills like this are aimed at taking away rights from LGBTQ Americans, specifically our kids. Kids and their families are being targeted and harassed for political gain. I ask, is this really the Nation that we want to live in?

Sports bans for kids are cruel and unnecessary. These bills are clearly, at their core, un-American. They are about restricting rights. They are about barring kids—kids, kids—from full participation in sports.

The U.S. House of Representatives must not participate in this obvious fear-based hate and discrimination of trans youth. We risk lives when we don't stand up clearly and loudly against discrimination of all kinds.

This bill would have us believe that we should be afraid of trans youth. Nothing could be further from the truth.

When I talk to these kids and their families, when I listen deeply to these kids and their families, what they say is: I just want to live my life. I just want to have friends. I want to be myself. I don't want to go to school and be picked on.

They need our support. They do not need us demonizing them and fearmongering and bullying.

Today, Republicans blocked our amendments, which would have actually supported our girls in schools. My amendment would have strengthened protections against harassment in schools based on sex, race, color, national origin, disability, and age. It would have restored protections against harassment and ensured equal opportunities for all students. It would have also required schools to take additional steps to protect students that have experienced sex-based harassment.

We cannot keep putting our children in harm's way with this hateful rhetoric that is coming directly from inside the Halls of Congress. Instead, let's do our job and take real steps to actually protect our children.

Mrs. HOUCHIN. Mr. Speaker, this is the bill that they say is demonizing: ''H.R. 734, to amend the Education Amendments of 1972 to provide that for purposes of determining compliance with title IX of such Act in athletics, sex shall be recognized based solely on a person's reproductive biology and genetics at birth.''

''Nothing in this subsection shall be construed to prohibit a recipient from permitting males to train or practice with an athletic program or activity that is designated for women or girls so long as no female is deprived of a roster spot on a team or sport, opportunity to participate in a practice or competition, scholarship, admission to an educational institution, or any other benefit that accompanies participating in the athletic program or activity.''

It makes me wonder, Mr. Speaker, if our colleagues on the other side of the aisle have read this bill, given their vehement opposition to it.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield 1½ minutes to the gentleman from California (Mr. GOMEZ).

Mr. GOMEZ. Mr. Speaker, here we go again. Republicans are attacking one of the most marginalized, most discriminated groups in our country—trans Americans—just to score cheap political points. Yes, cheap political points because this is something from the top down, from the head of the Republican Party here in Congress to each of the States that have introduced anti-trans legislation.

It is especially sick when you look at the statistics. Over 50 percent of trans youth considered suicide just last year. Let that sink in: 50 percent—not a fraction, 50 percent.

Yet, rather than address pressing issues like gun violence, the leading cause of death for our children, Republicans are attacking trans and other LGBTQ kids. It shows exactly who they are—bigots and bullies. I said that once and I will say it again: bigots and bullies.

This isn't their first attack on the trans community, as I mentioned. At the start of this Congress, my Republican colleagues threatened to revoke funding for an organization in my district that helps trans Americans find jobs and mental health resources. Oh, big conspiracy, trying to help people with mental health issues and help them find jobs.

If they think their attacks will stop me from supporting the trans community, they are simply wrong.

Transgender, nonbinary, and intersex youth want to participate in team sports for the same reason as their cisgender peers: to be part of a team, learn sportsmanship, and challenge themselves.

As the brother of an LGBTQ American, I find their attacks offensive. I will vote ''no'' on this piece of legislation.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, if we defeat the previous question, which I hope we do, I will offer an amendment to the rule to provide for consideration of a resolution that affirms the House's unwavering commitment to protect and strengthen Social Security and Medicare and states that it is the position of the House to reject any cuts to the program.

Mr. Speaker, I ask unanimous consent to insert the text of my amendment into the RECORD, along with any extraneous material, immediately prior to the vote on the previous question.

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

There was no objection.

Ms. LEGER FERNANDEZ. Mr. Speaker, to discuss our proposal, I yield 1½ minutes to the gentlewoman from Oregon (Ms. HOYLE).

Ms. HOYLE of Oregon. Mr. Speaker, my Democratic colleagues and I are here to defend Social Security and Medicare and to support our Nation's seniors.

My district has the lowest median household income in Oregon. We have over 160,000 seniors who rely on Social Security for their retirement.

My colleagues across the aisle are approaching Social Security as if it is an unearned handout. That is beyond offensive. That is not what it is meant to do. That is not what it is meant to be.

People have paid into this system their whole lives. They should be able to get their contributions back, and that is the promise of our Social Security program.

Right now, we only tax income up to $160,000 a year to fund Social Security. Millionaires and billionaires who get their income from investments instead of earning their money by the hour, like most of my constituents and like most working Americans, aren't paying their fair share into Social Security at all.

We must change the system. By finally requiring the wealthiest Americans to pay into Social Security at the same rate as all the hardworking nurses and firefighters across this country, we can expand benefits, not cut them.

I am not in Congress to protect billionaires. I am here to make sure those who have paid into the system their whole lives and who have worked hard, including our fishermen, electricians, and schoolteachers, can retire with dignity and welcome a new generation to the workforce. It is our responsibility to make sure that Social Security can be successful in the future.

It is time for the House majority to stop playing games with people's lives with bills that don't do anything and support Social Security and Medicare.

□ 1315

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Texas (Ms. GARCIA).

Ms. GARCIA of Texas. Mr. Speaker, across the country, State legislatures, including my home State of Texas, have advanced legislation seeking to ban transgender kids from participating in sports. Very sadly, this bill here today in Congress is seeking to do the same.

The so-called Protection of Women and Girls in Sports Act up for consideration today is nothing more than another extreme MAGA Republican political stunt, taking away the focus from the real issues affecting American people.

It would stipulate that Title IX compliance ban gender and intersex girls and women from participating in sports.

Denying children access to a place where they can gain mental and physical benefits does not protect women in sports. It harms women in sports.

This bill sanctions discrimination against transgender students, which is mean-spirited and just plain bullying. This is not the role of Congress.

I have heard directly from trans and intersex constituents in my district. They are worried every day about what political stunt and what political attack will come next. No one should live in fear just for being who they are.

I strongly oppose the rule and strongly, strongly oppose final passage of this bill.

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas, Ms. SHEILA JACKSON LEE.

Ms. JACKSON LEE. Mr. Speaker, I thank the gentlewoman for her kindness, and I only have a minute to talk about kindness.

I vigorously oppose the underlying legislation dealing with our beautiful children. Mr. Speaker, that is what it is, and I join with the Utah Governor who indicates that this minute problem does not deserve a sledgehammer.

This bill deals with girls and women in sports, and the Olympics and the NCAA have spoken on transgender. I speak from the heart as a fellow human being. I speak from loving children as the chair of the Congressional Children's Caucus.

I cannot stand here and tolerate 53 percent of trans kids considering suicide last year. They want to belong. They want to have friends. They want to play sports.

If you are 5 years old, 12 years old, this Congress has no right in interfering with a beautiful community. It is, in fact, a blessing to have a world and a Nation that has people who are different.

I affirm their difference. I stand for their difference. I will fight for their difference because they should be loved like anyone else.

The rules and regulations are already in place. Why are we here doing that when guns are killing our children?

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

Ms. LEGER FERNANDEZ. Mr. Speaker, I close with some powerful words from a Republican, a Republican Governor who vetoed a similar bill in his State.

He said, ''I must admit I am not an expert on transgenderism. I struggle to understand so much of it, and the science is conflicting. But when in doubt, I always try to err on the side of kindness, mercy, and compassion.''

''Here are the numbers that have most impacted my decision: 75,000, 4, 1, 86, and 56—75,000 high school kids participating in high school sports in Utah; four transgender kids playing high school sports in Utah; one transgender student playing girls' sports; 86 percent of trans youth reporting suicidality; 56 percent of trans youth having attempted suicide.

''Four kids, and only one of them playing girls' sports. That is what all of this is about. Four kids who aren't dominating or winning trophies or taking scholarships. Four kids who are just trying to find some friends and feel like they are part of something. Four kids trying to get through each day. Rarely has so much fear and anger been directed at so few. I don't understand what they are going through or why they feel the way they do, but I want them to live.''

I want our transgender children to live. I want them to have the ability to do what they need to do in school, which is to learn, to play, to compete, to learn about what it is like to be on a team.

I want them to live, which is why I oppose this rule, and I am asking all of my colleagues on both sides of the aisle: Please err on the side of compassion, kindness. Let them live.

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

Mrs. HOUCHIN. Mr. Speaker, I am prepared to close and yield myself the balance of my time.

Mr. Speaker, they can say it all they want. It doesn't make it true. This bill demonizes no one. It doesn't prohibit anyone from participating in sports.

We have heard a lot about the trans community today and the high percentage of trans students who committed suicide last year.

I want to reiterate: Those that are truly concerned about the mental health status of trans students would have supported H.R. 7966, the STOP II Act in the 117th Congress to provide additional funding for mental health guidance counselors.

Again, I have read the text of the bill. There is nothing in it that prohibits trans students from participating in sports. We are simply saying that they must compete against their own biological sex.

Like I said at the beginning of my remarks, I never thought I would have to say certain things on the House floor.

I never thought we would have to consider bills protecting sports for women and girls or legislation to support law enforcement officers, but if we don't support them, who will?

For me, those two things come naturally, and I think—I hope, anyway, we are about to see robust support from both sides of the aisle on these commonsense issues.

But even as I speak these words, I am aware that the President of the United States has issued statements of administration policy on these two bills stating his opposition and intent to veto them should they reach his desk.

How sad we can't support all women and girls in athletics. How sad we have decided to support activists over frontline police officers who are contending with increases in crime across the board. But unfortunately, this is where we are.

We heard today about the Utah law being vetoed and that it was for students. In the State of Connecticut, it was one transgender student that took the State championship away in State track and field from a biological female.

Unfortunately, this is where we are. This is why these two bills are necessary. Despite the statement from the President, I believe we must act to advance these two important pieces of legislation.

Mr. Speaker, I urge my colleagues to support this rule and the underlying legislation it provides for.

The material previously referred to by Ms. LEGER FERNANDEZ is as follows:

AN AMENDMENT TO H. RES. 298 OFFERED BY MS. LEGER FERNANDEZ OF NEW MEXICO

At the end of the resolution, add the following:

SEC. 3. Immediately upon adoption of this resolution, the House shall proceed to the consideration in the House of the resolution (H. Res. 178) affirming the House of Representatives' commitment to protect and strengthen Social Security and Medicare. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution and preamble to adoption without intervening motion or demand for division of the question except one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means or their respective designees.

SEC. 4. Clause 1(c) of rule XIX shall not apply to the consideration of H. Res. 178.

Mrs. HOUCHIN. Mr. Speaker, I yield back the balance of my time and move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. LEGER FERNANDEZ. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 218, nays 203, not voting 13, as follows:

[Roll No. 185]

YEAS—218

Aderholt	Burgess	Donalds
Alford	Burlison	Duarte
Allen	Calvert	Duncan
Amodei	Cammack	Dunn (FL)
Armstrong	Carey	Edwards
Arrington	Carl	Ellzey
Babin	Carter (GA)	Emmer
Bacon	Carter (TX)	Estes
Baird	Chavez-DeRemer	Ezell
Balderson	Ciscomani	Fallon
Banks	Cline	Feenstra
Barr	Cloud	Ferguson
Bean (FL)	Clyde	Finstad
Bentz	Cole	Fischbach
Bergman	Collins	Fitzgerald
Bice	Comer	Fitzpatrick
Biggs	Crane	Fleischmann
Bilirakis	Crawford	Flood
Bishop (NC)	Crenshaw	Foxx
Bost	Curtis	Franklin, C. Scott
Brecheen	D'Esposito	Fry
Buchanan	Davidson	Fulcher
Buck	De La Cruz	Gaetz
Bucshon	DesJarlais	Gallagher
Burchett	Diaz-Balart	

Garbarino
Garcia, Mike
Gimenez
Gonzales, Tony
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Grothman
Guest
Guthrie
Hageman
Harris
Harshbarger
Hern
Higgins (LA)
Hill
Hinson
Houchin
Hudson
Huizenga
Hunt
Issa
Jackson (TX)
James
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (OH)
Joyce (PA)
Kean (NJ)
Kelly (MS)
Kelly (PA)
Kiggans (VA)
Kiley
Kim (CA)
Kustoff
LaHood
LaLota
LaMalfa
Lamborn
Langworthy
Latta
LaTurner
Lawler
Lee (FL)
Lesko
Letlow
Loudermilk
Lucas
Luetkemeyer
Luna
Luttrell
Mace
Malliotakis
Mann
Massie
Mast
McCaul
McClain
McClintock
McCormick
McHenry
Meuser
Miller (IL)
Miller (WV)
Miller-Meeks
Mills
Molinaro
Moolenaar
Mooney
Moore (AL)
Moran
Murphy
Nehls
Newhouse
Norman
Nunn (IA)
Obernolte
Ogles
Owens
Palmer
Pence
Perry
Pfluger
Posey
Reschenthaler
Rodgers (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Rouzer
Roy
Rutherford
Salazar
Santos
Scalise
Schweikert
Scott, Austin
Self
Sessions
Simpson
Smith (MO)
Smith (NE)
Smith (NJ)
Smucker
Spartz
Stauber
Steel
Stefanik
Steil
Steube
Stewart
Strong
Tenney
Thompson (PA)
Tiffany
Timmons
Turner
Valadao
Van Drew
Van Duyne
Van Orden
Wagner
Walberg
Waltz
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams (NY)
Williams (TX)
Wilson (SC)
Wittman
Womack
Yakym
Zinke

NAYS—203

Adams
Aguilar
Allred
Auchincloss
Balint
Barragán
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Bowman
Boyle (PA)
Brown
Brownley
Budzinski
Caraveo
Carbajal
Cárdenas
Carson
Carter (LA)
Cartwright
Casar
Case
Casten
Castor (FL)
Castro (TX)
Cherfilus-McCormick
Chu
Cicilline
Clark (MA)
Clarke (NY)
Cleaver
Clyburn
Connolly
Correa
Costa
Courtney
Craig
Crockett
Crow
Cuellar
Davids (KS)
Davis (IL)
Davis (NC)
Dean (PA)
DeGette
DeLauro
DelBene
Deluzio
DeSaulnier
Dingell
Escobar
Eshoo
Espaillat
Fletcher
Foster
Foushee
Frankel, Lois
Frost
Gallego
Garamendi
García (IL)
Garcia (TX)
Garcia, Robert
Golden (ME)
Goldman (NY)
Gomez
Gonzalez, Vicente
Gottheimer
Green, Al (TX)
Grijalva
Harder (CA)
Hayes
Higgins (NY)
Himes
Horsford
Houlahan
Hoyer
Hoyle (OR)
Huffman
Ivey
Jackson (IL)
Jackson (NC)
Jackson Lee
Jacobs
Jayapal
Jeffries
Johnson (GA)
Kamlager-Dove
Kaptur
Keating
Kelly (IL)
Khanna
Kilmer
Kim (NJ)
Krishnamoorthi
Kuster
Landsman
Larsen (WA)
Larson (CT)
Lee (NV)
Lee (PA)
Leger Fernandez
Levin
Lieu
Lofgren
Lynch
Magaziner
Manning
Matsui
McBath
McClellan
McCollum
McGarvey
McGovern
Meeks
Menendez
Meng
Mfume
Moore (WI)
Morelle
Moskowitz
Moulton
Mrvan
Mullin
Nadler
Napolitano
Neguse
Nickel
Norcross
Ocasio-Cortez
Omar
Pallone
Panetta
Pappas
Pascrell
Payne
Pelosi
Peltola
Perez
Peters
Pettersen
Phillips
Pingree
Pocan
Porter
Pressley
Quigley
Ramirez
Raskin
Ruiz
Ruppersberger
Ryan
Salinas
Sánchez
Sarbanes
Scanlon
Schakowsky
Schiff
Schneider
Scholten
Schrier
Scott (VA)
Sewell
Sherman
Sherrill
Slotkin
Smith (WA)
Sorensen
Soto
Spanberger
Stansbury
Stanton
Stevens
Strickland
Sykes
Takano
Thanedar
Thompson (CA)
Thompson (MS)
Titus
Tlaib
Tokuda
Tonko
Torres (CA)
Torres (NY)
Trahan
Trone
Underwood
Vargas
Vasquez
Veasey
Velázquez
Wasserman Schultz
Waters
Watson Coleman
Wexton
Wild
Williams (GA)
Wilson (FL)

NOT VOTING—13

Boebert
Bush
Cohen
Doggett
Evans
Kildee
Lee (CA)
Miller (OH)
Moore (UT)
Neal
Ross
Scott, David
Swalwell

□ 1357

Messrs. THOMPSON of California, TAKANO, CLYBURN, Ms. CROCKETT, Messrs. THOMPSON of Mississippi, MORELLE, and GRIJALVA changed their vote from ''yea'' to ''nay.''

Mr. BURCHETT changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Ms. TENNEY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. LEGER FERNANDEZ. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 217, noes 202, not voting 15, as follows:

[Roll No. 186]

AYES—217

Aderholt
Alford
Allen
Amodei
Armstrong
Arrington
Babin
Bacon
Baird
Balderson
Banks
Barr
Bean (FL)
Bentz
Bergman
Bice
Biggs
Bilirakis
Bishop (NC)
Bost
Brecheen
Buchanan
Buck
Bucshon
Burchett
Burgess
Burlison
Calvert
Cammack
Carey
Carl
Carter (GA)
Carter (TX)
Chavez-DeRemer
Ciscomani
Cline
Cloud
Clyde
Cole
Collins
Comer
Crane
Crawford
Crenshaw
Curtis
D'Esposito
Davidson
De La Cruz
DesJarlais
Diaz-Balart
Donalds
Duarte
Duncan
Dunn (FL)
Edwards
Ellzey
Emmer
Estes
Ezell
Fallon
Feenstra
Ferguson
Finstad
Fischbach
Fitzgerald
Fitzpatrick
Fleischmann
Flood
Foxx
Franklin, C. Scott
Fry
Fulcher
Gaetz
Gallagher
Garbarino
Garcia, Mike
Gimenez
Gonzales, Tony
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Grothman
Guest
Guthrie
Hageman
Harris
Harshbarger
Hern
Higgins (LA)
Hill
Hinson
Houchin
Hudson
Huizenga
Hunt
Issa
Jackson (TX)
James
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (OH)
Joyce (PA)
Kean (NJ)
Kelly (MS)
Kelly (PA)
Kiggans (VA)
Kiley
Kim (CA)
Kustoff
LaHood
LaLota
LaMalfa
Lamborn
Langworthy
Latta
LaTurner
Lawler
Lee (FL)
Lesko
Letlow
Loudermilk
Lucas
Luetkemeyer
Luna
Luttrell
Mace
Malliotakis
Mann
Massie
Mast
McCaul
McClain
McClintock
McCormick
McHenry
Meuser
Miller (IL)
Miller (WV)
Miller-Meeks
Mills
Molinaro
Moolenaar
Mooney
Moore (AL)
Moran
Murphy
Nehls
Newhouse
Norman
Nunn (IA)
Obernolte
Ogles
Owens
Palmer
Pence
Perry
Pfluger
Posey
Reschenthaler
Rodgers (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Rouzer
Roy
Rutherford
Salazar
Santos
Scalise
Schweikert
Scott, Austin
Self
Sessions
Simpson
Smith (MO)
Smith (NE)
Smith (NJ)
Smucker
Spartz
Stauber
Steel
Stefanik
Steil
Steube
Stewart
Strong
Tenney
Thompson (PA)
Tiffany
Timmons
Turner
Valadao
Van Drew
Van Duyne
Van Orden
Wagner
Waltz
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams (NY)
Williams (TX)
Wilson (SC)
Wittman
Womack
Yakym
Zinke

NOES—202

Adams
Aguilar
Allred
Auchincloss
Balint
Barragán
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Bowman
Boyle (PA)
Brown
Brownley
Budzinski
Caraveo
Carbajal
Cárdenas
Carson
Carter (LA)
Cartwright
Casar
Case
Casten
Castor (FL)
Castro (TX)
Cherfilus-McCormick
Chu
Cicilline
Clark (MA)
Clarke (NY)
Cleaver
Clyburn
Cohen
Connolly
Correa
Costa
Courtney
Craig
Crockett
Crow
Cuellar
Davids (KS)
Davis (IL)
Davis (NC)
Dean (PA)
DeGette
DeLauro
DelBene
Deluzio
DeSaulnier
Dingell
Escobar
Eshoo
Fletcher
Foster
Foushee
Frankel, Lois
Frost
Gallego
Garamendi
García (IL)
Garcia (TX)
Garcia, Robert
Golden (ME)
Goldman (NY)
Gomez
Gonzalez, Vicente
Gottheimer
Green, Al (TX)
Grijalva
Harder (CA)
Hayes
Higgins (NY)
Himes
Horsford
Houlahan
Hoyer
Hoyle (OR)
Huffman
Ivey
Jackson (IL)
Jackson (NC)
Jackson Lee
Jacobs
Jayapal
Jeffries
Johnson (GA)
Kamlager-Dove
Kaptur
Keating
Kelly (IL)
Khanna
Kilmer
Kim (NJ)
Krishnamoorthi
Kuster
Landsman
Larsen (WA)
Larson (CT)
Lee (NV)
Lee (PA)
Leger Fernandez
Levin
Lieu
Lofgren
Magaziner
Manning
Matsui
McBath
McClellan
McCollum
McGarvey
McGovern
Meeks
Menendez
Meng
Mfume
Moore (WI)
Morelle
Moskowitz
Moulton
Mrvan
Mullin
Nadler
Napolitano
Neguse
Nickel
Norcross
Ocasio-Cortez
Omar
Pallone
Panetta
Pappas
Pascrell
Payne
Pelosi
Peltola
Perez
Peters
Pettersen
Phillips
Pingree
Pocan
Porter
Pressley
Quigley
Ramirez
Raskin
Ruiz
Ruppersberger
Ryan
Salinas
Sánchez
Sarbanes
Scanlon
Schakowsky
Schiff
Schneider
Scholten
Schrier
Scott (VA)
Sewell
Sherman
Sherrill
Slotkin
Smith (WA)
Sorensen
Soto

Spanberger	Tlaib	Velázquez
Stansbury	Tokuda	Wasserman Schultz
Stanton	Tonko	Waters
Stevens	Torres (CA)	Watson Coleman
Strickland	Torres (NY)	Wexton
Sykes	Trahan	Wild
Takano	Trone	Williams (GA)
Thanedar	Underwood	Wilson (FL)
Thompson (CA)	Vargas	
Thompson (MS)	Vasquez	
Titus	Veasey	

NOT VOTING—15

Boebert	Kildee	Neal
Bush	Lee (CA)	Ross
Doggett	Lynch	Scott, David
Espaillat	Miller (OH)	Swalwell
Evans	Moore (UT)	Walberg

□ 1406

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Deirdre Kelly, one of his secretaries.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, DEPARTMENT OF DEFENSE AND THE ENVIRONMENTAL PROTECTION AGENCY—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 118–26)

The SPEAKER pro tempore (Mr. STRONG). Pursuant to the order of the House on April 10, 2023, the unfinished business is the further consideration of the veto message of the President on the joint resolution (H.J. Res. 27) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to ''Revised Definition of 'Waters of the United States' ''.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. The question is, Will the House, on reconsideration, pass the joint resolution, the objections of the President to the contrary notwithstanding?

(For veto message, see proceedings of the House of April 10, 2023, at page H1715.)

The SPEAKER pro tempore. The gentleman from Missouri (Mr. GRAVES) is recognized for 1 hour.

Mr. GRAVES of Missouri. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Washington (Mr. LARSEN), the ranking member of the Committee on Transportation and Infrastructure, pending which I yield myself such time as I may consume.

GENERAL LEAVE

Mr. GRAVES of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on the veto message on H.J. Res. 27.

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

There was no objection.

Mr. GRAVES of Missouri. Mr. Speaker, I am proud to once again rise in support of H.J. Res. 27, which I introduced to negate an ill-timed and ill-conceived rule coming out of the Biden administration.

I remind my colleagues on both sides of the aisle that since I last spoke on the floor of this Chamber in support of H.J. Res. 27, the resolution passed both the House and the Senate with bipartisan support.

While the Clean Water Act has greatly improved the health of our Nation's waters in the 50 years since it has become law, this administration's rule defining a ''water of the United States,'' or WOTUS, is just the latest in a string of examples of executive overreach beyond the intent of the Clean Water Act.

Decades of agency interpretations and misinterpretations of WOTUS have created a lot of uncertainty for rural communities, farmers, businesses, and industries that rely on clean water, and this rule does absolutely nothing to provide clarity.

In his message to the House regarding the veto of this legislation, the President claims that H.J. Res. 27 ''would leave Americans without a clear definition of 'waters of the United States.''''

□ 1415

This is simply untrue and disingenuous, especially considering it was his own administration that decided to get rid of the 2020 Navigable Waters Protection Rule, which provided long-awaited clarity on the scope of WOTUS, in favor of this new overreaching and unclear definition.

This issue matters to everyday Americans all over the country, and I hear about it all the time.

I am disappointed to see the President favor radical environmental activists over America's families, small businesses, farmers, builders, and property owners.

That being said, I am hopeful that the Members of the House and Senate can come together to override this veto, terminating this ambiguous and burdensome rule in favor of greater economic prosperity for Americans nationwide.

Recently, two Federal courts halted enforcement of the administration's rule, granting relief to farmers, homebuilders, and landowners in 26 States.

Every Member today has the opportunity to vote to override the President's veto and ensure all 50 States are relieved of the burdens this rule has created.

Mr. Speaker, I urge my colleagues to join me in voting to override the President's veto of H.J. Res. 27, and I reserve the balance of my time.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. LARSEN of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, clean water is critical for the health and safety of our communities and our families. Our local businesses, farmers, and our economy depend on clean water for their success and their prosperity.

House Democrats have a proud and successful history of supporting clean water. House Democrats have championed investments in our Nation's water and wastewater infrastructure systems, ensuring that all communities can trust in the safety of the water they drink and the treatment of the wastewater they produce.

Last Congress, House Democrats provided historic, bipartisan investment in our Nation's infrastructure through the Bipartisan Infrastructure Law. Specifically for clean water, the BIL invests almost $13 billion in clean water infrastructure and is creating jobs in communities across the country.

The BIL showed what Congress can do when we focus on the needs of American families. Today, I would put to you that we are doing the opposite and putting polluters over people with this doomed veto override attempt.

In my own State of Washington, we are defined by clean water, including the health of the iconic Puget Sound and the hundreds of crystal clear lakes and thousands of miles of rivers and streams that run through our State.

My constituents know that rivers, streams, and wetlands are intrinsically connected. Pollution that starts in one body of water does not stay put.

House Democrats know we can protect clean water while providing certainty to businesses, farmers, and for everyone who depends upon clean water for their lives and livelihoods.

This is especially true for the 117 million Americans who depend on smaller streams as a source of drinking water at a time when many States continue to face historic droughts.

My colleagues on the other side of the aisle say they want clean water rules that are simple, clear, and easy to follow. So do we. We agree on that.

The Biden administration's Clean Water Restoration Rule does just that, following the law and the science of protecting clean water while providing regulatory certainty and stability for everyone.

Unfortunately, this resolution will do the opposite.

Mr. Speaker, I applaud the administration's call for vetoing H.J. Res. 27.

The argument is that they want bright lines in the regulation of clean water, yet the only proposal that my colleagues on the other side of the aisle seem to support is the Navigable

Waters Protection Rule of the previous administration, a proposal that removed Federal protections on roughly half of the Nation's wetlands and 70 percent of its rivers and streams.

That rule was rightly rejected by a Federal court, not by this administration, but by a Federal court in 2021, as fundamentally flawed and likely to cause serious environmental harm every day that it remained in effect.

Yet, despite their call for certainty, my colleagues have failed to recognize that passage of this resolution that is before us today would leave Americans without a clear definition of waters of the United States.

By taking away this clarity, this resolution brings back the very same uncertainty and ambiguity that supporters claim to be concerned about. I know they are concerned about that uncertainty.

This resolution will adversely impact farmers, ranchers, and developers by creating regulatory chaos and eliminating important exclusions that have been codified in this administration's rule to help water-dependent businesses and farmers understand and comply with the law.

For example, because it prohibits the EPA from issuing substantially the same rule, this resolution means the elimination of two longstanding exclusions for wastewater treatment systems and prior converted crop land—exclusions that have been relied upon by communities, developers, industry, and farmers for decades.

This resolution would also eliminate six new regulatory exclusions for features considered generally non-jurisdictional, including certain ditches, artificially irrigated areas, and artificial lakes or ponds.

Ironically, this resolution will result in more uncertainty and more bodies of water being regulated than under the administration's proposal. You don't have to take my word for it. Just read the Congressional Budget Office report accompanying this resolution. It is right in there.

As I mentioned previously on this floor and in another debate on this issue, the Biden proposal will not adversely impact family farmers in this country, period. Why?

Because farmers are, by statute, largely exempt from the Clean Water Act regulation where less than 1 percent of all wetlands permits relate to ag activities nationwide.

Therefore, if a farm is engaged in normal farming, forestry, and ranching activity, that farm is exempt from regulation, and the current proposal does not change that exemption.

In short, this resolution still makes no sense. It invalidates the Biden rule and all the clarifications and all of the exceptions for business it contains in favor of a similarly structured but much less clear regulatory framework.

It increases uncertainty and the likelihood of continued legal battles and gridlock; the opposite of what businesses and farmers are looking for.

Mr. Speaker, I support this administration's efforts on clean water, both through implementation of the critical bipartisan infrastructure law investments in water infrastructure and its veto of this shortsighted resolution.

This resolution represents a step backward for clean water, increases uncertainty for businesses, and doubles down on fighting and on chaos.

Mr. Speaker, I urge my colleagues to continue to oppose this resolution and work toward real predictability for businesses that need it, and clean water for communities that cannot survive without it.

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

Mr. GRAVES of Missouri. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. CRAWFORD), the chairman of the Highways and Transit Subcommittee.

Mr. CRAWFORD. Mr. Speaker, I thank the chairman for his leadership on this. Here we are again. We are here once again to speak against the Biden administration's new waters of the United States rule. This is a bridge too far. Since this issue last appeared on the House floor, a Federal judge blocked the rule, as the chairman mentioned, in 26 States.

It seems that even our judicial system is signaling this is a vast overstep of Federal jurisdiction. Yet, President Biden is insistent on pushing this resolution through. There are already State and local laws in place to protect our waterways, and these entities are much better equipped to oversee small, isolated bodies of water.

All this change does is create more red tape for farmers, ranchers, and landowners. What it does not do, it doesn't make our waterways any cleaner.

Mr. Speaker, I urge my colleagues to support this measure and give the power back to the States.

Mr. LARSEN of Washington. Mr. Speaker, I include in the RECORD the following letter from 111 organizations opposed to overriding the veto of this Congressional Review Act resolution.

APRIL 17, 2023.

Re: Vote NO on the veto override of H.J. Res. 27, the Congressional Review Act joint resolution of disapproval of the Revised Definition of the ''Waters of the United States''.

DEAR REPRESENTATIVE: On behalf of our members and supporters, the undersigned organizations urge you to oppose the attempt to override President Biden's veto of H.J. Res. 27, the Congressional Review Act (CRA) joint resolution of disapproval targeting the Revised Definition of the ''Waters of the United States'' rule (Clean Water Restoration Rule). This dangerous legislation would invalidate the Biden administration's recently finalized regulation, which ensures protections for many of the waters that our families and communities value and depend on.

This Clean Water Restoration Rule ensures that critical waters—from small streams to rivers to wetlands—are protected from unregulated pollution and destruction when they have important downstream effects on water quality. The rule is a return to a familiar approach that the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) have used to identify waters that qualify as ''waters of the United States'' since President George W. Bush's administration. It also resoundingly rejects the Trump-era approach, which unlawfully and unscientifically rolled back the Clean Water Act's long standing protections and reinstates basic safeguards to ensure big polluters can be stopped from recklessly and indiscriminately bulldozing our wetlands and dumping waste into our streams. The Clean Water Restoration Rule is grounded in science, which demonstrates that the condition of waters often depends on water bodies upstream, and those upstream waters must be protected to safeguard the health of downstream communities and the environment. The rule will more effectively fulfill the purpose of the Clean Water Act: ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.''

By using the Congressional Review Act to attack the Clean Water Restoration Rule, H.J. Res. 27 is employing an incredibly blunt tool in a dangerous attempt to undermine the Clean Water Act itself. When a rule is undone using the CRA process, future administrations are prevented from issuing rules that are ''substantially the same,'' which could undermine future agency action to the benefit of polluters. Despite rhetoric that this bill is being promoted to provide certainty for businesses and other stakeholders, it would actually do the opposite. For instance, should H.J. Res. 27 become law, both protections and exemptions codified in the Clean Water Restoration Rule, including ones for the agriculture industry, could be called into question in future efforts designed to define ''waters of the United States.'' The only stakeholders who benefit from this attack on our clean water protections are big polluters who dump waste into our waterways and burden our families and communities with the health and environmental costs.

Again, we ask you to oppose the veto override of H.J. Res. 27, the CRA joint resolution disapproving of the Biden-Harris administration's Revised Definition of the ''Waters of the United States.'' This harmful bill is simply a polluter-driven effort to undermine the Clean Water Act and the critical safeguards that it provides for our waters. Congress should be doing more, not less, to protect our waterways and to ensure that everyone, no matter their race, zip code, or income, has access to clean, safe water.

Sincerely,

350.org; A Community Voice; Alabama Rivers Alliance; Alaska Community Action on Toxics; Alliance for the Great Lakes; Alliance of Nurses for Healthy Environments; American Geophysical Union; American Public Health Association; American Rivers; American Sustainable Business Network; Amigos Bravos; Anthropocene Alliance; Appalachian Trail Conservancy; Asociación de Residentes de La Margaita, Inc; Atchafalaya Basinkeeper; Black Millennials 4 Flint; Cahaba River Society; California Environmental Voters; Center for a Sustainable Coast; Center for Biological Diversity.

Center for Environmental Transformation; Chesapeake Bay Foundation; Children's Environmental Health Network; Clean Water Action; Clean, Healthy, Educated, Safe & Sustainable Community, Inc.; Coalition for Wetlands and Forests; Committee on the Middle Fork Vermilion River; Community In-Power and Development Association Inc. (CIDA Inc.); Concerned Citizens for Nuclear Safety; Concerned Citizens of Cook County (Georgia); Conservation Alabama; Earthjustice; Endangered Habitats League;

Environment America; Environment Maine; Environment Michigan; Environment Minnesota; Environment Montana; Environment Nevada.

Environment New Hampshire; Environment New York; Environment Ohio; Environment Rhode Island; Environment Texas; Environmental Law & Policy Center; Environmental Working Group; Food & Water Watch; For Love of Water (FLOW); Freshwater Accountability Project; Freshwater Future; Friends of Buckingham; Friends of the Mississippi River; Gila Resources Information Project; Greater Edwards Aquifer Alliance; Greater Neighborhood Alliance of Jersey City, NJ; Green Latinos; Groundswell Charleston SC; Gullah/Geechee Sea Island Coalition; Harpeth Conservancy.

Healthy Gulf; Hispanic Federation; Idaho Rivers United; Illinois Council of Trout Unlimited; Kentucky Waterways Alliance; Izaak Walton League of America; Lake Erie Waterkeeper; Lake Pepin Legacy Alliance; Lawyers for Good Government (L4GG); League of Conservation Voters; Lynn Canal Conservation; Maine Conservation Voters; Malach Consulting; Michigan League of Conservation Vote; Milton's Concerned Citizens; Milwaukee Riverkeeper; Mississippi River Collaborative; Missouri Confluence Waterkeeper; Montana Conservation Voters; MS Communities United for Prosperity (MCUP).

National Wildlife Federation; Natural Heritage Institute; Natural Resources Defense Council; NC Conservation Network; NC League of Conservation Voters; New Mexico Climate Justice; New Mexico Environmental Law Center; New York League of Conservation Voters; Northeast Ohio Black Health Coalition; Northeastern Minnesotans for Wilderness; Ohio Environmental Council; Ohio River Foundation; Our Children's Earth Foundation; Park Watershed; Patagonia Area Resource Alliance; PES; Rapid Creek Watershed Action; Renewal of Life Trust.

River Network; Save the Illinois River, Inc., STIR; Serene Wildlife Sanctuary LLC; Sierra Club; Southern Environmental Law Center; Surfrider Foundation; The Clinch Coalition; The Water Collaborative of Greater Greater New Orleans; Tookany/Tacony-Frankford Watershed Partnership; Virginia League of Conservation Voters; Washington Conservation Action; Waterkeepers Chesapeake; Weequahic Park Association; Winyah Rivers Alliance.

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

Mr. GRAVES of Missouri. Mr. Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. ROUZER), the cosponsor of the resolution and the chairman of the Water Resources and Environment Subcommittee.

Mr. ROUZER. Mr. Speaker, I rise in support of the override of President Biden's veto of this resolution, which I was proud to introduce alongside and with Chairman SAM GRAVES. Of course, this repeals the EPA's new waters of the U.S. rule.

Mr. Speaker, I certainly recognize that this administration has never seen an onerous rule it didn't like, but the President's veto of this resolution reversing one of the Federal Government's most egregious rules to date really takes the cake.

This resolution passed in both Chambers with a bipartisan vote, yet the President and his administration refuse to even consider the devastation this new WOTUS rule, if ultimately left intact by the courts, will cause.

This new rule, with all its ambiguity, and therefore subjectivity, was issued mere months before the Supreme Court is anticipated to decide in Sackett v. EPA, a decision all but guaranteed to update the definition of the WOTUS once again, making this mud puddle of complexity even muddier.

While this is clear to many Members on both sides of the aisle here in Congress, this administration continues to bow down to the demands of radical environmentalists while ignoring the commonsense calls to revoke this misguided rule.

Unfortunately, the inconsistencies so many of us have said would result from this rule has already begun. Last week, a U.S. district court judge issued a preliminary injunction on the rule after 24 attorneys general filed suit. However, this only applies in those 24 States, as well as Texas and Idaho following action within their own courts. This means half of the country is currently subject to the rule and the other half is not.

I am disappointed North Carolina's attorney general did not join that effort. In North Carolina's Seventh Congressional District that I have the honor to represent, storms can bring very heavy rains, and with creeks, streams, and rivers everywhere throughout the landscape, water lingering for short periods of time could easily be classified as a WOTUS, depending on the viewpoint of the bureaucrat making the judgment. Heavy fines, litigation, and even prosecution can and does result.

Further, the overregulation and broad scope of interpretations of this rule have grave implications for cattle, poultry, and hog farmers in North Carolina. These farmers are often victims of environmentalists and trial lawyers looking for a gotcha moment in their quest to upend the efficiency and sustainability of our food system. This WOTUS rule puts a target on their backs, and it is why my colleagues on the other side of the aisle that also represent strong agricultural communities supported this resolution.

Mr. Speaker, this vote today is an opportunity for our legislative body to exercise one of its most basic but fundamental responsibilities, to serve as a check on the executive branch when it goes against the will and interests of the American people.

Mr. Speaker, this WOTUS rule clearly does that. I urge my colleagues to support this override of the President's veto.

Mr. LARSEN of Washington. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Speaker, I thank the distinguished ranking member for the time, and I also thank the managers who are on the floor today.

Let me clarify the reason for my being present as a member of the Homeland Security Committee, and one who has dealt with the issues by way of national security issues of water chemical contamination.

I rise with great opposition to H.J. Res. 27.

Let me call the roll: Flint, Michigan; Jackson, Mississippi; East Palestine, which it is known that the derailment also contaminated water; and cancer clusters in Houston where runoffs were contaminating the water.

Let me give you the basis of what this is about. The rule that we are trying to oppose reestablishes critical protections for the Nation's vital water resources by returning to the longstanding 1986 regulations with appropriate updates, exclusions, and streamlining clarifications.

In fact, the plain statement is that H.J. Res. 27 would leave Americans without a clear waters of the United States definition, which deals with the overall question of clean water.

Mr. Speaker, I oppose it because it does clarify the categories of water bodies and wetlands that would be subject to government protection under the Clean Water Act. People are suffering across America.

Mr. Speaker, to my good friend with the lawsuit by 24 States—we have 50 States. It is very clear that my good friends in the red States, the AGs, thought that they would undermine the President's direction on clean water.

H.J. Res. 27 would carelessly bind the hands of Federal agencies working to protect our country's water supply and quality while creating instability for farmers and developers. This does not work.

If H.J. Res. 27 was to become law, it may have a detrimental effect on the Clean Water Act, a law that prohibits the discharge of pollutants into our country's rivers and safeguards the quality of our water resources.

We are a smart and big country. We can definitely find ways to help our farmers. We are getting ready to do the farm bill. We definitely can find ways to help those who engage in economic development.

It is important to prevent this joint resolution in order to maintain the Clear Water Act because the CWA places restrictions on the number of pollutants that can be emitted and mandates that any plant that releases pollutants into U.S. waters acquire a permit.

□ 1430

Mr. Speaker, is that too onerous?

I heard someone use that term ''to save lives'' and to prevent babies from having an impact by drinking this water and having distorted growth.

The Clean Water Act also permits the use of Federal funding to support the construction and maintenance of water treatment facilities by local governments and other organizations. I can tell you, Mr. Speaker, Houston, Texas, needs those resources, and so do other

cities. I would hate to undermine those resources.

The Clean Water Act has been an essential tool for preserving the health of U.S. water resources and for ensuring that Americans have access to clean, safe water.

By establishing standards, funding infrastructure projects, and promoting monitoring research activities, the Clean Water Act has been a significant factor in preserving and enhancing Houston's water quality.

I have worked with the Army Corps of Engineers. They listen. If they speak up and say that this is the framework which we need and the EPA, as well, that has been on front lines of contamination, that seems to be the call of the day because our good friends in corporate America, trains, and otherwise, seemingly don't listen.

Believe me, Mr. Speaker, I just rode in on a train. I believe in that mode of opportunity and transportation. Let's have everyone be fair and responsible to what we have to do to protect the water of this Nation.

The Clean Water Act was enacted in 1972. According to the EPA, the number of water bodies in the U.S. that were safe for fishing and swimming has increased from 36 percent to over 60 percent.

When you have something that is working, Mr. Speaker, why are you undermining it?

So I am clearly in the position to say that in 2019 the EPA awarded $4.2 million to the city of Houston to fund projects aimed at improving water quality and storm water management.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. LARSEN of Washington. Mr. Speaker, I yield an additional 1 minute to the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Speaker, I thank the gentleman for yielding me additional time.

Mr. Speaker, we advocated for that management. We have hurricanes. And when we have hurricanes, we are always subject to the system not being able to hold the water and contamination is a possibility.

According to the Houston Public Works Department, the city's wastewater treatment plant treats an average of 304 million gallons of wastewater per day. These treatment plants are required to meet strict standards.

I will say that all cities and counties we are all working to maintain clean water. We have a situation that we are working on in my local community of Houston, wastewater and sewage.

What do you think we would do, Mr. Speaker, without the Clean Water Act?

Please don't undermine us. Don't undermine us and the local people. Listen to the roll call: Flint; Jackson, Mississippi; East Palestine; and many others.

Let us oppose this particular H.J. Res. and let us recognize that we have the responsibility. If we are doing nothing else, we have got to be responsible with H.J. Res. 27, opposing it, so that we can stand up for the children of this Nation.

Mr. Speaker, I ask my colleagues to oppose H.J. Res. 27.

Mr. Speaker, I rise in strong opposition of H.J. Res 27—Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to ''Revised Definition of 'Waters of the United States' ''.

H.J. Res. 27 is specifically intended to oppose the ''Revised Definition of 'Waters of the United States' '' rule, which clarifies and broadens the categories of water bodies and wetlands that would be subject to government protection under the Clean Water Act.

In 2019, the EPA awarded over $4.2 million to the city of Houston to fund projects aimed at improving water quality and stormwater management.

According to the Houston Public Works department, the city's wastewater treatment plants treat an average of 304 million gallons of wastewater per day.

These treatment plants are required to meet strict standards set by the Clean Water Act, which helps ensure that the water discharged from the plants is safe for the environment and public health.

The EPA has identified several bodies of water in the Houston area as ''impaired'' due to pollution, including parts of the Buffalo Bayou and Galveston Bay. However, thanks in part to the Clean Water Act, the overall water quality in the area has improved over the past few decades.

According to a report by the Natural Resources Defense Council, the Clean Water Act has helped prevent an estimated 230,000 cases of childhood gastrointestinal illness in Texas each year by reducing water pollution.

It is important to oppose this resolution because H.J. Res. 27 will be the sixth attempt at weakening the Clean Water Act.

Over many years, Republicans in Congress and industry groups argued that the restrictions were overly broad and would have negatively impacted farmers, ranchers, and other businesses by subjecting more waters to federal regulation under the Clean Water Act.

H.J. Res 27 will carelessly bind the hands of federal agencies working to protect our country's water supply and quality. We need to help farmers have clean water with effective oversight.

If H.J. Res. 27 were to become law, it may have a detrimental effect on the Clean Water Act (CWA), a law that prohibits the discharge of pollutants into our country's rivers and safeguards the quality of our water resources.

It's important to prevent this joint resolution in order to maintain the Clean Water Act because the CWA places restrictions on the number of pollutants that can be emitted and mandates that any plant that releases pollutants into US waters acquire a permit.

The Clean Water Act also permits the use of federal funding to support the construction and maintenance of water treatment facilities by local governments and other organizations.

The Clean Water Act has been an essential tool for preserving the health of US water resources and for ensuring that Americans have access to clean, safe water.

By establishing standards, funding infrastructure projects, and promoting monitoring and research activities, the Clean Water Act has been a significant factor in preserving and enhancing Houston's water quality.

According to the Environmental Protection Agency (EPA), since the Clean Water Act was enacted in 1972, the number of water bodies in the U.S. that are safe for fishing and swimming has increased from 36 percent to over 60 percent.

However because to statutory exclusions for routine farming, forestry, and ranching activities as well as for the building and upkeep of farm and stock ponds and irrigation ditches, farmers are mainly exempt from the Clean Water Act's regulatory requirements.

Less than 1 percent of all permits issued under Section 404 of the Clean Water Act are for agricultural purposes.

Yet, this resolution will abolish elements of the Biden rule intended to provide farmers further advantages, such as the recodification of the previous converted cropland exclusion and new regulatory exclusions for specific ditches, irrigated regions, such as rice fields and erosional features.

Eliminating these agricultural exclusions will increase uncertainty rather than decrease it.

In addition, The Biden regulation reinstates the same scientifically based standards that have been used for decades by every presidential administration, including originally the Trump administration.

I would like to thank Biden Administration for keeping those rules in place that helps the resident of Houston to have a better water quality and help farmers to maintain the productivity of their land and support sustainable agricultural practices.

As a Senior member of the Infrastructure Protection Subcommittee, I urge my colleagues to oppose H.J. Res 27 so we may keep defending the water's purity and the health of our citizens.

Mr. GRAVES of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DUARTE), who is somebody who personally knows how disruptive this rule can be.

Mr. DUARTE. Mr. Speaker, I wish we were here talking about clean water. We can all agree, as we did back in 1974 when we passed the Clean Water Act and we gave the government all it needed to deliver clean water to America, the rivers no longer burn. Trains do fall in rivers, but that is a jurisdictional river. That is not what we are talking about today.

What we are talking about today is how much dry land, how much farmland, and how much rolling hills and grassy fields with no frogs, no fish, and no water most of the year are going to be regulated by this administration.

Back when we passed the Clean Water Act, it was bipartisan. Republicans and Democrats got together, and we gave the government jurisdiction to protect our clean drinking water. Our harbors, our rivers, and our streams are protected. Our lakes are protected. Our drinking water is protected. Nothing here today will have any impact on whether we have safe drinking water or not.

As a farmer, I was prosecuted under the Clean Water Act for planting wheat in a wheat field that had been planted

to wheat with the same practices many times before. What we are talking about here today is expanding the authorities of the Clean Water Act to regulate almost every activity—construction, farm production, energy exploration—that can happen on open fields that might from one time or another pocket a little bit of water.

When I went through delineation on my property, it took 2 years just to get enough rain to be able to tell where the wetlands were under the previous clean water rule.

So let's not pretend this is about clean water. This is about government control of land, it is about affordable food, and it is about affordable housing. It is about use of our lands by private landowners for economic purposes.

What we are doing today here is telling the President that he didn't have authority to do this back in 1974, and he doesn't have authority to do it today.

Mr. LARSEN of Washington. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. TONKO).

Mr. TONKO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong opposition to H.J. Res. 27, the Congressional Review Act joint resolution of disapproval targeting the clean water restoration rule.

Our waterways, like the mighty Hudson and Mohawk Rivers that flow through my district in New York's capital region, are key economic engines as drivers of heritage tourism and outdoor recreation, as well as cherished gathering spaces for our communities, if we indeed care for them.

The Biden administration's clean water restoration rule restores protections for the rivers, the streams, and the wetlands that constituents in all of our district areas rely upon.

I will reinstate key safeguards to stop big polluters from recklessly dumping waste into our water systems and damaging the fragile wetlands that are so crucial for the resilience of our coasts.

Importantly, the rule is grounded in science. An important fact. It restores the same science-based approach that Presidential administrations have utilized for decades to assess the conditions of upstream waters to protect the health of downstream ecosystems and communities.

Our water systems are fragile and interconnected. As an engineer, I know the importance of using a science and data-driven approach to achieve the very best results for our communities.

The dangerous legislation before us today is an attempt to overturn these finalized regulations. This is an attack on the clean water that is critical to the health of our communities, our Nation's economy, and particularly our agricultural and energy sectors.

Mr. Speaker, I urge Members to oppose it.

Mr. GRAVES of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. BURCHETT).

Mr. BURCHETT. Mr. Speaker, I appreciate the chairman and his leadership.

Mr. Speaker, I rise in support of overriding President Biden's veto of H.J. Res. 27. Overriding the veto would get rid of a Biden administration rule that hurts American landowners, small business owners, and farmers.

Back in 2020, the EPA addressed a longstanding problem. It got rid of a broad and confusing definition of waters of the United States, also known as WOTUS, and replaced it with a definition that was much more specific and easier to understand. But no good deed is left unpunished.

Mr. Speaker, landowners need to know if their body of water meets the definition of a WOTUS, because if it does, then it is subject to much, much stricter environmental regulations.

Of course, the Biden administration is doing what it does best, and it is messing up the situation.

It is like my dad used to say about education: The problem we have with education is we called in the people who created the problem to fix it.

That is what they are doing.

It repealed that clear definition of a WOTUS from 2020 and replaced it with a more confusing and ambiguous one. This means a lot more landowners, small business owners, and farmers will need to hire expensive lawyers and consultants just to figure out if their body of water now qualifies as a WOTUS. This is another example of bringing in the bureaucrats to fix a problem that they have created.

A lot of my constituents are farmers and landowners, of course. Many are both of those. It is hard enough for them to take care of their land and follow these crazy environmental regulations without adding the burden of trying to figure out what these regulations are in the first place.

Basically what we have done is we have taken this away from the mom and pop farmers, the people who have inherited the land and who respect the land. No one respects the land more than a farmer, Mr. Speaker. We are replacing it with multinational globalist corporations who control politicians like the puppet masters that they are.

This administration needs to stop throwing bureaucracies at every situation it can get its hands on.

Mr. Speaker, it just doesn't work. This time it will hurt Americans who work hard to take care of their land and their businesses.

Mr. LARSEN of Washington. Mr. Speaker, before I reserve my time, I want to state, again, for the record, that the Federal courts blocked the implementation of the previous administration's navigable waters protection rule. It wasn't this administration.

In response to that, the administration developed a new rule, this particular one that we are debating today. So it needs to be said for the record that the Federal courts made a decision about the previous administration's rule, not this particular administration.

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

Mr. GRAVES of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. WILLIAMS).

Mr. WILLIAMS of New York. Mr. Speaker, the redefinition of these waters of the United States rules is really only about one thing, and that is Government overreach.

When faced with a crisis, the Government is given a broad mandate and loves very vague rules.

Just recently, we remember the incredible rules of the COVID crisis and the extraordinary powers granted to Government to effect this crisis.

Mr. Speaker, if you remember the definition of essential businesses, essential personnel, essential services, then you have some idea really of what the waters of the United States redefinition desired by activist courts and desired by current administration means.

You can imagine the effect it will have on our lives, Mr. Speaker.

The Clean Water Act was a broad power given in 1974 to clean up polluted waterways.

Guess what, Mr. Speaker?

It worked. We have clean waters and clean rivers. It has been an extraordinary success since the high point of pollution in the 1970s. With a government that is hungry for power, as we learned most recently in COVID, bureaucrats remembered that vague rules allow for extraordinary powers. You are not a farmer; you are a polluter. You are not a homeowner; you are a polluter. You are not a home builder; you are a polluter. You are guilty until proven innocent.

My colleagues across the aisle say that this provides clarity, and it does.

But clarity for whom?

This rule provides clarity only to EPA regulators who will have extraordinary authority. It doesn't provide clarity to homeowners, farmers, and home builders.

Mr. LARSEN of Washington. Mr. Speaker, I continue to reserve the balance of my time.

Mr. GRAVES of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PERRY), who is the chairman of the Economic Development, Public Buildings, and Emergency Management Subcommittee.

Mr. PERRY. Mr. Speaker, I thank the chairman for his leadership on this issue.

Mr. Speaker, let's be clear. We are not talking about the Clean Water Act. We are talking about the waters of the United States of America, Mr. Speaker, and definitionally what has happened here is the administration didn't like what was in the rule and the regulations, and it has changed the definition.

They didn't like it, so they changed the definition such that under this rule, nearly every single property

across the entire United States that is subject to one drop of rain is now open to enforcement by the Federal Government—not your State government, and not your local government—the Federal Government coming in to tell you that you are a polluter and that you are misusing your land because a drop of rain landed on it.

People say: Oh, you don't really mean a drop of rain.

Yes, I do mean a drop of rain. You see, Mr. Speaker, it is the EPA that will determine the definition on a case-by-case basis arbitrarily, which is what they want.

That is why it is important that we override the President's veto.

You see, Mr. Speaker, he didn't veto on behalf of the United States of America. The United States of America sent the people to this Chamber to vote on what they wanted, and we passed the Congressional Review Act to say that we don't want the definition changed.

The President doesn't like that.

Half of the bureaucrats who work in Washington, D.C., probably don't even have a yard. They probably live in a high-rise. They don't even have grass, but yet they are going to tell you how you are going to live your life and how you are going to use your land based on the Federal Government's rule.

Threats of imprisonment under ambiguous terminology and threats of financial ruin is what belies this bill and the American people if we allow this to go.

Mr. Speaker, I urge adoption. We must override the President's veto. We must stand for the American people and individual property rights which are the bedrock and the foundation of the United States of America.

□ 1445

Mr. LARSEN of Washington. Mr. Speaker, I yield myself 1 minute just to clarify that if this passes and we override the veto message, the end result will be reverting to a rule that was created around 2007, 2008, not the last administration's rule but another rule that I don't think either side likes.

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

Mr. GRAVES of Missouri. Mr. Speaker, I yield 2 minutes to the gentlewoman from Oklahoma (Mrs. BICE).

Mrs. BICE. Mr. Speaker, President Biden's waters of the United States rule seeks to insert the Federal Government into every stream, pond, and ditch in America, even those on private property.

When I am back in Oklahoma, I regularly hear from farmers, ranchers, energy producers, and small businesses about their concerns with the Biden administration's WOTUS rule.

For my constituents, it is absolutely unthinkable that a Federal bureaucrat from Washington would come on their private property to regulate an intermittent stream that may only have water in it for a few days a year. This is a huge overreach.

It is also worth noting that regulations such as WOTUS, along with others from Federal, State, and local governments, account for up to 25 percent of the price of a new single-family home and over 40 percent for a multifamily development.

Under WOTUS, the significant nexus test would result in increased regulatory uncertainty for Oklahomans. Furthermore, the ambiguous nature of its policies will further delay vital projects on strict timelines.

Despite bipartisan opposition to the WOTUS rule, President Biden still elected to veto the resolution.

American families, farmers, and small businesses are suffering under the economic crises caused by President Biden's policies. The last thing they need is more burdensome regulations.

Today's vote to overturn Biden's veto would empower local landowners instead of giving power to unelected Federal bureaucrats.

Mr. Speaker, I urge my colleagues to support the resolution.

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

Mr. GRAVES of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas (Mr. MANN).

Mr. MANN. Mr. Speaker, I rise today in support of the farmers, ranchers, agricultural producers, and independent oil and gas producers that have been forced to operate their businesses under three different definitions of the word ''water'' in the past 10 years alone.

Congress has spoken clearly on this issue. President Biden received a bicameral, bipartisan joint resolution of disapproval under the Congressional Review Act on his administration's flawed and burdensome waters of the United States, or WOTUS, rule. He vetoed it, and that is inexplicable. Congress, not the executive branch, was created to legislate, and it is sad that this particular example of legislating from the executive branch serves as an outrageous instance of government overreach.

While President Biden would like to federally regulate every small stream, ditch, and puddle from sea to shining sea, American producers have been the careful custodians of their own resources for centuries. They are the original conservationists, and their livelihoods already depend on their voluntary efforts to care for their own water resources.

How we vote today will speak volumes. By overriding President Biden's veto, Congress has the opportunity to stand up not only for the people who feed, fuel, and clothe us all, but also for all Americans whose businesses and private lives would be affected by this Big Government encroachment onto their property.

We can either tell Americans that we believe the Federal Government knows best, or we can tell them that the Federal Government should get out of their way and let them do what they do best. I know where I stand.

Mr. Speaker, I urge a ''yes'' vote.

Mr. LARSEN of Washington. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, House Democrats have a long, proud, and successful history of supporting clean water. Last year, House Democrats successfully made historic investments in our Nation's infrastructure through the bipartisan infrastructure law, providing communities with almost $13 billion in clean water infrastructure upgrades and creating jobs.

These clean water investments are helping everyday Americans with safe, reliable, and sustainable water and wastewater services while providing good-paying jobs that cannot be sent overseas and reinvigorating our State and local economies.

Every day, more and more Americans are realizing the public health, economic, and environmental benefits of this transformative law, benefits that will continue as additional resources are implemented across the country.

The bipartisan infrastructure law was what Congress can do at its best. This resolution is the opposite. Again, I support President Biden for his decision to veto this resolution.

My colleagues say they want certainty, and we agree, but that certainty that we support also ensures the health and safety of our environment for current and future generations. This resolution, though, provides no certainty.

I argue that it is a playbook for how to create confusion, more litigation, and continued gridlock.

This resolution provides no benefits to public health. It seeks to eliminate protections for rivers, streams, and wetlands, many of which provide drinking water for millions of Americans.

This resolution provides no benefits for our economy. It not only casts aside a time-tested, scientifically based tool to implement the Clean Water Act, but it also blocks any provision of additional clarity for businesses, farmers, and homebuilders going forward.

In short, this resolution is a step backward for clean water, and it is a step backward for certainty.

Mr. Speaker, I urge my colleagues to sustain the President's veto by voting ''no'' and to reject this attack on our clean water future.

Mr. Speaker, I urge a ''no'' vote on this resolution, and I yield back the balance of my time.

Mr. GRAVES of Missouri. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, the administration's definition of ''waters of the United States'' under the Clean Water Act is an onerous, burdensome, and ambiguous rule that is going to create even more issues for hardworking farmers, builders, small businesses, and property owners throughout the Nation.

While the President claims that the rule is going to help advance infrastructure projects, economic investment, and agricultural activities in his veto message, this simply is not the case. Instead, this costly, overreaching rule favors radical environmentalists at the expense of infrastructure, agriculture, and economic growth and those who depend on these activities.

Last month, Members from both parties in the House and Senate came together to stand up for everyday Americans by rejecting this flawed rule. Today, we have the opportunity to do so again.

Mr. Speaker, I urge my colleagues to override the President's veto and vote in support of H.J. Res. 27, and I yield back the balance of my time.

The previous question was ordered.

The SPEAKER pro tempore. The question is, Will the House, on reconsideration, pass the joint resolution, the objections of the President to the contrary notwithstanding?

Under the Constitution, the vote must be by the yeas and nays.

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

CONTINUATION OF THE NATIONAL EMERGENCY AND OF THE EMERGENCY AUTHORITY RELATING TO THE REGULATION OF THE ANCHORAGE AND MOVEMENT OF RUSSIAN-AFFILIATED VESSELS TO UNITED STATES PORTS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 118–28)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, within 90 days prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency declared in Proclamation 10371 of April 21, 2022, with respect to the Russian Federation and the emergency authority relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports, is to continue in effect beyond April 21, 2023.

The policies and actions of the Government of the Russian Federation to continue the premeditated, unjustified, unprovoked, and brutal war against Ukraine continue to constitute a national emergency by reason of a disturbance or threatened disturbance of international relations of the United States. Therefore, I have determined that it is necessary to continue the national emergency declared in Proclamation 10371.

JOSEPH R. BIDEN, Jr.
THE WHITE HOUSE, *April 18, 2023.*

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 55 minutes p.m.), the House stood in recess.

□ 1700

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. CAREY) at 5 o'clock p.m.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, DEPARTMENT OF DEFENSE AND THE ENVIRONMENTAL PROTECTION AGENCY—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question of whether the House, on reconsideration, will pass the joint resolution (H.J. Res. 27) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to ''Revised Definition of 'Waters of the United States' ''.

In accord with the Constitution, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 227, nays 196, not voting 11, as follows:

[Roll No. 187]

YEAS—227

Aderholt
Alford
Allen
Amodei
Armstrong
Arrington
Babin
Bacon
Baird
Balderson
Banks
Barr
Bean (FL)
Bentz
Bergman
Bice
Biggs
Bilirakis
Bishop (GA)
Bishop (NC)
Bost
Brecheen
Buchanan
Buck
Bucshon
Burchett
Burgess
Burlison
Calvert
Cammack
Carey
Carl
Carter (GA)
Carter (TX)
Chavez-DeRemer
Ciscomani
Cline
Cloud
Clyde
Cole
Collins
Comer
Costa
Craig
Crane
Crawford
Crenshaw
Cuellar
Curtis
D'Esposito
Davis (NC)
De La Cruz
DesJarlais
Diaz-Balart
Donalds
Duarte
Duncan
Dunn (FL)
Edwards
Ellzey
Emmer
Estes
Ezell
Fallon
Feenstra
Ferguson
Finstad
Fischbach
Fitzgerald
Fleischmann
Flood
Foxx
Franklin, C. Scott
Fry
Fulcher
Gaetz
Gallagher
Garbarino
Garcia, Mike
Gimenez
Golden (ME)
Gonzales, Tony
Gonzalez, Vicente
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Grothman
Guest
Guthrie
Hageman
Harris
Harshbarger
Hern
Higgins (LA)
Hill
Hinson
Houchin
Hudson
Huizenga
Hunt
Issa
Jackson (TX)
James
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (OH)
Joyce (PA)
Kean (NJ)
Kelly (MS)
Kelly (PA)
Kiggans (VA)
Kiley
Kim (CA)
Kustoff
LaHood
LaLota
LaMalfa
Lamborn
Langworthy
Latta
LaTurner
Lawler
Lee (FL)
Lee (NV)
Lesko
Letlow
Loudermilk
Lucas
Luetkemeyer
Luna
Luttrell
Mace
Malliotakis
Mann
Massie
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McClain
McClintock
McCormick
McHenry
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Miller (IL)
Miller (OH)
Miller (WV)
Miller-Meeks
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Moolenaar
Mooney
Moore (AL)
Moore (UT)
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Newhouse
Norman
Nunn (IA)
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Perry
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Reschenthaler
Rodgers (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Rouzer
Roy
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Salazar
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Scott, Austin
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Self
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Smith (MO)
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Spartz
Stauber
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Lee (PA)
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Moulton
Mrvan
Mullin
Nadler
Napolitano
Neguse
Nickel
Norcross
Ocasio-Cortez
Omar
Pallone

Pappas	Schakowsky	Thompson (MS)
Pascrell	Schiff	Titus
Payne	Schneider	Tlaib
Pelosi	Scholten	Tokuda
Peltola	Schrier	Tonko
Perez	Scott (VA)	Torres (CA)
Peters	Sewell	Torres (NY)
Pettersen	Sherman	Trahan
Phillips	Sherrill	Trone
Pingree	Slotkin	Underwood
Pocan	Smith (WA)	Vargas
Porter	Sorensen	Vasquez
Pressley	Soto	Veasey
Quigley	Spanberger	Velázquez
Ramirez	Stansbury	Wasserman Schultz
Raskin	Stanton	Waters
Ruiz	Stevens	Watson Coleman
Ruppersberger	Strickland	Wexton
Ryan	Sykes	Wild
Sánchez	Takano	Williams (GA)
Sarbanes	Thanedar	Wilson (FL)
Scanlon	Thompson (CA)	

NOT VOTING—11

Boebert	Kildee	Salinas
Bush	Lee (CA)	Swalwell
Davidson	Neal	Thompson (PA)
Evans	Ross	

□ 1729

Mr. PETERS changed his vote from ''yea'' to ''nay.''

So (two-thirds not being in the affirmative) the veto of the President was sustained and the joint resolution was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MCCORMICK). The veto message and the joint resolution are referred to the Committee on Transportation and Infrastructure.

The Clerk will notify the Senate of the action of the House.

Stated against:

Ms. BUSH. Mr. Speaker, due to a medical emergency, I was unable to vote during today's vote series. Had I been present, I would have voted "nay" on rollcall No. 187.

Mrs. LEE of Nevada. Mr. Speaker, during rollcall Vote number 187 on H.J. Res. 27, my vote was recorded as a "yea" when I intended for it to be a "nay." Let the record reflect that I oppose H.J. Res. 27.

PERSONAL EXPLANATION

Mrs. BOEBERT. Mr. Speaker, I had to fly back home to be there for the birth of my first grandchild. Had I been present, I would have voted "yea" on rollcall No. 185, "yea" on rollcall No. 186, and "yea" on rollcall No. 187.

PERSONAL EXPLANATION

Mr. KILDEE. Mr. Speaker, I am unable to attend votes due to a medical procedure. Had I been present, I would have voted "nay" on rollcall No. 185, "nay" on rollcall No. 186, and "nay" on rollcall No. 187.

MOMENT OF SILENCE HONORING DEPUTY SHERIFF JOSH OWEN

(Mrs. FISCHBACH asked and was given permission to address the House for 1 minute.)

Mrs. FISCHBACH. Mr. Speaker, over the weekend, while responding to a domestic violence call, Deputy Sheriff Josh Owen of Pope County was tragically shot and killed. It was his 44th birthday.

Deputy Owen spent nearly 12 years with the sheriff's office and recently received a Distinguished Service Award. He was also a military veteran, serving with the Minnesota National Guard and deploying to Iraq for 22 months. He leaves behind a wife and son.

This is a devastating, heartbreaking reminder that our men and women in law enforcement put their communities above all else every single day. We are praying for Josh's family and for the Pope County community as they mourn the loss of a local hero.

I ask now that we have a moment of silence in honor of Pope County Deputy Sheriff Josh Owen.

RECOGNIZING YOM HASHOAH

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

Mr. LAWLER. Mr. Speaker, today, I rise to recognize Yom HaShoah, Holocaust Remembrance Day.

On this day, we honor and remember those who suffered and lost their lives in one of the darkest moments in human history, the Holocaust.

Yom HaShoah is a day of remembrance, a day to pay tribute to the millions of innocent men, women, and children who were brutally murdered by the Nazis and their collaborators, a day to reflect on those atrocities, and a day to commit ourselves to never forgetting or ever letting this happen again. Over 6 million Jews were killed.

Earlier today, I joined a number of my congressional colleagues at a ceremony recognizing this somber day. We were joined by Holocaust survivors and descendants who shared their stories and experiences, which were heartbreaking.

As we light candles and say prayers today and this week in memory of the victims of the Holocaust, let us also renew our commitment to building a world that honors survivors, respects all faiths, and ensures that this never happens again.

DENOUNCING THE CLOSURE OF THE WASHINGTON BUREAU OF NJ ADVANCE MEDIA

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

Mr. PAYNE. Mr. Speaker, I rise to condemn the decision to shut down the last Washington, D.C.-based bureau for New Jersey media.

In March, NJ Advance Media closed its Washington news bureau forever. It was the last Washington news bureau to focus on New Jersey-related content.

This closure robs New Jersey readers of critical political information, and it undermines the media outlet's responsibility to keep its readers informed.

Now, New Jersey readers will not know how congressional funding benefits their communities, and they will not know how they will be affected by legislation and possible political corruption.

The bureau had one reporter, the excellent Jonathan Salant, so it was a cost-effective way to provide this information. Instead, NJAM betrayed the very purpose of a news outlet to increase the bottom line.

I hope NJAM will reopen this bureau soon and provide effective coverage of national politics to its New Jersey readers.

THE WAR ON FEMALE ATHLETES

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

Mr. MCCORMICK. Mr. Speaker, the Biden administration has declared war on Title IX protections for female athletes. They want to force American schools to allow biological men and boys to compete in women's sports. In fact, they show no intent to protect women at all.

As a doctor, I know this is ridiculous. Where does it stop? What would it take for liberal women to stand up for themselves?

Perhaps when all the scholarships for women are given to biological men, when all the female sports records are broken, all the medals are taken, all the awards stolen, and every woman of the year title or best actress Oscar is given to a man, perhaps then President Biden and his media allies will finally decide to enforce Title IX and protect young women.

We are not going to wait around for them. I am proud to cosponsor the GOP bill to protect women's sports and save Title IX for America's female student athletes.

ADDRESSING ACCESS TO HEALTHCARE

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

Mr. DAVIS of North Carolina. Mr. Speaker, I rise to discuss a topic important to the people of North Carolina's First Congressional District: addressing access to healthcare.

April is Medicaid Awareness Month, and I was honored to kick it off with my fellow State Medicaid Expansion Caucus co-chairs and Protect Our Care.

North Carolina has passed critical legislation that Governor Roy Cooper has signed into law, creating a pathway to expanding Medicaid in our State, showing the significance and power of bipartisanship.

Mr. Speaker, nearly 100,000 eastern North Carolinians would have access to healthcare that would come as a result. There would be a creation of roughly 3,000 jobs in one of the most economically distressed parts of the State while saving our rural hospitals.

Mr. Speaker, nearly 2 million Americans remain trapped in a coverage gap. Medicaid Awareness Month is the perfect time to make a bipartisan appeal.

Let us work together to close that gap so that the greater good of Americans will benefit.

RECOGNIZING MARTHA ZOLLER

(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 recognize Martha Zoller, who was recently named TALKERS magazine's 2023 Woman of the Year.

Ms. Zoller has been known as a well-respected conservative voice in talk radio since the start of her career in 1994. Ever since then, she has kept people across the State of Georgia and the Nation informed on the news and the state of American politics with her radio broadcasts.

In addition to her time in radio, Ms. Zoller has served in the political world, as well. She spent time as the State director for field offices for Governor Brian Kemp, and she was a senior staffer for Senator David Perdue from 2014 to 2018.

Ms. Zoller's career in both radio and politics, while also being a mother and grandmother, is a testament to her character and commitment to both her family and her community.

Mr. Speaker, I congratulate Ms. Zoller again for being named TALKERS' 2023 Woman of the Year.

RAMIFICATIONS OF THE COURT DECISION ON MEDICATION ABORTION

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

Mr. PETERS. Mr. Speaker, the recent court decision on medication abortion is the clearest example yet of the horrific consequences of the Republicans' anti-abortion crusade. While many said a national ban was not the goal and that this would be a States' issue, abortion care could be restricted even in pro-choice States.

Mr. Speaker, that begs the question: What is next? Birth control? Plan B? Will anti-vaxxers ask the courts to take down lifesaving vaccines? Will extremists litigate any drug that utilized stem cell research?

San Diego is home to some of the most innovative biomedical companies in the world, and so many of these companies have come out to oppose this decision, to say that the ruling threatens their ability to create the cures of tomorrow.

My colleagues on the other side of the aisle are uncharacteristically quiet about this. They let this genie out of the bottle. They need to find the political courage to put it back in.

□ 1745

NO INCREASE IN THE DEBT LIMIT

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

Mr. GAETZ. Mr. Speaker, I rise to vindicate the most American of values, and that is work. When John Smith landed at Jamestown, he said: ''He who does not work, neither shall he eat.''

We have drifted far away from that, creating a social safety net that has been converted into a multigenerational hammock for far too many Americans.

As we reach America's credit card limit, I am proud to stand with my many House Republican colleagues who believe there should be no increase in this debt limit absent rigorous work requirements.

If you could see President Clinton and Newt Gingrich coming together for work requirements in the 1990s, there is no reason we cannot do that in divided government now to cut spending where it is wasteful and to grow this economy where it is necessary.

RECOGNIZING UCONN BASKETBALL CHAMPIONS

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

Mr. COURTNEY. Mr. Speaker, as the Congressman from eastern Connecticut, it is a proud moment for me to congratulate the UConn men's basketball team for winning this year's NCAA national championship on April 4, just a couple weeks ago.

Mr. Speaker, the UConn men starting out in this season back in November were not even ranked in any of the leading polls. Yet, despite that negativity, they tuned it out and really came together as a team led by a great coach, Danny Hurley.

By the time they got to the NCAA playoffs, their average margin of victory was over 15 points per game. It is a record in terms of NCAA championships in the past, and a great testament to a group of young men who are now going to go on and do greater things, whether it is in the NBA or next year's college basketball season.

It is a great program. This is their fifth title since 1999. The women's team has won 11 titles. It is truly easy, I think without exaggeration, to say that I represent the basketball capital of the world for college basketball: Storrs, Connecticut.

RECOGNIZING THE SERVICE OF WILLIE MIMS

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

Mr. DESAULNIER. Mr. Speaker, I rise today to recognize the service of Willie Mims.

Mr. Speaker, throughout Mr. Mims' life he has shown his commitment to educating, serving, and empowering residents of the community that I have represented for some time now in Contra Costa County in the San Francisco Bay Area.

In 1963, Willie began engaging in local politics, advocating for the Rumford Fair Housing Act, which aimed to combat racial discrimination in housing in California. He went on to obtain his teaching credentials and had a long career in teaching with the Vallejo City Unified School District.

Willie is also an original member of Pittsburg's Black Political Association and part of the executive committee of the East Contra Costa County Branch of the NAACP. He was instrumental in the creation of the Antioch Unified School District's African American Male Achievement Initiative, which sought to address racial disparities in education. Willie received the Dr. Martin Luther King Freedom Fighter Award in 2008 in recognition of his many efforts to promote racial justice and equity.

Willie is a true leader and friend. We are grateful for the positive impact that his work has had across our community. Please join me in recognizing Willie for his many years of devoted service to his community.

APPOINTMENT OF MEMBERS TO THE JOINT ECONOMIC COMMITTEE

The SPEAKER pro tempore (Mr. MCCORMICK). The Chair announces the Speaker's appointment, pursuant to 15 U.S.C. 1024(a), and the order of the House of January 9, 2023, of the following Members on the part of the House to the Joint Economic Committee:

Mr. SCHWEIKERT, Arizona
Mr. ARRINGTON, Texas
Mr. ESTES, Kansas
Mr. FERGUSON, Georgia
Mr. SMUCKER, Pennsylvania
Ms. MALLIOTAKIS, New York
Mr. BEYER, Virginia
Mr. TRONE, Maryland
Ms. MOORE, Wisconsin
Ms. PORTER, California

REVENUE NEUTRAL PERSONAL CONSUMPTION TAX

The SPEAKER pro tempore. Under the Speaker's announced policy of January 9, 2023, the gentleman from Georgia (Mr. CARTER) is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Mr. CARTER of Georgia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and to submit extraneous material into the RECORD.

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

There was no objection.

Mr. CARTER of Georgia. Mr. Speaker, today could be the last tax day our country ever has. Let that sink in. Today could be the last tax day our country ever has.

Monday, April 15, 2024, could be just another spring day if Congress acts now and passes the only tax reform proposal to ever make it to The New York Times best seller list, the FairTax Act.

H.R. 25, the FairTax Act is a simple, fair, and preferred alternative to our current tax system which puts bureaucrats before the basic needs of hard-working Americans.

The bill would eliminate, as in do away with, the Federal income, the Federal payroll, the estate, and gift taxes, replacing them with a revenue neutral national 23 percent consumption tax.

Mr. Speaker, nobody likes taxes, but given the choice between a payroll tax, an income tax, an estate tax, a gift tax, or a consumption tax, people would prefer a consumption tax because they are in control then.

It would also eliminate the need for the IRS. It would eliminate tax day. No more tax day.

How many people out there right now in this country are sweating as a result of today being tax day, or just sitting at home thinking, oh, if I can just get through this day?

It would allow you to take home 100 percent of your paycheck so that you could control where your hard-earned dollars go. The best part about this is you don't need a law degree or a CPA license to understand it. It is simple. It is fair. It is preferred.

For every dollar you pay for a new good or service, 23 cents will go to the Federal Government and 77 cents will go to the business. It is that simple. I agree, 23 percent is too high, but it is much better than what you are paying now.

Have you ever looked at your paycheck? Have you ever looked at how much you get paid and how much you get to take home? It is ridiculous.

No more, no less, no legal or financial expertise would be required.

As I said, a 23 percent consumption tax is a lot. No one likes paying taxes, me included. I don't like paying taxes. I understand it and I am certainly willing to do my part, but I would surely prefer to have control over it instead of some unelected bureaucrat in Washington, D.C., as it is now, having control over it.

What many consumers fail to realize and what Washington Democrats conveniently ignore is that today's sticker prices are already inflated to cover corporations' tax burdens.

Every tax imposed on businesses, whether it is corporate, FICA, or other taxes is passed down to the consumer. You are already paying taxes every time you purchase a good or service. Under the FairTax Act you are only paying yours, not anyone else's. That is right. On the FairTax Act you will only be paying for what you consume. That is what a consumption tax does.

Mr. Speaker, I am going to pause right now and then I will come back and finish what I have to say about this.

Mr. Speaker, I yield to the gentleman from Arizona (Mr. BIGGS), my friend who wants to speak on this FairTax Act.

Mr. BIGGS. Mr. Speaker, I thank the gentleman from Georgia (Mr. CARTER) for yielding. I appreciate his leadership on this issue.

I was thinking as you were talking about the first job I ever had. I was making—this is really going to date me—I was making $2.50 an hour. I thought, holy mackerel, that is $100. I was working 40 hours and I was going to bring home $100. No, it was $75. That was a million years ago. I would bring home less today because everything else has gone up.

I will just tell you something about that. I have watched that same thing happen to each one of my children. We live in this world where the Federal Government kind of clamps down on you. I appreciate this so much.

The FairTax Act would repeal all Federal taxes, corporate taxes, individual income taxes, payroll taxes, self-employment taxes, capital gains taxes, death taxes, and gift taxes and replace them with a revenue neutral consumption tax.

Do you know what is so nice about a consumption tax?

You choose whether you are going to pay it. You choose whether you are going to pay it because it is how you consume. We pay too much already in Federal taxes, and under this administration we are paying silent taxes we never voted for.

Since this administration took over, Americans are paying nearly 15 percent more for goods and services due to the inflation tax.

I have introduced legislation, and I know others have as well, to repeal the 16th Amendment to permanently abolish the Federal income tax. This is a fantastic bill that Mr. CARTER has.

I don't need to remind you that the Federal Government takes up to 37 percent away from families—away from your dinner tables, away from your gas tank, and pays for drag shows in Ecuador, and $85,000 Bob Dylan statues, for Pete's sake.

Americans know how to spend their own money better than politicians do. Under the FairTax Act everybody is going to take home 100 percent of their paycheck with no Federal taxes withheld.

Americans would decide how much they pay in taxes through the choices they make to purchase and consume goods and services. That means that Americans would keep their entire paycheck they worked for and have the freedom to decide how they spend their money.

Flat taxes are sometimes criticized as disproportionately affecting lower-income Americans negatively, but the FairTax Act accounts for that by preparing a prebate.

This prebate is an advance tax refund to every legal American family at the beginning of every month to purchase goods and services free up to the national poverty level. That has been compared, quite frankly, to the earned income tax credit, which is part of our Byzantine structure today.

When I was in my first year in law school—this was also 100 years ago—this is back before the internet and back when I worked for a tax firm, I was their librarian. Every week I went in and for hours I updated a room full of tax books—the regulations and the code itself being updated all the time as Congress would decide who gets a special break and who doesn't.

The FairTax Act, instead, encourages economic growth. It is more efficient and more productive than our current tax code. This means investment, wages, and consumption are higher than they are under the current income tax.

In light of the Democrat majority in Congress and the Biden administration, both of which have made clear their policies are to tax, spend, and control the American people, the FairTax Act provides the perfect alternative that gives Americans more freedom.

Without a national income tax there would be no need to file taxes or have an IRS, which this bill defunds. You had me at hello with that.

In addition to closing the many loopholes in the current tax code, the FairTax Act would reach a much larger group of taxpayers, which nine States have already seen the benefits of firsthand by eliminating their State income taxes.

Mr. Speaker, I thank Representative CARTER for letting me speak on behalf of his bill. I think it is a wonderful bill, and I support it. I encourage all of my colleagues to support this bill.

Mr. CARTER of Georgia. Mr. Speaker, I thank the gentleman from Arizona for his insightful comments. I think we have all had that aha moment when we got our first paycheck, and we said: Wait a minute, I was supposed to make X-amount, but I am only taking home this amount. Why is that?

The reason why is because you are having to pay an income tax, a payroll tax—you have to pay all these taxes. With a consumption tax, the FairTax Act, you decide. If you want to buy a boat, you are going to pay taxes. If you don't want to pay taxes, don't buy the boat. That is all there is to it.

I appreciate the gentleman mentioning this about every time you buy something you are paying taxes, every time you purchase a good or a service. Under the FairTax Act you are only paying for your goods or services. You are only paying your tax, not someone else's.

There is no other tax proposal—serious tax proposal—that would overhaul the largest and the most regressive tax that the majority of Americans pay, the payroll tax, while making the United States the most competitive place in the world to do business.

□ 1800

It honestly baffles me that my friends on the other side of the aisle

haven't embraced this proposal with open arms because it will save taxpayers time, money, and headaches while ensuring that those with more money to spend, AKA the wealthy, pay more taxes. After all, when they buy a boat, it is a big boat—usually a yacht—and the taxes on the yacht are a lot bigger.

Now, I am going to buy a jon boat. Taxes aren't going to be as much on it. But they buy yachts, and the taxes are high on that. So they are going to pay their fair share.

That is one of the criticisms I always hear: Oh, the wealthy don't pay their part.

Let me tell you, Mr. Speaker, they consume a lot more.

Who is going to benefit the most from this?

The people making between $30,000 and $50,000 a year. Those are the people who are going to benefit from this. Those are the people whom I am talking about here.

Under this proposal, every legal American family will receive a prebate, as was mentioned, on their taxes up to the national poverty level.

So, Mr. Speaker, don't tell me this about: Oh, this is going to penalize the very least money earners.

No. That is not the case at all because the prebate is going to take care of that.

This means that a family of four can spend $30,000 a year without paying a penny—without paying a penny—in taxes. That is an effective tax rate of zero. Close your eyes, Mr. Speaker. That is how much it is: zero.

No matter how you slice it, this bill is a much better deal for middle- and low-income earners than it is for those at the top.

That is what I don't understand, Mr. Speaker, from those on the other side of the aisle who are always saying: Oh, the rich don't pay their fair share.

This is why we have the FairTax Act. This is why we have a consumption tax, so they will be paying their fair share.

I hear this about: Oh, the illegals here don't pay taxes.

If they are going to buy something here, then they are going to be paying taxes now. They are going to be paying the fair tax. We will be able to capture that underground economy, if you will.

As distasteful as it may be, the pimps and the prostitutes are going to be paying taxes because they consume. They go out, and they buy groceries. They go out, and they buy stuff. That is what you are going to be paying the taxes on.

No matter how you slice it, Mr. Speaker, this bill is a much better deal for middle- and low-income earners than it is for those on the top.

The FairTax Act provides freedom to choose when you pay your taxes, Mr. Speaker, and how much you spend. You are in control. Don't let Washington, D.C., decide how much you are going to pay in taxes. You decide.

That is why the administration and that is why those on the other side of the aisle don't like it. It is because they lose control of you, and you have control, Mr. Speaker. Instead of taking money from every single dollar you earn, you are only paying taxes on the money you spend, leaving more room for paying down debt, retirement, college, savings, and more.

All of us speaking in support of this legislation today know that this is a big idea. It is a big idea. It is a big change. Although, as Mr. BIGGS mentioned, there are nine States that do it. Oh, by the way, Florida, Texas, and Tennessee don't have an income tax. They are doing fine. Some of the strongest economies in the world are right there, and they are doing fine.

We know that overturning an entrenched Tax Code with thousands of special interests invested in keeping their carve-outs poses significant challenge. It does pose a significant challenge. But we didn't come to Congress to maintain the status quo—at least that is not why I came here. I thought we were here for big ideas. This is a big idea.

For those who are just turning it off saying: Oh, no. I remind them that a closed mind is a dead mind. You have got to have an open mind with this, Mr. Speaker. That is why this is so good.

The only people with something to lose are those who gain their power and money on the back of this convoluted, broken system. There are those who know how to play it. I know that, and you know that as well, Mr. Speaker. That is why it is time for the FairTax Act. That is why it is time to put Americans first.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. CLYDE), who has an opinion or two about taxes. I know he does. He has had an experience with taxes too, like many of us have.

Mr. CLYDE. Mr. Speaker, I thank my dear friend and fellow Georgian, Congressman BUDDY CARTER, for yielding.

Mr. Speaker, I am proud to be a staunch supporter and original cosponsor of Mr. CARTER's FairTax Act, a commonsense piece of legislation designed to create a simplified and fair code that works for everyone.

Most Americans would agree that tax season is stressful and at times intimidating. This is largely due to the fact that our Tax Code has become overwhelmingly complicated and the IRS is generally unavailable on the phone. In fact, over the past year, my Gainesville district office has processed nearly 200 casework issues involving the IRS, and with an IRS backlog of more than 2 million returns, I know this issue is felt by taxpayers across the country.

While great reforms were made in President Trump's 2017 Tax Cuts and Jobs Act, I believe the next necessary step is to completely overhaul our overly complex Tax Code with the FairTax Act. The FairTax Act represents a long-term solution by repealing all Federal, corporate, and individual income taxes, payroll taxes, self-employment taxes, and death taxes, replacing our misguided system with the revenue-neutral personal consumption tax.

Under the FairTax Act, Americans would be able to keep their entire paycheck and only pay taxes on the goods and services that they actually purchase. With no national income tax, there would be no need to file a tax return. April 15—or in this year's case, April 18, today—would become just another beautiful spring day.

The FairTax Act is also a critical step to truly stop the weaponization of the IRS. In 2013, I was a victim of the IRS' abuse through unjustified civil asset forfeiture against my small business to the tune of $940,000. I relentlessly fought back for months, eventually reclaiming my hard-earned money through the court system. Then I took my case to Congress leading to the creation and passage of what eventually was called the Clyde-Hirsch-Sowers RESPECT Act, which President Trump signed into law to ensure no American faces this injustice ever again.

Unfortunately, I know that I am not the only victim of the severe overreach of the Internal Revenue Service. In fact, to make matters worse, just last year, my Democratic colleagues provided the IRS with a whopping $80 billion with the primary purpose of expanding the already bloated agency. The IRS recently confirmed it is set to hire nearly 30,000 new employees over the next 2 years drastically increasing the agency's auditing capabilities in order to rake in billions of dollars to pay for President Biden's pricey Green New Deal agenda.

House Republicans' first vote this Congress repealed this unnecessary funding authorization, and it is past time for Congress to fully recoup this money—sending a strong message that this institution values fiscal responsibility and stands against the weaponization of the IRS.

Not only would Congressman CARTER's FairTax Act eliminate the need for the IRS, but it would also lead to economic prosperity. Economists resoundingly agree that the FairTax Act would significantly boost our Nation's economy. Eliminating corporate taxes would incentivize corporations to headquarter in the United States, which would provide new jobs and economic development in our communities. The cost savings these companies experience will drive the competitive market, ultimately lowering prices of goods and services for Americans. In turn, Americans would have more freedom to reinvest in the economy since there would be no tax on pure investments.

In closing, I am a proud supporter of Representative CARTER's FairTax Act, and I strongly urge my colleagues to support this commonsense bill to not only simplify but also improve our tax system.

Mr. CARTER of Georgia. Mr. Speaker, I thank the gentleman for bringing up some great points.

Mr. Speaker, I want to very quickly go over a couple of myths, if you will. I know you find it hard to believe, but there are some myths out there about the FairTax Act.

First of all, the myth is that the FairTax Act rate is really 30 percent, not 23 percent. I agree. Twenty-three percent is too high. We wish it could be lower, but it is not 30 percent.

Our current income tax as expressed is an inclusive tax. When directly comparing the FairTax Act to our current income tax, the FairTax Act rate is 23 percent. Under the FairTax Act, if you would pay $100—this is simple math, now—if you pay $100 for a good, $77 goes for the good, and there is an inclusive $23 tax.

If you take the $23 as a percentage of the $100, Mr. Speaker, then the tax rate is 23 percent.

Unfortunately, opponents of the FairTax Act—unbelievably there are some out there—typically speak about the FairTax Act in terms of an exclusive tax simply because the rate sounds higher to consumers.

It is 23 percent. It is simple math: 23 percent.

Not only do opponents of the FairTax Act fail to admit that the exclusive and inclusive rates have consumers paying the same amount of money, but they also compared the exclusive FairTax Act rate to the inclusive income tax rate. That is unfair, and that is misleading. That is a myth. It is 23 percent. Again, I get it. I know that is too high. I wish it would be lower, but it is not 30 percent. It is 23 percent.

The only other thing I want to mention at this point is the myth that the FairTax Act—and we mentioned this earlier—would hurt the poor and give the rich a huge tax cut.

Baloney.

The FairTax Act is the only progressive tax reform bill currently pending before Congress.

Each household, as I mentioned earlier, will receive a monthly prebate based on Federal poverty levels and household size that will allow families to purchase necessary goods such as food, shelter, and medicine essentially tax-free—zero percent. This is similar to our current individual exemption and refundable tax credit system. It is essentially the same thing, but it is far simpler.

Further, the FairTax Act is not riddled with shelters and loopholes, meaning wealthy taxpayers cannot minimize what they pay in taxes regardless of how many lawyers and accountants they hire to advise them.

It is simple, it is fair, and it is preferred.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. COLLINS). Representative MIKE COLLINS is a great new member of our delegation who certainly knows a thing or two about taxes, having been in business for many years himself.

Mr. COLLINS. Mr. Speaker, I thank Mr. CARTER for yielding.

Mr. Speaker, as someone who represents the great University of Georgia, it is nice to see him pick up the football and run with this thing. My friend is also right. I have spent my private life, over 30-plus years, in one of the most regulated and taxed industries that there are in this country. So, yes, it is very near and dear to my heart.

I want to thank the gentleman also for leading on a Georgia original bill which originated with Congressman John Linder.

The IRS was weaponized early on in the Obama administration, and the only thing that came out of that, the result of that, was Lois Lerner being found in contempt of Congress, and then we saw the issue go away.

Now the Biden administration, with the addition of 87,000 IRS agents, has a new target: the middle class and small businesses.

It is time for a new tax system that works for all Americans. So today I rise in support of H.R. 25, the FairTax Act.

Our tax system is in desperate need of reform, and this bill will let Americans keep their hard-earned paychecks and get rid of the IRS.

The FairTax Act will eliminate payroll and income taxes and greatly reduce compliance costs on small businesses by replacing all of these with a consumption tax on new goods and services.

The current tax system is purposely complicated, burdensome, and confusing so only the well-navigated can navigate the loopholes.

So why wouldn't we want to make it simpler and more understandable so small businesses and workers can thrive?

From my first day in Congress, I have been focused on making the Federal Government more transparent and accountable to the American taxpayer. The FairTax Act does just that. Every time Americans buy a product or service, they will know exactly how much they will pay in taxes and will be able to factor that into their decisions. There will be no more complex and expensive end-of-the-year Federal tax filings.

The only way big legislation is passed in this town is when the American people demand it. The way we get them on board is we need to hold hearings across this country to explain the ideas and the details of the FairTax Act. We need to discuss and debate the bill publicly so that the Americans can consider this proposal. Once they hear about it though, I am confident that they will support the concept of the FairTax Act.

Let's get to work.

□ 1815

Mr. CARTER of Georgia. Mr. Speaker, again, here you have a businessowner. He knows all about taxes. When he talks about a business that is one of the most regulated in the country, he and our previous speaker, Representative CLYDE, boy, you talk about regulated businesses, both of them have regulated businesses. Both of them understand firsthand and have personal experience, real-life experience, about the IRS and taxes.

I will address one more myth here, the myth that the FairTax Act will unfairly punish senior citizens living off their retirement income. Unfairly punish senior citizens living off of their retirement income? Wrong. Retired individuals living on fixed incomes will benefit from the FairTax Act, just like all other Americans will benefit.

The new system will eliminate the current income tax on Social Security benefits. Have you looked at your Social Security check lately? It is not what it started out at because they take out taxes on it.

It will also eliminate the income taxes on investment income, something a lot of retirees have and depend on.

It eliminates taxes on pensions, benefits, and individual retirement account, IRA, withdrawals.

It eliminates all of that, so don't tell me it is going to punish retirees. It is going to do just the opposite.

The monthly prebate will offset the taxes paid by seniors on essential goods. I hear this: Old people aren't going to be able to afford groceries, and they are not going to be able to afford shelter.

Wrong. They will be able to afford it. That is what the prebate is about. Essentially, up to $30,000 a year for a family of four, your essential tax rate is going to be zero, nil.

Again, senior citizens living off of their retirement income, after the initial implementation of the FairTax Act, if prices increase, penny for penny, seniors will receive additional Social Security benefits until prices return to or below pre-FairTax Act levels.

This is simple. It is fair. It is preferred.

Mr. Speaker, I yield to the gentleman from Alabama (Mr. MOORE), who certainly understands a thing or two about taxes. He has paid enough taxes in his life, I am sure.

Mr. MOORE of Alabama. Mr. Speaker, today, I rise to express my support for making tax day a thing of the past. Our current tax code is four times as long as the King James Bible but contains none of the good news.

Last Congress, PELOSI and the Democrats made it their mission to hire 87,000 new IRS agents. Furthermore, Biden's budget calls for the highest level of taxation in American history, with $4.7 trillion in new taxes.

A recent analysis by the Tax Foundation found that Biden's $4.7 trillion tax hike on workers, families, farmers, and small businesses would destroy over 300,000 American jobs, cut workers' wages by 1 percent, and reduce American economic growth by 1.3 percent.

President Biden and the Democrats want every day to be tax day, but today, I introduced legislation that would abolish the 16th Amendment. I am also a proud supporter of the FairTax Act.

The FairTax Act would eliminate all personal and corporate income taxes, abolish the death tax, eliminate gift and payroll taxes, repeal the tax code, replace it with a single national consumption tax, and, my favorite part, it would abolish the IRS.

This is the gold standard for tax law and would turn the convoluted, abusive, and biased system into a straightforward code that works for every American.

Instead of inflating our already-bloated bureaucracy and continuing to punish those who work hard to succeed, Americans deserve a system that works for them.

Mr. Speaker, I thank my colleague BUDDY CARTER for his work on this legislation.

Mr. CARTER of Georgia. Mr. Speaker, one more myth: The FairTax Act will make new homes too expensive, and it will eliminate incentives like the mortgage interest rate deduction. I hear this all the time. Again, wrong.

Under the current system, every time a new home is purchased, a home buyer is paying an increased price that results from embedded costs. See, that is what people don't understand. Taxes are embedded. They are embedded in the prices that you are paying right now.

Under the FairTax Act, when you buy a new home, these embedded costs are eliminated, meaning the cost for consumers can fall relative to the price of home construction and compliance costs.

Additionally, under the FairTax Act, mortgage interest rates are expected to drop as interest income falls toward the tax-free bond rate. Mortgage interest rates are expected to fall under the FairTax Act. Wow.

Mr. Speaker, I yield to the gentleman from Virginia (Mr. GOOD), a great advocate of tax reform.

Mr. GOOD of Virginia. Mr. Speaker, I thank the gentleman from Georgia for his leadership on this critically important issue.

You might say what the House of Representatives does is tax and spend. Thankfully, we are the party that wants to tax less and spend less, so it is a win-win for the American people, a win-win for freedom, a win-win for Americans as a whole.

It is appropriate on this day of all days, national tax day, to be discussing the state of our tax system. It is no secret to most Americans that the IRS does not serve their interests and, worse yet, frequently uses its power to target law-abiding American citizens and conservative groups. The American people are sick and tired of dealing with a broken, confusing, and even hostile tax system.

My office regularly hears from constituents who simply want to get an answer from the IRS when they are trying to do their taxes or want to know why they are forced to pay taxes for things such as an inheritance from their loved ones.

Rather than take a hard look at the current situation, the Biden administration has made it clear they want to further weaponize the IRS against hardworking Americans by spending $80 billion to hire an estimated 87,000 new agents to harass, intimidate, and threaten taxpayers.

In fact, in Virginia's Fifth District, one of the things I commonly hear is what we need more of is IRS agents. Of course, I have never heard that in Virginia's Fifth District.

The American people deserve a better tax system that does not needlessly target them or even punish them for doing their best to work hard, put food on the table, and comply with an ever-more-complicated tax code.

The addition of these 87,000 IRS agents should raise alarm bells for all Americans since the IRS and its employees regularly do not follow the limits of their lawful directive. We can point to example after example.

As a matter of fact, just last month, an IRS employee was found guilty of three counts of wire fraud, two counts of aggravated identity theft, five counts of aiding and assisting in the preparation and presentation of a false and fraudulent return, and three counts of making and subscribing a false and fraudulent tax return.

Clearly, the American people do not need a more powerful and emboldened IRS. The current system must change, and that is where this bill from the gentleman from Georgia (Mr. CARTER) comes into play.

The FairTax Act tax system is easy to understand, and it will save billions in compliance for taxpayers and the Federal Government. It holds all Americans to the same standard, a 23 percent sales tax. In doing so, Americans will not be onerously taxed on what they earn. Instead, they pay a fair tax on what they consume. It puts Americans in control of the taxes that they pay.

It removes the discrimination that is in the tax system because everybody pays taxes based on what they consume. Organized crime pays taxes. Crime cartels pay taxes. The Mafia pays taxes. Tax cheats are paying. Under-the-table earners are paying. You get the idea.

Today, the average American worker is forced to pay the Federal Government 33 cents of every dollar they earn as opposed to what we are proposing today, which is the fair tax of 23 cents for every dollar they spend if they choose to spend it.

Thanks to the prebate plan in this bill, taxpayers will be able to spend up to the poverty guideline and have that amount be exempt from the impact of the 23 percent tax.

Implementing this national sales tax will double the number of taxpayers in the system. Instead of having just about 150 million taxpayers who are currently having to pay income taxes, this would bring about 300 million Americans as consumers into the tax revenue. Everybody would be participating based on what they consume.

Wealthy people would pay more because they spend more and make more expensive purchases, not to mention 51 million annual foreign tourists and some 12 million illegal immigrants in our country, illegal aliens who reside here.

The FairTax Act is a commonsense reform that will unburden the American people and stimulate economic growth. Individuals will have more control over their finances and not be threatened with penalties or double taxation for investing and saving their own money.

Rather than guess how much you owe each year or how much the government owes you, which a lot of us just had to do here, the FairTax Act will enable taxpayers to know exactly how much they are paying.

Mr. Speaker, I thank my friend BUDDY CARTER for his leadership on this that will put the American taxpayer first, unleash economic growth, and hold everyone accountable to one simple tax requirement.

Mr. CARTER of Georgia. Mr. Speaker, did you hear what he just said? Unleash American growth. Unleash American growth. Wow. What great words.

Mr. Speaker, the bottom line: Our current tax system is broken. It is broken, and it is oppressive. The FairTax Act allows Americans to keep 100 percent of their paycheck, of their hard-earned paycheck, and it ends the IRS headache.

A family of four earning $30,000 a year is going to pay zero, not one penny, in taxes. Further, this bill will save small businesses hundreds of billions of dollars a year in compliance costs, making it easier to start and grow a business here in America—we need that; we need more small businesses—by capturing the underground economy.

Almost every speaker has talked about this. We are going to be capturing the underground economy—tourism dollars, purchases made by illegal immigrants.

This bill will save Social Security while leaving more money in the hands of the American people and revolutionizing our economy.

Mr. Speaker, I yield to the gentleman from New York (Mr. SANTOS), the latest sponsor of the FairTax bill.

Mr. SANTOS. Mr. Speaker, the American people need tax relief, and I rise today to share my unapologetic support for the FairTax Act.

Taxes continue to skyrocket in States like New York. Many of my constituents pay nearly $50,000 in local taxes. Of that amount, $10,000 can be deducted from gross income. The rest gets taxed twice.

I have introduced two bills regarding tax deductions: H.R. 1260, the SALT

Relief Act, and H.R. 2634, the Alimony Relief Act. Both of my bills seek additional deductions for taxpayers forced to submit to government-directed payments.

Regarding alimony, I hope to repeal the section of law within the Tax Cuts and Jobs Act of 2017 that places the tax liability of government-mandated payments on the person who makes the payment and not the payee. Why should the person earning the money but not spending it pay the tax liability?

Mr. CARTER's FairTax Act ensures that we pay taxes on what we buy rather than on what we earn. It would make both of my bills unnecessary. The hours spent every year doing tax returns wouldn't be necessary, and Americans would have more time to spend with their families.

I hope we can make real progress on the FairTax Act, but in the meantime, I would welcome my colleagues to support my efforts. I look forward to the day when a simpler tax code is afforded to all of our constituents.

Mr. CARTER of Georgia. Mr. Speaker, I thank the gentleman for his very insightful comments. I appreciate that very much. I thank all of my colleagues for their support and for speaking in favor of America's favorite tax proposal. Yes, it has been around. It has been around for quite a while now, but its time has come.

This bill, in fact, was first proposed by Representative John Linder, a member of the Georgia delegation whose chief of staff, ROB WOODALL, took over the bill when he was elected to Congress, another Georgian. When Rob retired, he asked me if I would take over this legislation, and I was honored to do so because I made a commitment when I became a Member of Congress that this would be the first bill I would cosponsor as a Member of Congress, and it was. It has been ever since I have been a Member of Congress.

Cosponsoring this bill was my first act as a Member of Congress, and I am eager to see this landmark bill finally get the attention and legislative action it deserves. It is fair; it is simple; it is preferred. You are in control. You decide how much you want to pay in taxes, not some unelected bureaucrat, not some Member of Congress who decides they need a loophole or a tax break for something. No, you are going to decide. You are going to decide what you are going to pay taxes on and what you are not going to pay taxes on.

Again, as I started out tonight, today could be the last tax day our country ever sees. Let that sink in. Today could be the last tax day our country ever sees. All we have to do is adopt the FairTax Act, a consumption tax.

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

□ 1830

TARGETING PEOPLE OF FAITH

The SPEAKER pro tempore. Under the Speaker's announced policy of January 9, 2023, the Chair recognizes the gentleman from Wisconsin (Mr. GROTHMAN) for 30 minutes.

Mr. GROTHMAN. Mr. Speaker, this week Congress returned from 2 weeks working in our districts, and obviously, we heard quite a bit from our constituents back home. I would like to spend a little bit of time addressing issues that I think are on their minds.

The first thing is we had another step toward the—I will call it the de-Christianization or dislike of people of faith.

It was revealed within the last month and a half that a memo was leaked from the Richmond office of the FBI saying that they were concerned that conservative Catholics may be tied up with white supremacists, and we have to monitor them. I think this is one of the most offensive things up there.

Now, first of all, their source for this was the Southern Poverty Law Center. I would ask anybody to Google the Southern Poverty Law Center and see the degree to which it has been used to enrich its founders and is a totally discredited source.

I thought nobody outside of maybe a few journalists would trust it with anything, but apparently the FBI considers the Southern Poverty Law Center a legitimate source.

Even more scary is that they are targeting conservative Catholics. Do you know why they are targeting conservative Catholics?

Because they are sincere believers in their faith, and that scares the type of people who are running the country, or they are afraid they would be an obstacle in the type of country they want us to become.

They do say that this was not up to their exact standards. In other words, what they are apologizing for is they got caught because there was somebody there who was a whistleblower who exposed the way the leadership in the FBI thought.

I think all Americans—and I am not Catholic, but all Americans who take their faith seriously should be very alarmed at this.

There have been many countries around the world which consider Christianity or religion their enemy. I thought one of the major reasons why the United States was different than these other countries is because we are supposed to be a moral and religious Nation.

We are a Nation built for people who take their faith seriously. Now we find out the FBI thinks we ought to put informants in with groups of conservative Catholics to make sure they are not up to something untoward.

I hope all Americans are appropriately concerned with the type of people we have being hired in the FBI. I hope all clergymen realize that if they can go after the conservative Catholics, the next thing they are going to do is go after you.

The idea that they would think we should put informants in with conservative Catholic groups to make sure they are not doing something untoward is truly scary.

WORKING TOWARD PEACE

Mr. GROTHMAN. My next topic for tonight is a topic in which not a lot of progress has been made in the last 2 weeks, but I continue to believe people in this body or the press corps should be turning up the heat a little bit on our current administration.

I have talked before about the potentially huge problems we could have in Ukraine. We are dealing with a very advanced country in Russia, a country with nuclear submarines, a country with the ability to shut down your electric grid, and no progress is being made toward some sort of peace agreement.

This war has now gone on for over a year. I think there are, sadly, some people in this town who wouldn't mind if it goes on another 2 or 3 years.

The additional cost, as far as monetary cost, is a scandal in its own right, but that is not as horrible as the huge cost in human suffering and death that every war has.

I have talked before about the fact that Ukraine has the second lowest birth rate of any country its size in the world, behind only South Korea.

Russia itself has had a big immigration problem in which people are leaving their country. I have been at the southern border and heard stories of young Russians coming here, so it should be particularly easy to negotiate some sort of deal.

The United States is in a position to negotiate that deal, but certainly other countries that we are friendly with; Israel, Turkiye, or France, could be prodded to work toward some sort of peace deal on humanitarian reasons, if none other.

Nevertheless, we don't hear a lot of talk about that, not a lot of gossip that behind the scenes, people are working toward some sort of agreement.

Given how poorly things went with Russia when they invaded, things didn't wrap up in 3 days like our CIA was guessing, I assume it was a surprise to Russia that things are still going on this long, as well.

I would assume that, therefore, both sides would like to work toward a peace agreement here. But sadly, the United States, who I think should be working for peace—I always kind of remember when the United States negotiated the end of the Russia or Japanese war.

We should be wanting world peace but, instead, you hear no rumors in that regard. I would hope that the press corps and other politicians in this area would be asking a little bit or prodding the relevant people along to make sure that we work toward peace.

CONTROL OF THE SOUTHERN BORDER

Mr. GROTHMAN. The next topic—I could always argue—and the most important topic for our country is the border. While back in the district, I spent 1 day—haven't been there in about 11 months, but I spent 1 day at

the Arizona-Texas border and continued to see what a complete mess we have down there.

While down there, Congressman BIGGS from Arizona and I were given a ride along the Arizona-Mexico border.

The ride had to go for 25 or 30, maybe 35 miles along a very rocky trail. I don't think the car could go more than 15 or 20 miles an hour.

We saw nobody until we got about 15 miles in, in the middle of nowhere, and we came across four or five families totaling 21 people.

We were informed by this group that they were dropped off about a 2-hour walk from the American border and had to walk over this rocky land to get there.

Now, so you know, most people who ask for asylum they go to designated points of entry where they roll out the red carpet—I am only exaggerating a little bit—to deal with people and walk them through.

Why was this group of 21 people—and you have got to understand. There is some question as to the whether the border is under control.

I will assure you: The border is under control. The Mexican drug-controlled gangs have that border under control.

These folks, after having to walk 2 hours through the desert, sat for 2 hours in the middle of nowhere. It was, fortunately, a cool day, about 70 degrees, but it could have been a hundred degrees.

Finally, us two Congressmen came across them. I don't know who would have come across them if we hadn't been taking the tour at the time.

We had to call and waited probably another 30 or 35 minutes for the Border Patrol to show up and take these 21 people back.

Now, why would the Mexican drug gangs want 21 people showing up in the middle of nowhere rather than the designated points of entry?

The reason is all along the southern border, the drug gangs have spotters in the surrounding mountains. When the people come across with drugs, they want to make sure they are not caught.

One way to make sure they are not caught is you send other people across that you know the Border Patrol has to deal with, you know the Border Patrol has to process.

It took a minimum of three—I would guess more than that—big SUVs to take these people to a designated Border Patrol station so that the gangs doing the spotting in the high mountains around us knew that now was the easy time to get through the fentanyl and other drugs that stream across our border. Just a real tragedy.

I think it was very risky to have such young kids going along, in addition to the fact that is 21 more people coming in our country, who I would almost be certain do not need asylum. They are just coming here because our President does not consider the border something worth enforcing.

I want to give you one other anecdote from that trip which tells you the lack of seriousness that this administration has toward this unfettered immigration, as well as the stream of illegal drugs coming across the border.

I have been an advocate in the past for drug-sniffing dogs that can identify the horrible drugs that have killed over 100,000 Americans in the past.

I asked our guide, who was connected with the union down there, so he represented how the average Border Patrol people felt.

He said, no, not more dogs. Why didn't he want more dogs? Because right now, the Biden administration did give them more dogs. They gave them more dogs because they needed therapy dogs for the Border Patrol.

They felt that the stressful situation of being underfunded, of being miles and miles away from the closest Border Patrol agent in case something goes south, that the way to deal with the stress was to hire therapy dogs. They had 38 therapy dogs.

Wouldn't you think if you are going to hire dogs for the southern border, they would be drug-sniffing dogs and try to reduce that 100,000-plus number of people who are dying of illegal drug use every day? No.

The people who currently run our government think, well, the Border Patrol is stressed in the current situation. What should we do about it?

I don't think we should hire more Border Patrol agents. I don't think we should hire more drug-sniffing drugs.

Aha. Let's hire some more therapy dogs for the Border Patrol because they will feel better if, on their way out in the morning, they get to pet the dog.

Unbelievable. I mean, you can't make this stuff up, can you?

We dealt a little bit more with the border in the committee that I am the subcommittee chair earlier today. We remember a couple years ago, under a different President, that the press made a big deal that they felt there were some families being separated.

Those families could be only separated for, I think, under 20 days, and it was only if the parents had broken some law.

Well, today in our committee hearing, we looked at the number of unaccompanied minors crossing the southern border. These are minors crossing without parental guidance, without parents being with them.

In the final full year before the current administration, in a whole year, there were 15,000 unaccompanied minors crossing.

That was the first half of that year, before COVID was really out there, so it was kind of an artificial count; it should have been a higher number, but 15,000.

Last year, we had 128,000 unaccompanied minors crossing the border, young people without any parental guidance coming on their own. That, by itself, should be a major cause of concern.

We had a witness today, Robin Marcos, the Director of the Office of Refugee Resettlement, a political appointee, and it was shocking what she didn't know about the young people crossing the border.

Now, I have been at the border before, and I know the Border Patrol will tell you, or other people guarding the border, that there are times they suspect that children are crossing the border and are only providing cover for other people who want to come here.

They say this is my child, but the Border Patrol suspects it is not their child. They do a DNA test and find out it is not their child.

Wouldn't you be giving DNA tests to just about every unaccompanied minor crossing the border to make sure they aren't being trafficked, or when you give them to a sponsor eventually, if they say that sponsor is an aunt or uncle or whatever, it really is?

But when you ask Ms. Marcos how many DNA tests they are giving of the unaccompanied minors, she has no idea. I would think that is about the first thing that you should know.

□ 1845

The second thing that you should wonder about: Is her agency adequately vetting the sponsors that are going to take over these kids who are coming here without their parents?

So we asked her how many sponsors are rejected as unfit to take care of these unaccompanied minors?

She had no idea.

Isn't that kind of surprising?

Wouldn't you think in this era of human trafficking that you would want to know that?

Wouldn't you think in this era in which a lot of these kids cross the border, and according to The New York Times, wind up working in unsafe conditions—I assume in part to pay off the debt that they have to pay for coming into this country—wouldn't you think that we would be doing a thorough investigation of these sponsors?

Apparently not.

We have no idea how many sponsors were considered unfit to come here.

Another thing that surprised me at the border was that if you really wanted to disrupt the drug trade that is killing over 100,000 Americans a year, one of the things you could do very successfully is not only try to track down people coming into the country, you could track down people leaving the country with tens or hundreds of thousands of dollars. After all, it wouldn't be so profitable for the drug trade if some of that cash was being intercepted.

I guess for a while, a few years ago, they tried to intercept that cash. Whether it is the lack of money or whatever, they are not doing it anymore. I guess I will take that as one more piece of evidence of the lack of seriousness that this administration is taking in trying to disrupt the drug trade coming across the southern border. In any event, we don't see that happening either.

Like I said, the new Director, who has been here since last September, really knows very little about what is going on at the border. You would think she would want to know.

We also know from The New York Times—and she didn't deny this—that there are 87,000 unaccompanied minors, and we don't know where they are.

Now, she could say it is not her job, but when we are taking people away from their parents or when people are leaving their parents and coming to America, wouldn't you think we would express a little bit of interest to see whether they are being taken care of by someone that the child would be safe with?

Apparently not.

Now, some may say, Well, this guy says it is the child's uncle. It could be an uncle that they have never met in their life. They could be making it up that it is an uncle. It could be an uncle who lives with six other guys, and he is taking in a 14-year-old girl to live with them.

Who knows what is going on? There is little concern.

I guess the only thing that drives this administration's Border Patrol policy is getting as many people here as quickly as possible because they want to change America. That is what we are dealing with.

One final thing. I would think that when somebody comes here without parents, you would want to contact the parents and let them know, We have little Mary here. She says she is 12 years old. We want to make sure that you understand that she is here in Tucson, Arizona.

Our Director has no idea how many parents have been contacted. She has no idea how many times both parents are being contacted, or maybe only one parent is connected with that child.

We have no idea. However, if we care even remotely for these kids, I would think we would be in contact with their parents: You said you are sending little Mary here to live with Uncle Joe; is that accurate?

You would try to get ahold of both parents because we like to have both parents play a role in raising their children. Who knows if we ever get ahold of both parents.

I hope, for humanitarian interests, that we have some concern over the lack of care for over 120,000 unaccompanied minors coming into this country every year. I can't help but ask myself, given that some of these kids will probably never see their parents again: Where was the press corps and where were the Democrats, who at one time were all concerned that sometimes when a parent broke the law, they would have to spend 15 or 16 days apart from their child?

That is an important story, and a story I hope people follow up on.

AFFIRMATIVE ACTION

Mr. GROTHMAN. Now, I will deal with one of the problems the Biden administration thinks is of great concern. And I don't think it should be a major concern, but they keep pushing it and pushing it down upon us, and that is: what to do about the supposed huge amount of racism in the country?

We know that when Joe Biden was sworn in—I attended his inaugural speech—I believe if there was one theme, it was racism. He talked about racism four times. He talked about white supremacy first.

He really thought we had a big racist problem in America today. And he followed up on it in this year's state of the Union address, another time Joe Biden couldn't resist taking a shot at our law enforcement and saying how racist they were.

This, despite the fact that when they do studies of law enforcement when adjusted to criminal behavior, there is no difference of anything going the other way, as far as the chance that race will be a factor in people who die.

In any event, Joe Biden has done two things that I think require us to look at the so-called racial element as Joe Biden's heavy-handed government weighs in.

In his budget, he begins with new diversity, equity, and inclusion teams in all government agencies. That is interesting. So we have bureaucrats—I am sure bureaucrats will be involved—whose job it is apparently to poke around and educate people that they should view themselves not as individuals but view themselves racially.

One of the things I did when I was on break—I am not quite through with the book—is to take advantage of a gem that you might not be familiar with by the incisive Thomas Sowell, ''Affirmative Action Around the World.''

I don't think a lot of people in this body know that this idea of affirmative action, recognizing people by race, promoting them by race, hiring by race, is not unique to the United States. It has happened in various other countries around the world, and I think we ought to see what traits we have in common as soon as you go down the path of affirmative action.

I first dealt with this problem when I was in the State legislature many years before. Of course, with affirmative action and racial preferences and identifying people by race is not something unique to the government. To a certain extent with the government weighing in, it has become very common at universities, very common in big business.

We were in a hearing a couple of weeks ago and it was revealed that in college universities these racial police are being hired for as much as $200,000 a year. It drives me up a wall given that sometimes we talk about student loan debt. The fact that the student loan debt is going to pay for these race hustlers, I think, is entirely inappropriate.

I also believe there are certain majors we need more of in this country. We need more nurses. We need more engineers. It drives me up a wall when we have a shortage of nursing professors or engineering professors and hearing that universities think it is more important to hire the equity police.

In any event, what lessons can we learn from Thomas Sowell?

When going down this path and identifying people by race, what things happen in common when they tried this in countries around the world?

Well, the first thing is, all around the world when they have affirmative action, it usually starts out with a lie that this race preference stuff will happen for a short period of time and then will disappear, maybe 10 years, maybe 20 years.

This country began to enforce affirmative action in earnest in 1965. So the current race preference-type stuff is about 57 years old, well longer than originally thought.

Secondly, around the world, once you go down this path, you keep adding more people to the mix. And I think at the time when Lyndon Johnson really kicked off affirmative action in earnest in 1965 it was primarily for Black Americans, with an implication that slavery might have been part of it, that sort of thing.

Since then, we have added Hispanics—new word. It is kind of an interesting thing because for the purpose of affirmative action, if your ancestors came from Spain and spent a couple of generations in Costa Rica, you are considered a minority. If your ancestors came from Spain and came straight to the United States, you are considered European, which shows the ridiculousness of the whole thing.

This is common around the world. The idea of we keep adding—we added women to the mix, so we need to have affirmative action there as well.

Secondly, people begin to change their identity as soon as affirmative action kicks in. A lot of people don't realize that if you are one-quarter, say, Latin, or one-eighth Asian, you can be considered eligible for affirmative action. So they follow this stuff. Somebody who maybe before affirmative action on the census form said I am White, but because they are a quarter Cuban—which is European anyway—you all of a sudden can relabel yourself a minority.

Now, we obviously had a U.S. Senator here a few years ago, ELIZABETH WARREN, an extreme example of that. She was whatever, 1/64th or 1/128th American Indian, Native American, and she therefore changed her identity and miraculously said, I am a Native American; I should get preferences.

I think that is inappropriate, but that is what the current system apparently allows, and this is common. Apparently, when affirmative action is implemented in other countries, people change their identity.

The next thing that happens is, even though I think affirmative action is supposed to benefit the least fortunate of people of certain groups, it uniformly winds up benefiting the most fortunate of those groups.

In other words, if you have preferences in government contracting, it benefits the wealthy businessman. It doesn't benefit the person more at the bottom of the heap. But this is common around the world. The benefits of the people who implement affirmative action are usually the people who are the most well-off in the first place.

I do believe that—and maybe the least bad thing is it leads to resentment—in countries that previously everybody was getting along, all of a sudden bifurcate as people fight for more and more of their group. They didn't think they were part of a group before, but all of a sudden, they are part of a group.

I think everybody should read about what happened in Sri Lanka, a country that had two primary ethnic groups. They got along for apparently centuries very well on the small island of Sri Lanka, but once affirmative action kicked in, the resentment kicked in. They wound up having a civil war and over 20,000 people died. This was on an island and before they had affirmative action everybody was getting along just fine.

I would also point out that means in some cases, you almost, by definition, have to be promoting people because it is very important we have the best person there—doctors, air traffic controllers, engineers. Maybe it doesn't matter a lot the quality of professor we have in universities, but it certainly matters in these other occupations. And if we don't have the best people there, it can result in deaths.

Now, there is one thing I wish the press would follow up on a little bit here. About 2 years ago, when Joe Biden first took office, Senators TAMMY DUCKWORTH and MAZIE HIRONO said that we shouldn't have any more White guys appointed by the Biden administration.

I think that was an inflammatory thing to say. They haven't followed up on it, but recently, there was an article in a legal journal pointing out—not saying it is good or bad—we had 97 new judges so far in the first 2 years of the Biden administration, only five were White guys, and at least two were gay.

Well, it sounds like this strict adherence to group identity is playing a big role in who President Biden is appointing. And I am not sure the American public knows the degree to which that is going on, but it is something that should be looked into. It is something that maybe we should look at all appointments rather than just judicial appointments. I think it is something that a shocking number of people don't know about, and it is something we should follow up on.

□ 1900

So there are some of the issues that were discussed back in my district when I was there. None of these issues, I think, have received the appropriate amount of attention that it should be given by our press corps, and hopefully we will hear more about all of these issues in the press in the weeks and months to come.

Thank you. I yield back the balance of my time.

CELEBRATING APRIL AS FAITH MONTH

The SPEAKER pro tempore. Under the Speaker's announced policy of January 9, 2023, the Chair recognizes the gentlewoman from Illinois (Mrs. MILLER) for 30 minutes.

GENERAL LEAVE

Mrs. MILLER of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to submit extraneous material into the RECORD.

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

There was no objection.

Mrs. MILLER of Illinois. Mr. Speaker, I thank my colleagues for joining me tonight in this Special Order. I am honored to join together to celebrate April as Faith Month, and I am calling on people of faith to join in prayer and in celebration.

As a Member of Congress, I am happy to reaffirm my commitment to the Judeo-Christian values and the freedom of religion on which our country was founded.

In Congress, my colleagues and I will always fight to protect the right of all Americans to exercise their faith and maintain the freedom of religion. People of faith seek to be a positive force in their communities, especially in difficult circumstances.

Religious organizations in America have a rich history of charitable engagement in helping the poor, the sick, and the afflicted, and they should be appreciated.

Mr. Speaker, I yield to the gentlewoman (Mrs. HARSHBARGER), my friend and colleague from Tennessee.

Mrs. HARSHBARGER. Mr. Speaker, I thank Representative MILLER for yielding.

I want to talk about faith. What is faith? Thankfully, the Bible contains a clear definition in Hebrews 11:1. It says: Now faith is the assurance of things hoped for and the evidence of things not seen.

So faith is trusting in something you cannot explicitly prove. Trust is actually relying on the fact that something is true. This biblical definition of faith doesn't only apply to salvation, which is God's gift to us, but to the rest of our Christian life. We are to believe what the Bible says and we are to obey it. That is called living by faith.

We are to believe the promises of God, we are to agree with the truth of God's word, and we are to be transformed by it. Hebrews 11:6 says: Because without faith, it is impossible to please God. Without faith, we cannot be saved. Without faith, the Christian life cannot be what God intends it to be. Without faith, I wouldn't be standing in this Chamber today representing the precious people of the First District of Tennessee. Without faith, I wouldn't be able to share a hopeful message with this great Nation that if God be for us, who shall be against us?

Faith knows that no matter what the situation is in our life or someone else's life that the Lord is working within that situation for their good and His glory. Perfect faith is simply taking God at His word.

Mrs. MILLER of Illinois. Mr. Speaker, I thank Congresswoman HARSHBARGER for speaking. It has been a privilege to join with her weekly and with other members to pray for our country.

Our Nation is in crisis because our society has turned away from God and has embraced a culture that now tells children that life has no value. This year, I launched the Congressional Family Caucus because I believe we have a moral obligation as servant representatives to save our American values and to defend the natural family as ordained by God, a husband and a wife committed to each other for life with their children.

We need to defend the natural family from attempts by the radical left to erode this core foundation of our society. In Deuteronomy 6, in the context of the traditional family, in the home, we are to diligently instruct our children to love God and to obey His commandments.

During Faith Month, I would like to recognize that a happy family is a blessing from God and is foundational to human flourishing. I will always proudly stand up for faith and for our families in Congress.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. CLYDE).

Mr. CLYDE. Mr. Speaker, I thank my friend, Congresswoman MILLER from Illinois, for leading on this important issue, this important Special Order, and for being a leader in defending religious freedom.

Mr. Speaker, I rise today in honor and celebration of Faith Month. During Faith Month, we celebrate the enduring power of the Bible as God's revelation to His creation, offering guidance and the promise of eternal life through the Gospel of His word.

This sacred text has played a pivotal role in shaping the very fabric of our Nation, acting as a guard for liberty in the United States of America.

Over 400 years ago, settlers fled religious persecution in search of the New World, and the Bible became the cornerstone of our Founding Fathers' vision for a free government. Their wise leadership wove the Word of God into the foundation and core principles of our Nation, ensuring unity and success for generations to come.

Our Founders wisely and proudly proclaimed that our liberties are not bestowed by the government, but by our heavenly creator. As Thomas Jefferson wrote in the Declaration of Independence, ''We hold these truths to be self-

evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.''

This includes the most pivotal liberties, outlined in the First Amendment, which preserves our unalienable right to religious liberty. Undoubtedly, this remains one of the most important foundations of our Nation, but I see little by little, day by day, these religious liberties are in danger of being canceled or abandoned because of persecution in government at all levels.

We must not allow that to continue, and so we must defend all our God-given liberties from government overreach and we, in Congress, must lead on this issue. Today and every day, may we individually and unapologetically rejoice in our faith.

As we move forward, let us continue to use God's word as the guiding light. Our government founded on faith and His divine plan will bring peace, freedom, and liberty to all who call this great Nation home.

Mrs. MILLER of Illinois. Mr. Speaker, I agree with Congressman CLYDE that we do need to defend these core principles and our freedom to exercise our faith.

This year during Faith Month, we celebrate and thank God for the historic victory of the end of Roe v. Wade. The end of Roe is the beginning of a new chapter where we can now embrace a culture of life with reverence for all of God's children. I applaud the Justices who stood bravely up to the radical abortion industry and defended life. I also applaud President Trump who gave the American people a Court that delivered a pro-life win for our Nation.

The Bible tells us in Psalm 139 that we are fearfully and wonderfully created by God, knitted together in our mother's womb. This verse reminds us that every human life is created by God and has inherent worth and dignity at every stage of development.

What a shame that today we are teaching our children that they are the result of cosmic dust and are here without purpose instead of intricately woven and designed and purposed by God.

Defending life has been one of the most meaningful fights that I have contributed to during my time in Congress. I have had the opportunity to stand with pro-life colleagues from across the country by supporting the Life at Conception Act, the No Taxpayer Funding For Abortion Act, and cosponsoring the Protecting Life on College Campus Act.

During Faith Month, I would like to recognize the incredible strides we have made for the pro-life movement over recent years. I will always defend the lives of the unborn.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank Mrs. MILLER for holding this Special Order so that we can share our faith and the importance of our faith to this country.

Mr. Speaker, it is important that we take this opportunity to celebrate Faith Month. Faith in God is as important to our Nation today as it was in 1776. When faced with critical decisions, our Founding Fathers looked to the scriptures and sought the wisdom of God.

The church was the most important pillar in every community at that time and had tremendous influence over the establishment of our Constitution and the values as a Nation.

As my friend MIKE JOHNSON explained to me, what our Founders did was simply this: They left God at the top, they got rid of the king, and put the people in charge.

I want to tell the American people today; you are in charge. The Constitution has not changed in that regard. They recognize, as many of us here today do, that the Bible is a life-changing source of eternal hope which sustains our faith.

President Adams stated that our Constitution was written for moral and religious people only. It will do for no other. I have often said that, and it offends some people. What did Adams mean by this statement?

Well, as I understand it, our Founders came to America for religious freedom. A couple weeks ago, Os Guinness spoke to us at the Faith & Law Breakfast, and he explained it this way. He said, you cannot have virtue without faith. You cannot have faith without freedom. You cannot have freedom without virtue. You think of this as a triangle, each dependent on the other.

We serve a God who created perfect order, because chaos is the absolute opposite of freedom. Based on these founding principles, we have ''In God We Trust'' above the American flag that hangs right there above the Speaker's podium. Behind us, looking down on this body, we have the full face of Moses who wrote the first five books of the Bible—the law, God's law. In this body, we are without excuse.

With that, let me lift up a few examples of faith in both the Old and New Testament. God chose Abraham to be the father of Israel, the home of God's chosen people. Why did God choose Abraham? I will read from Genesis 12: ''The Lord had said to Abraham, 'Leave your country, your people and your father's household and go to the land I will show you. I will make you into a great Nation and I will bless you; I will make your name great, and you will be a blessing. I will bless those who bless you, and whoever curses you I will curse; and all peoples on Earth will be blessed through you.' '' I would say to you today that includes the United States of America.

The second example I would like to share is from Matthew, and this is one of my favorites when Jesus calms the storm. This is Matthew chapter 8: ''Then he got into the boat and his disciples followed him. Suddenly a furious storm came up on the lake, so that the waves swept over the boat. But Jesus was sleeping. The disciples went and woke him, saying, 'Lord, save us. We're going to drown.' He replied, 'You of little faith, why are you so afraid?' Then he got up and rebuked the winds and the waves, and it was completely calm. The men were amazed and asked, 'What kind of man is this? Even the winds and the waves obey him.' ''

That begs the question, who is actually in charge of the climate?

The third example I would like to share on faith is from John 20:24–29: ''Now Thomas, one of the 12, was not with the disciples when Jesus came. So the other disciples told him, 'We have seen the Lord.' But he said to them, 'Unless I see the nail marks in his hands and put my finger where the nails were, and put my hand into his side, I will not believe.' A week later his disciples were in the house again, and Thomas was with them. Though the doors were locked, Jesus came and stood among them and said, 'Peace be with you.' Then he said to Thomas, 'Put your finger here; see my hands. Reach out your hand and put it into my side. Stop doubting and believe.' ''

□ 1915

Thomas said to him: ''My Lord and my God.'' Those words were maybe the greatest proclamation of faith in the New Testament.

Jesus also told him: ''Because you have seen Me, you have believed. Blessed are those who have not seen and yet have believed.'' And that is what our faith is about today.

Over 50 years ago, the late Billy Graham prayed about the status of our faith in this Nation. I will share this prayer:

''Our Father and our God, Thou hast said, 'Blessed is that nation whose God is the Lord.' We recognize on this historic occasion that we are 'a nation under God.' We thank Thee for this torch of faith handed to us by our forefathers. May we never let it be extinguished. Thou alone hast given us our prosperity, our freedom, and our power. This faith in God is our heritage and our foundation.

''Thou hast warned us in the Scriptures, 'If the foundations be destroyed, what can the righteous do?' As George Washington reminded us in his Farewell Address, morality and faith are the pillars of our society. We confess these pillars are being eroded in an increasingly materialistic and permissive society. The whole world is watching to see if the faith of our fathers will stand the trials and tests of the hour. Too long we have neglected Thy word and ignored Thy laws. Too long we have tried to solve our problems without reference to Thee. Too long we have tried to live by bread alone. We have sown to the wind and are now reaping a whirlwind of crime, division, and rebellion.''

I ask you tonight: Why have we not passed down these very values to the

next generation, and why is this generation in chaos?

As chairman of the Congressional Prayer Caucus, I am in a unique position to hear the spiritual concerns of the American people. Every week that we are in session, Members of Congress get together to pray for our great Nation and those with prayer requests.

I urge you to visit my website at allen.house.gov to submit a prayer request. Only through prayer and faith in God can we unite and heal the deep divisions and moral crises facing our Nation that Billy Graham pointed out more than 50 years ago.

Mrs. MILLER of Illinois. Mr. Speaker, I thank Congressman ALLEN for his words.

Mr. Speaker, I yield to the gentleman from Idaho (Mr. FULCHER).

Mr. FULCHER. Mr. Speaker, today, I rise to commemorate Faith Month.

As a member of the Christian faith, I see this month as a time to reflect on my own faith journey. As an American, it is time to celebrate the foundations of religious liberty that our country is built upon and the resulting prosperity that it has brought.

Our country is home to over 150 million Christian believers. Now more than ever, these Americans are under threat as their beliefs are labeled bigoted, their places of worship are attacked, and their religious protections are diminished.

Founding Father John Adams once said: ''Nothing is more dreaded than the national government meddling with religion.'' I agree. In a world increasingly hostile to people of faith, America must remain a refuge for those looking to worship God without fear of state reprisal.

Proverbs 29:2 says: ''When the righteous are in authority, the people rejoice; but when the wicked rule, the people mourn.''

Let us govern in a righteous manner and protect our fellow Americans' freedom to practice their faith as they choose.

Mrs. MILLER of Illinois. May I inquire as to the time remaining.

The SPEAKER pro tempore. The gentlewoman from Illinois has 9 minutes remaining.

Mrs. MILLER of Illinois. Mr. Speaker, I yield to the gentleman from Virginia (Mr. GOOD), my friend and colleague.

Mr. GOOD of Virginia. Mr. Speaker, I thank my colleague, the great Congresswoman from Illinois (Mrs. MILLER), for her leadership on this all-important issue, this all-important opportunity to discuss the importance of faith.

We are so privileged to live in a country where our right to worship or to not worship, our right to practice our faith or not to practice, to believe or not to believe, is protected, literally enshrined in our Constitution in the First Amendment to the Constitution.

Our Founders, in fact, with this wonderful, great experiment in self-rule and self-governance, in a constitutional republic, literally sought divine intervention when they were forming this country. They prayed together and asked for wisdom and courage. They certainly showed that as patriots when they fought for our freedom some 250 years ago from, at that time, the world's greatest economic and military power. Our Founders fought for our freedom. They risked everything.

I have a painting in my office, an artist's rendering, of George Washington, as general of the Continental Army, praying, seeking wisdom, seeking protection, seeking courage in the battle for our independence, for our freedom.

Then, as the Congress came together and established this country, they sought again divine intervention. They sought wisdom. They sought the Lord's guidance in forming this country.

Who were the Founders? Most of them were Christians. Most of them were Bible-believing Christians. Virtually all of them believed in a higher power, believed in a creator, believed in divine providence.

Of course, the First Amendment, the reason why it was the first amendment, saying that Congress shall make no law establishing a religion or prohibiting the free exercise thereof, the intention of that, as they had escaped the oppression or the tyranny of England and a monarchy where there was a blended church-state, an official state church, they wanted the freedom from that so that everyone could again worship as they chose, believe as they chose, practice their faith as they chose, or do none of those things in a free country like the United States.

Lest anyone should say, as commonly and incorrectly posited by some today, that there is this mythical separation of church and state, the Founders never intended that. All you have to do is read their extraconstitutional writings to know what they intended. They were seeking to protect the church from the government, never intending to protect the government from the influence of the church.

That is why those very Founders, those signers of the Declaration, many of them, are the ones who started the practice of opening Congress every day in prayer, a practice we continue today.

Those very Founders are the ones who declared a National Day of Prayer soon after founding this great Nation. Thankfully, that has continued to this day.

America has been that shining city on a hill, not just because we have been economically strong, not just because we have been militarily strong, but as was famously said: America has been great because America has been good.

America was founded upon Judeo-Christian principles, a belief that our rights are God-given, God-given rights that preceded the founding of our country, yet we are unique among the nations of the world, as those rights are protected in this country by our Constitution.

No nation in the history of the world has ministered to more people around the globe, has brought the Gospel to more people around the globe, than the United States of America. No nation in the history of the world has rescued more people, ministered to more people, and freed more people than the United States of America. No nation in the history of the world has been more welcoming to people from all over the globe, immigrants from all over, to come to these shores from all ethnic backgrounds, all nationalities, all races, and to provide more upward mobility and opportunity than the United States of America.

I submit that is because we are founded upon Biblical principles, Judeo-Christian principles, respect for life, respect for rule of law, respect for God-given rights.

Again, that is protected in this country—unique among the nations of the world in our founding, unique among the nations of world where our rights are protected in our own Constitution.

Those rights are under assault in this country. You are seeing increasing hostility from some on people of faith. You are seeing protections being eliminated for individuals or businessowners to practice their faith in the public square or to practice their faith in the way they run their business.

You are seeing a lack of protection for people of faith from attack, from violence, and from vandalism at places of worship or at places like crisis pregnancy centers.

You are even seeing the Federal Government targeting people based on their faith, as we recently saw with the FBI toward Catholics in the city of Richmond, just 30 minutes from the outskirts of my district.

While it is still permitted in this country, we continue to open every morning in Congress, every day in Congress, every session, with prayer. While it is still permitted, I am going to take the opportunity here, with the time granted to me by my friend from Illinois, to share a little bit about my personal faith.

I am a born-again Christian. I came to know the Lord when I was 9 years old. That is when the faith that my parents had raised me in became my own, where I personally made the decision to surrender to Jesus Christ as my Lord and Saviour.

It doesn't matter what BOB GOOD believes. BOB GOOD has no more right to truth or a corner on truth than anyone else does. It does matter what the Bible says.

The Bible says, in Romans 5:8: ''But God commendeth his love toward us, in that, while we were yet sinners, Christ died for us.''

God loved us so much that he sent his only son, Jesus Christ, to die for our sins so that we could have salvation, to pay for the sins of everyone in the world.

John 3:16 says: ''For God so loved the world that he gave his only begotten

son, that whosoever believeth in Him should not perish but have everlasting life.''

There is a reason why the protection of our faith and our religious freedom, our right to the free exercise of our faith, is enshrined in the First Amendment to the Constitution. What is more precious to a person than their own belief, their own faith, their ability to worship, their ability to assemble with other believers if they choose? What is a more important right or a more precious freedom than that?

That is why, by the way, it is so egregious, just in the last couple of years, where we saw the government clamp down on the ability of people to assemble together, to worship, how they conducted their worship, whether or not they could conduct their worship. We saw that like no other time in the history of this country during the years 2020 and 2021, especially during the COVID years.

What an egregious violation of the right to express our faith and to worship. We saw that on display during the 2 years when the China virus was ravaging our country.

We kept liquor stores open. We kept casinos open. We kept other essential places open, but we didn't keep houses of worship open. That has done harm to our country.

I think many of us recognize that America has been blessed in large part because of our dependence upon the Lord, our dependence on divine intervention, our dependence on guidance from our creator, a belief we were created unique in the image of God, created for a purpose, that there is more to this life than just the 80 or so years that God gives us if we live a long life.

□ 1930

There is an eternity. The most important thing in life is to be prepared for eternity.

Mr. Speaker, I thank my friend and my colleague from Illinois (Mrs. MILLER) for organizing, arranging, and leading on this very important issue. I also thank her for letting me share today.

Mrs. MILLER of Illinois. Mr. Speaker, I thank the gentleman for his words and his testimony.

To conclude, during Faith Month I hope that you will join me in praying for our Nation. Clearly, there has been an attack on our First Amendment right to exercise our freedom of religion and our faith beliefs.

Mr. Speaker, I want to say that if you took instinct out of a beehive, you would have chaos. When you take God out of a society, you have chaos also.

I will never be afraid to speak up in defense of our faith, our freedom, and for our children. We need to protect the American way of life. We have been criticized by radical leftists, and they are trying to remake America into a Communist, atheist experiment. Our Founders were men of faith, and there are many of us here in Congress that are men and women of faith also.

We pray for our country. I encourage everybody to continue to pray for our great Nation.

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

ADJOURNMENT

Mrs. MILLER of Illinois. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 31 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, April 19, 2023, at 10 a.m. for morning-hour debate.

AMENDED NOTICE OF ADOPTION OF SUBSTANTIVE REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, April 18, 2023.

Hon. KEVIN MCCARTHY,
Speaker of the U.S. House of Representatives,
The United States Capitol,
Washington, DC.

DEAR MR. SPEAKER: Section 304(b)(3) of the Congressional Accountability Act (CAA), 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board of Directors of the Office of Congressional Workplace Rights (Board) has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments pursuant to subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations 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 on which both Houses are in session following such transmittal.'' On February 2, 2009, the Board adopted regulations implementing section 206 of the CAA, which extends the rights and protections of the Uniformed Services Employment and Reemployment Act (USERRA) to covered employees in the legislative branch, and the Chair of the Board transmitted to the Office of the Speaker notice of such action together with copies of separate USERRA regulations adopted for the Senate, the House of Representatives, and the other covered entities and facilities.

The Board has since made additional minor amendments to its adopted USERRA regulations, as detailed in the *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval*, which accompanies this letter. The Board requests that the accompanying Amended Notice and amended regulations for the Senate, the House of Representatives, and the other covered entities, be published in the House version of the *Congressional Record* on the first day on which both Houses are in session following receipt of this transmittal, and that Congress approve the amended regulations.

Any inquiries regarding this notice should be addressed to Patrick N. Findlay, Executive Director of the Office of Congressional Workplace Rights, Room LA–200, 110 2nd Street, S.E., Washington, DC 20540; 202–724–9250.

Sincerely,

BARBARA CHILDS WALLACE,
Chair of the Board of Directors, Office of Congressional Workplace Rights.

Attachment.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

AMENDED NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

Substantive Regulations Adopted by the Board of Directors of the Office of Congressional Workplace Rights (Board) Extending Rights and Protections under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as required by 2 U.S.C. §1384, Congressional Accountability Act of 1995, as amended (CAA).

Background:

Section 304(b)(3) of the CAA, 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations 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 on which both Houses are in session following such transmittal.''

Section 206 of the CAA, 2 U.S.C. §1316, applies the rights and protections of USERRA, chapter 43 of title 38, to covered employees in the legislative branch. On April 21, 2008, and May 8, 2008, the Office of Congressional Workplace Rights (OCWR), then known as the Office of Compliance (OOC), published a Notice of Proposed Rulemaking (NPR) in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)). After notice and comment per section 304(b), on February 2, 2009, the Board adopted and submitted for publication in the *Congressional Record* its adopted substantive regulations regarding USERRA. 155 Cong. Rec. H783–H873, S1280–S1368 (daily ed. February 2, 2009). Congress has not yet acted on the Board's request for approval of these substantive regulations.

The purpose of this *Amended Notice of Adoption of Regulations and Transmittal for Congressional Approval* is to incorporate minor amendments to the Board's previously-adopted USERRA substantive regulations. These amendments are necessary in order to bring the regulations in line with recent changes to the CAA and the OCWR Procedural Rules. Specifically, on December 21, 2018, Congress passed the Congressional Accountability Act of 1995 Reform Act, Pub. L. 115–397. The CAA Reform Act changed the name of the Office of Compliance to the Office of Congressional Workplace Rights. In addition, the Board, consistent with Section 303 of the CAA, amended its Procedural Rules and submitted them for publication in the *Congressional Record* on June 19, 2019. 165 Cong. Rec. H4896–H4916, S4105–S4125 (daily ed. June 19, 2019). Amendments to the Board's adopted USERRA regulations are necessary in order to bring them in line with these recent changes.

Because the amendments to the Board's adopted USERRA regulations are minor, they do not require an additional general notice of proposed rulemaking or period for comments. *See* 2 U.S.C. §1384(e). Moreover, there have been no additional changes since 2009 to the relevant substantive regulations promulgated by the Secretary of Labor upon which the Board's USERRA regulations are based that would necessitate reopening the notice and comment period.

Because the USERRA substantive regulations previously adopted by the OCWR in

2009 have not yet been approved by Congress—and thus have not yet been formally issued or put into effect—this *Amended Notice of Adoption* incorporates the OCWR Board's prior discussion of the public comments it received in 2008, and those changes made by the OCWR in response, as reflected in the USERRA regulations adopted in 2009. This prior discussion is included herein for purposes of clarity and completeness, as the OCWR again requests that Congress approve its adopted USERRA regulations.

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking:

On April 21, 2008 and May 8, 2008, the Board published an NPR in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)).

Why did the Board propose these new Regulations?

Section 206 of the Congressional Accountability Act (''CAA''), 2 U.S.C. §1316, applies certain provisions of USERRA to the legislative branch. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits. Subsection 1316(c) requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may only modify the Department of Labor regulations if it can establish good cause as to why a modification would be more effective for the application of the protections to the legislative branch. In addition, section 304 of the CAA, 2 U.S.C. 1384, provides procedures for the rulemaking process in general.

What procedure followed the Board's Notice of Proposed Rulemaking?

The Board's Notice of Proposed Rulemaking included a 30-day comment period. A number of comments to the proposed substantive regulations were received from interested parties. The Board reviewed the comments from interested parties, made a number of changes to the proposed substantive regulations in response to comments, and on December 3, 2008, adopted the amended regulations.

What is the effect of the Board's "adoption" of these proposed substantive regulations?

Adoption of these substantive regulations by the Board does not complete the promulgation process. Pursuant to section 304 of the CAA, the procedure for promulgating such substantive regulations requires that:

(1) the Board issue proposed substantive regulations and publish 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; and

(3) after consideration of comments by the Board, that the Board adopt regulations and transmit 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*.

This *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval* completes the third step described above.

What are the next steps in the process of promulgation of these regulations?

Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. §1384(b)(4), the Board is required to ''include a recommendation in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.'' The Board recommends that the House of Representatives approve the ''H'' version of the regulations by resolution; that the Senate approve the ''S'' version of the regulations by resolution; and that the House and Senate approve the ''C'' version of the regulations applied to the other employing offices by a concurrent resolution. Alternatively, the House and the Senate could approve all three versions of the regulations by a single concurrent resolution.

Which employment and reemployment protections are applied to eligible employees in 2 U.S.C. §1316?

USERRA was enacted in December 1994, and the Department of Labor final regulations for the executive branch became effective in 2006. USERRA's provisions ensure that entry and re-entry into the civilian workforce are not hindered by participation in military service. USERRA provides certain reemployment rights; protection from discrimination based on military service, denial of an employment benefit as a result of military service; and protection from retaliation for enforcing USERRA protections.

The selected statutory provisions that Congress incorporated into the CAA and determined ''shall apply'' to eligible employees in the legislative branch include nine sections: sections 4303(13), 4304, 4311(a) and (b), 4312, 4313, 4316, 4317, 4318, and paragraphs (1), (2)(A), and (3) of 4323(d) of title 38.

The first section, section 4303(13), provides a definition for ''service in the uniformed services.''

This is the only definition in USERRA that Congress made applicable to the legislative branch. Section 4303(13) references section 4304, which describes the ''character of service'' and illustrates situations that would terminate eligible employees' rights to USERRA benefits.

Congress applied section 4311 to the legislative branch in order to provide discrimination and retaliation protections, respectively to eligible and covered employees. Interestingly, although Congress adopted these protections, it did not adopt the legal standard by which to establish a violation of this section of the statute.

Sections 4312 and 4313 outline the reemployment rights that are provided to eligible employees. These rights are automatic under the statute, and if an employee meets the eligibility requirements, he or she is entitled to the rights provided therein.

Sections 4316, 4317, and 4318 provide language on the benefits given to eligible employees.

Are there veterans' employment regulations already in force under the CAA?

Yes. The Board has adopted and Congress has approved substantive regulations implementing the Veterans Employment Opportunities Act (VEOA) in the legislative branch. The Board has also submitted for congressional approval its amended substantive regulations implementing the Family and Medical Leave Act (FMLA) in the legislative branch, which, among other things, includes enhanced protections for servicemembers and veterans.

Why are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?

As the Board has identified ''good cause'' to modify the executive branch regulations to implement more effectively the rights and protections for veterans, there are some differences in other parts of the proposed regulations applicable to the Senate, the House of Representatives, and the other employing offices. Therefore, the Board is submitting three separate sets of regulations: an ''H'' version, an ''S'' version, and a ''C'' version, each denoting those provisions in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Are these adopted regulations also recommended by the Office of Congressional Workplace Rights' Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), these regulations have also been recommended by the Executive Director and Deputy Executive Directors of the Office of Congressional Workplace Rights.

Are these adopted CAA regulations available to persons with disabilities in an alternate format?

This Notice of Adoption of Substantive Regulations, and Submission for Congressional Approval is available on the Office of Congressional Workplace Rights website, www.ocwr.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print, Braille, or other alternative format. Requests for this Notice in an alternative format should be made to: the Office of Congressional Workplace Rights, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202–724–9250 (voice); 202–426–1913 (fax); or ocwrinfo@ocwr.gov.

Supplementary Information:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, became law on January 23, 1995, and was amended by the Congressional Accountability Act of 1995 Reform Act, PL 115–397, which was enacted on December 21, 2018. The CAA applies the rights and protections of 14 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. §1381) establishes the Office of Congressional Workplace Rights as an independent office within the Legislative Branch.

The Board's Responses to Comments

General Comments

The Board noted in the Notice of Proposed Regulations (NPR) that it had not identified any good cause for issuing three separate sets of regulations and that if the regulations were approved as proposed, there would be one text applicable to all employing offices and covered employees. During the notice and comment period, the Board received comments from the Committee on House Administration (CHA), Senate Employment Counsel (Counsel), and the United States Capitol Police (Capitol Police). All of the commenters noted, in different places throughout the regulations, the need for modifications that would apply specifically to the House, Senate or other employing offices. Although the Board has not found good cause to vary the Department of Labor (DOL) regulations in all instances where requested, there are a number of places where such variances are warranted. In light of that and the comment by the CHA that the Congressional Accountability Act (CAA) requires the publication of separate regulations for the Senate, House and other covered employees and employing offices, the Board has made that change and put forward three separate sets of regulations, an ''H'' version, an ''S'' version, and a ''C'' version,

each denoting the provisions that are included in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Eligible Employees

In its comments, CHA maintained that the definition of ''eligible employee'' in the regulations is overly broad. Pointing to section 206(a)(2)(A) of the CAA, which defines an ''eligible employee'' as ''a covered employee performing service in the uniformed service, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon occurrence of any of the events enumerated in section 4304 of title 38,'' the CHA notes that the definition references only the present tense of the verb ''performing'' and makes no mention of the past tense. CHA also noted that section 206 does not define ''eligible employee'' to include an individual who was previously a member of the uniformed services or one who applies or has applied to perform service in the uniformed services. CHA acknowledged that this ''stands in marked contrast to the general USERRA statute's protection of individuals who currently serve as well as to those who have previously served, to those who have an obligation to serve, and to those who have applied to serve in the uniformed services (regardless of whether they actually served).'' CHA further recognized ''that USERRA's intent is to provide broad protections for those who serve and have served in the uniformed services . . .'' CHA commented that the regulations are inappropriately broad, notwithstanding language in section 206(a)(2)(A) that strongly suggests inclusion of an individual who has been honorably discharged and is therefore not currently serving, but who has served in the past.

The Board acknowledges the tension in the language in section 206(a)(2)(A), but does not agree with the conclusions reached by the CHA, that, absent a statutory amendment revising the definition in section 206(a)(2)(A), the proposed regulations should be revised to reflect that, ''as applied by the CAA, USERRA only protects employees who are currently 'performing service in the uniformed services.' ''

The Board's authority to promulgate substantive regulations is found in section 206 of the CAA, 2 U.S.C. §1316, which applies certain provisions of USERRA. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits.

Subsection 1316(c) of the CAA requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may modify the Department of Labor regulations only if it can establish good cause as to why a modification would be more effective for application of the protections to the legislative branch. The Board chooses to apply a broad definition of ''eligible employee.''

The Board does not read the ''performing service'' language in section 206(a)(2)(A) as limiting the discrimination protection of USERRA to only those employees who are currently serving in the uniformed services. Rather, we interpret the phrase ''performing service'' in this context to refer to covered employees who have some form of military status (i.e., those who have performed service or who have applied or have an obligation to perform military service, as well as those who are currently members of or who are serving in the uniformed services) as distinguished from covered employees who do not have this military status.

This application of the phrase ''performing service'' is supported by several indicia of Congressional intent. First, section 206(a)(2)(A) prohibits discrimination against eligible employees ''within the meaning of'' subsection (a) of section 4311 of title 38, which states:

> A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

Most, if not all, of these protections would be lost if the phrase ''performing service'' were applied to exclude covered employees who are not currently performing service at the moment of the alleged violation. It would vitiate the reemployment rights under USERRA because employees would lose their statutory rights at the moment of discharge, whether honorable or not. Similarly, had Congress intended to so limit the coverage of USERRA, it could have said that ''any'' discharge was a disqualifying condition, not those that are other than honorable.

Congressional intent is also reflected in the USERRA statute itself, passed in 1994, which states, ''It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.'' 38 USC §4301(b). A narrow application of the phrase ''performing service'' would be directly contrary to this statement of the sense of Congress.

Finally, we note that after the CAA was enacted, Congress enacted the VEOA and thereby granted certain preferences in hiring and retention during layoffs to *all* covered employees who are ''veterans'' as defined in 5 U.S.C. §2108, or any superseding legislation. We conclude that Congress intended a broad application of the phrase ''performing service'' so that covered employees who will perform or have performed service are also protected against discrimination and the improper denial of reemployment or benefits.

In light of the above, the Board has found good cause to modify the Department of Labor's definition of ''eligible employee.'' Further, in order to avoid any confusion as to the application of the regulations to ''eligible'' employees, the Board has made the appropriate editorial changes throughout the adopted regulations.

Other Definitions

Section 1002.5 contains the definitions used in the regulations. Several commenters recommended that some of the definitions in this section be edited to be consistent with the CAA. Where appropriate, the Board has made those changes. One specific change was the substitution of ''Capitol Guide Service and Capitol Guide Board'' with ''Office of Congressional Accessibility Services,'' in light of Congress adopting PL 100–437 on October 20, 2008. The Board has modified its regulations to reflect this change in §1002.5(e)(3) in all versions and in §1002.5(k)(1) in the ''C'' version.

Section 1002.5(i) defines an employee of the House of Representatives. CHA noted that because there may be some joint employees of the House and Senate, the definition of an employee of the House of Representatives should also include individuals employed by the Senate. We agree and have made the necessary revisions.

Section 1002.5(k) defines employing office. CHA commented that the definition in §1002.5(k)(4) was broader than the definition of ''employing office'' in section 101(9) of the CAA. We note that during the rulemaking procedures for VEOA, the Board determined that in view of the selection process for certain Senate employees, the words ''or directed'' would be added to the definition of ''covered employee'' to include any employee who is hired at the direction of a Senator, but whose appointment form is signed by an officer of either House of Congress. Although we included such language in the proposed rules on USERRA, it appears that this language would be overreaching for the House and other employing offices. As the House has different methods of making appointments and selections, this language is unnecessary and may create confusion given the practices of the House. Accordingly, the Board has deleted this provision from the House and other employing offices version, but will include it in the Senate version.

Section 1002.5(l) defines health plan. The Capitol Police recommended that the language in the definition of health care plans be limited to the Federal Employees Health Benefits (FEHB) program. As discussed more fully below, the Board is mandated to follow, as closely as possible, the regulations applied to the executive branch. In view of the fact that the DOL regulations apply to federal employees in the executive branch who are also only covered under the FEHB Program, the Board finds that there is no good cause to limit the definition.

Section 1002.5(q) defines seniority. The Capitol Police also recommended that this definition of seniority be deleted because of potential conflict with definitions of seniority in various collective bargaining agreements. The Board has determined that there is no good cause for such a change. The definition in the adopted regulations is not limiting and is consistent with section 4316 of USERRA. Further, as DOL indicated in its notice to the final USERRA regulations, section 4316(a) of USERRA is not a statutory mandate to impose seniority systems on employers. Rather, USERRA requires only that those employers who provide benefits based on seniority restore the returning service member to his or her proper place on the seniority ladder. Because each employing office defines and determines how seniority is to be applied, the definition of seniority in the adopted regulations should not conflict with collective bargaining agreements.

Section 1002.5(s) defines undue hardship. The CHA has noted that in setting out the standards for considering when an action might require significant difficulty or expense, the proposed regulations did not include the language from §1002.5(n)(2) of the DOL's regulations. In the DOL's regulations, section 1002.5(n)(2) provides that an action may be considered to be an undue hardship if it requires significant difficulty or expense when considered in light of: the overall financial resources of the *facility or facilities* involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility. Section 1002.5(s)(2) of the proposed regulations similarly referred to the overall financial resources of the *employing office*. However, in view of the fact that employing offices also may have multiple facilities, the Board agrees with the CHA comments and finds that there is no good cause to delete what was §1002.5(n)(2) of the DOL regulations. Therefore, what was section 1002.5(n)(2) of the DOL regulations has been included in the adopted regulations as section 1002.5(s)(2) and subsequent sections have been renumbered accordingly.

The Relationship between USERRA and Other Laws, Contracts and Practices

Section 1002.7 states that USERRA supersedes any state and local law, contract, or policy that reduces or limits any rights or benefits provided by USERRA, but does not supersede those provisions that are more beneficial. Senate Employment Counsel commented that reference to the fact that USERRA supersedes any state and local laws is superfluous and does not apply to legislative offices. Further, Counsel recommended that the section referring to the fact that USERRA does not supersede more beneficial state or local laws be omitted. The Board acknowledges that state and local laws do not apply to federal employees or the employing offices covered under the CAA. Therefore, in order to avoid any confusion, the Board has made the appropriate changes.

Anti-Discrimination and Anti-Retaliation Provisions

As a general comment, the Capitol Police raised questions about the Board's reference in the notice to *Britton v. Office of the Architect of the Capitol*. The Capitol Police maintains that *Britton* is not applicable to section 4311(a) or (b) and that the USERRA regulations should not be changed to include substantive regulations under the CAA. The Board notes that the reference to the *Britton* case and retaliation under section 208 of the CAA is merely explanatory and not a part of the substantive regulations. In the NPR, there was a typographical error. The correct statement is that the Board does not propose a particular standard for claims of discrimination or retaliation brought by eligible employees under section 206. Any discussion referring to Section 206 retaliation is for explicative purposes only.

Section 1002.20, as set out in the proposed regulations, discussed the extent of the coverage of USERRA's prohibitions against discrimination and retaliation. Several commenters noted that section 1002.20 and 1002.21 were confusing and did not clearly differentiate discrimination and retaliation protections as applied by section 206 and section 208 of the CAA. The Board agrees and has modified section 1002.20 and replaced section 1002.21 with a new section to reflect that USERRA protects eligible employees in all positions with covered employing offices. Thus, because section 206 of the CAA only covers ''eligible employees'' as defined in section 1002.5(f), ''covered employees'' would only be protected by the anti-retaliation provisions under section 208 of the CAA.

Additionally, in its comments, the Capitol Police asked why the numbering of section 1002.20 and 1002.21 was reversed and why section 1002.22 covering the burden of proving discrimination or retaliation was excluded. The Board notes that it had good cause to delete section 1002.22 as Congress specifically did not adopt the ''but for'' test (38 U.S.C §4311 (c)(1) and (2)) and therefore it was confusing and unnecessary to include this provision. In view of the revisions to section 1002.20 and 1002.21 noted above, the Board has kept the order as it was in the proposed regulations to be more consistent with these edits.

Eligibility for Reemployment

As a general comment, the CHA noted that with respect to employees in the House, the statement in the NPR that ''it is not permitted for an employee to work for a Member office and a Committee at the same time'' is incorrect. Although this statement is not part of the substantive regulations, where there are variations in the employment requirements of different employing offices, the Board has made the necessary changes to each of the versions of the adopted regulations.

Section 1002.32 sets out the criteria that an employee must meet to be eligible under USERRA for reemployment after service in the uniformed services. The CHA recommended that this section be changed to be consistent with the definition of eligible employee in section 206(a)(2)(A) of the CAA, and for clarity as applied to individual employing offices that may cease to exist while an eligible employee is performing service. The Board agrees and has changed the House and Senate versions to reflect that generally, if an eligible employee is absent from a position in an employing office by reason of service in the uniformed services, he or she will be eligible for employment in the same employing office if that employing office continues to exist at such time.

Section 1002.34 of the proposed regulations established that USERRA applies to all covered employing offices of the legislative branch as defined in Subpart A, §1002.5(e). Both the Capitol Police and Senate Employment Counsel commented that the definition of ''employing office'' should be changed to track the CAA, rather than the definition in the proposed regulations. Thus, Counsel notes that any regulation the OCWR issues for an ''employing office'' should track 2 U.S.C. §1301(a)(9), and include the General Accounting Office and Library of Congress, as required under 2 U.S.C. §1316(a)(2)(C). The Board agrees and has changed the definition to more closely follow the CAA.

Section 1002.40 states that in protecting against discrimination in initial hiring decisions, an employing office need not actually employ an individual to be his or her employer. The CHA commented that it is not correct to say that ''[a]n employing office need not actually employ an individual to be his or her 'employer.' '' The CHA noted that while the result is the same—an applicant who is otherwise an eligible employee cannot be discriminated against in initial employment based on his or her performing service in the uniformed service—to say that the employing office is his or her employer is incorrect. The Board agrees and has made the change to reflect that while an employing office may not technically be the ''employer'' of an applicant, the result is the same—the employing office is *liable* under the Act if it engages in discrimination against an applicant based on his or her performing service in the uniformed service.

Section 1002.120 allows an employee to seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. The proposed regulations stated that such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. The CHA has noted that because employees of the House are ''at-will,'' reference to termination and/or discipline for ''cause'' in this section is inapplicable and could be confusing. While the Board recognizes that employees of the House are ''at-will,'' the same issues raised by the CHA can apply to many executive branch and private sector employees, as well. In view of the fact that the DOL regulations contain the same provision, notwithstanding the different employment arrangements in the private sector and executive branch agencies, the Board finds no good cause to make the change.

Health and Pension Plan Coverage

USERRA ensures that eligible employees are provided with health and pension plan coverage on a continuing basis in certain circumstances and reinstatement of coverage upon reemployment. All of the commenters raised concerns over the inclusion of provisions concerning health and pension plan benefits and asked that these provisions be withdrawn or limited specifically to the specific health and pension plans covering federal employees. For example, the CHA notes that House employing offices do not provide health or retirement benefits to their employees and do not pay or administer contributions and/or premiums for such plans. Similarly, Senate Employment Counsel explained that while employees of Senate employing offices are entitled to health plan coverage and pension benefits under the FEHB and Civil Service Retirement System (CSRS) or the Federal Employment Retirement System (FERS), their respective employing offices do not provide the ''employer contribution'' for such coverage and do not determine when such coverage starts or is reinstated or any terms or conditions of the coverage. Moreover, while the Senate appropriates monies for any agency contribution to such plans, these contributions do not come from the monies appropriated to individual employing offices.

The Board recognizes that the role of the Senate and House employing offices in administering health and pension plans is somewhat attenuated. With the caveat in mind that it is the U.S. Office of Personnel Management that controls not only federal employee health plans, but pension plans as well, the Board nonetheless does not find good cause to exclude these provisions from the adopted regulations. In support of this, the Board notes that the DOL regulations cover federal employees in the executive branch who are also covered under the FEHB, CSRS and FERS. Moreover, USERRA itself states in section 4318 that a right provided under any Federal or State law governing pension benefits for governmental employees (except for benefits under the Thrift Savings Plan) is covered. The Board is not aware of every employment relationship in the legislative branch and there is always the possibility that there may be situations where employees are not covered under the FEHB or CSRS/FERS, or may be covered under craft union or multi-employer plans. The Board further notes that to the extent that an employing office does not control nor is responsible for assuring that eligible employees are properly covered under health and pension plans, these provisions would not apply. Although employing offices may not have direct control over health and pension plans, they are responsible for ensuring that eligible employees are covered by facilitating or requesting that the necessary contribution or funding is made. Rather than deleting sections of the regulations, the Board has revised the regulations to reflect the responsibility of the employing offices and where appropriate, has made changes to reflect that while employing agencies may not have control over the plans, they do have some responsibility in assuring that eligible employees are covered as required under USERRA.

Protection Against Discharge

Section 1002.247 protects an employee against discharge. Rather than state that a discharge except for cause is prohibited if an employee's most recent period of service was for more than 30 days, the proposed regulations stated that, because legislative employees are at will, a discharge without cause could create a rebuttable presumption of a violation. In its comments, the CHA notes that in modifying this section, the explanation regarding the discharge of a returning employee was unclear. The Board agrees that there is no ''good cause'' for making the revisions originally contained in the proposed regulations and has changed

this section to be consistent with DOL regulations.

Enforcement of Rights and Benefits Against an Employing Office

Section 1002.303 requires that employees file a claim form with OCWR before making an election between requesting an administrative hearing or filing a civil action in Federal district court. The proposed regulations contained language that provided for ''covered'' rather than ''eligible'' employees to bring claims under USERRA to the OCWR.

The CHA commented that to be consistent with section 206(a)(2)(A) of the CAA, this provision should be modified to make clear that only ''eligible employees'' may bring claims under section 206. The Board agrees and because only eligible employees are covered under section 206 discrimination and retaliation provisions, this section has been modified.

Section 1002.312 provides for the various remedies that may be awarded for violations of USERRA, including liquidated damages. The CHA commented that because of a technical error in the CAA (a reference to section ''4323(c)'' rather than ''4323(d)''), there is no statutory authority to provide for liquidated damages remedies under USERRA. In its notice of rulemaking, the Board noted the same error. Congress subsequently corrected this typographical error by way of the adoption of the CAA Reform Act, making clear its intent that the liquidated damages provision of USERRA be applied under the CAA.

Under section 1002.310 and 1002.314 of the proposed regulations, respectively, fees and court costs may not be charged against individuals claiming rights under the CAA and courts and/or hearing officers may use their equity powers in actions or proceedings under the Act. The CHA commented that because section 1002.314 and the first sentence of section 1002.310 are based on sections of USERRA that are not incorporated by the CAA (sections 4323(e) and 4323(h) respectively), these provisions should be deleted from the adopted regulations. The Board has reviewed these comments and while we would find that, notwithstanding any ''technical'' error, the CAA does incorporate the remedies set out in section 1002.314 (a)–(c), we agree that the CAA does not include the remedies articulated in sections 4323(e) and 4323(h) of USERRA. As the first sentence in section 1002.310 of the proposed regulations does appear to mirror section 4323(h) of USERRA and section 002.314 of the proposed regulations similarly mirrors section 4323(e), in order to avoid any confusion, the Board has found good cause to delete these provisions. The Board has retained the part of section 1002.310 pertaining to the awarding of fees and costs. As discussed in the NPR, the Board found that the DOL regulations permitting an award of fees and court costs for an individual who has obtained counsel and prevailed in his or her claim against the employer was consistent with section 225(a) of the CAA, permitting a prevailing covered employee to be awarded reasonable fees and costs. To be more fully consistent with the CAA, the Board has kept its modification of the language removing the requirement that the individual retain private counsel as a condition of such an award.

Text of USERRA Regulations
"H" Version

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix ''H.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?
§ 1002.2 Is USERRA a new law?
§ 1002.3 When did USERRA become effective?
§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?
§ 1002.5 What definitions apply to these USERRA regulations?
§ 1002.6 What types of service in the uniformed services are covered by USERRA?
§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Member of the House of Representatives; (2) a committee of the House of Representatives or a joint committee of the House of Representatives and the Senate (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.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship,* in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?
§ 1002.19 What activity is protected from employer retaliation by USERRA?
§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?
§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, nonrecurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

§ 1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

§ 1002.60 Does USERRA cover an individual attending a military service academy?

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

§ 1002.118 Is an application for reemployment required to be in any particular form?

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

§ 1002.136 Who determines the characterization of service?

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office, if that employing office continues to exist at such time, by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in §§1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in §1002.139. The employment position to which the eligible employee is entitled is described in §§1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a

USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise

meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five

years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at § 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in §1002.5(s) and discussed in §1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in § 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in § 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to § 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by § 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in § 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

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PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in §§1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee

become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in §1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in §§1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in § 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See § 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service.

If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5(e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office

of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"S" Version

When approved by the Senate for the Senate, these regulations will have the prefix "S."

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?
§ 1002.2 Is USERRA a new law?
§ 1002.3 When did USERRA become effective?
§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?
§ 1002.5 What definitions apply to these USERRA regulations?
§ 1002.6 What types of service in the uniformed services are covered by USERRA?
§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA" or "the Act"), as applied by the Congressional Accountability Act ("CAA"). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act ("VRRA"), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, "performing service" means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Senator; (2) a committee of the

Senate or a joint committee of the House of Representatives and the Senate; (3) any other office headed by a person with the final authority to appoint, or be directed by a Member of Congress to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the Senate.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?
§ 1002.19 What activity is protected from employer retaliation by USERRA?
§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?
§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C—Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?
§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

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§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?
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COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"
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ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?
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EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office, if that employing office continues to exist at such time, by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an

offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the

employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(A) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the

initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing

office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does

not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in section 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in section 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to section 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by section 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in section 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

PROMPT EMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

§ 1002.181 How is "prompt reemployment" defined?

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

§ 1002.192 How is the specific reemployment position determined?

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

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SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

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DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

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§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

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§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

§ 1002.266 What are the obligations of a multiemployer pension benefit plan under USERRA?

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts

to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"C" Version

When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix ''C.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?
§ 1002.2 Is USERRA a new law?
§ 1002.3 When did USERRA become effective?
§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?
§ 1002.5 What definitions apply to these USERRA regulations?
§ 1002.6 What types of service in the uniformed services are covered by USERRA?
§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) Act or USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) Employee of the Capitol Police includes any member or officer of the Capitol Police.

(i) Employee of the House of Representatives includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the Office of Congressional Accessibility Services; (2) the Capitol Police Board; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Government Accountability Office; (7) the Library of Congress; or (8) the Office of Congressional Workplace Rights.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

§ 1002.19 What activity is protected from employer retaliation by USERRA?

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, nonrecurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

§ 1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

§ 1002.60 Does USERRA cover an individual attending a military service academy?

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

§ 1002.118 Is an application for reemployment required to be in any particular form?

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

§ 1002.136 Who determines the characterization of service?

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is

no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in

order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters)

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing

office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan

coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in section 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in section 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to section 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by section 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in section 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

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PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible

employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more non-essential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been reemployed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases.

However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause —

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Make-up contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will

be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b)(1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

EC–765. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment of Multiple Air Traffic Service (ATS) Routes and Revocation of a VOR Federal Airway in the Vicinity of Wolbach, NE [Docket No.: FAA-2022-1395; Airspace Docket No.: 22-ACE-10] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–766. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment of VOR Federal Airways V-50, V-52, V-63, and V-586, and Revocation of V-582 in the Vicinity of Quincy, IL [Docket No.: FAA-2022-1436; Airspace Docket No.: 22-ACE-13] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–767. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment of VOR Federal Airways V-126, V-156,V-233, and V-422, and Revocation of V-340 and V-371 in the Vicinity of Knox, IN [Docket No.: FAA-2022-1399; Airspace Docket No.: 22-AGL-22] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–768. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Agency's final rule — Amendment of VOR Federal Airways V-268 and V-474, Revocation of Jet Route J-518 and VOR Federal Airway V-119, and Establishment of Area Navigation Route Q-178 in the Vicinity of Indian Head, PA [Docket No.: FAA-2022-1424; Airspace Docket No.: 22-AEA-11] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–769. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace, and Amendment of Class E Airspace; Dallas, GA [Docket No.: FAA-2022-1505; Airspace Docket No.: 22-ASO-26] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–770. A letter from the Management and Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment of Class D and Class E Airspace; Greenville, Spartanburg, and Greer, SC [Docket No.: FAA-2022-1161; Airspace Docket No.: 22-ASO-18] (RIN: 2120-AA66) received April 10, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–771. A letter from the Deputy Associate General Counsel for Regulatory Affairs, Office of the Chief Procurement Officer, Department of Homeland Security, transmitting the Department's final rule — Homeland Security Acquisition Regulation (HSAR); United States Coast Guard Contract Termination Policy (HSAR Case 2020-001) [Docket No.: DHS-2022-0046] (RIN: 1601-AB08) received March 22, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Transportation and Infrastructure.

EC–772. A letter from the Associate Administrator, Specialty Crops Program, Agricultural Marketing Service, Department of Agriculture, transmitting the Department's final rule — Harmonized Tariff Schedule Numbers for the Paper and Paper-Based Packaging Products [Doc. No.: AMS-SC-22-0050] received March 28, 2023, pursuant to 5 U.S.C. 801(a)(1)(A); Public Law 104-121, Sec. 251; (110 Stat. 868); to the Committee on Ways and Means.

EC–773. A letter from the Chair of the Board of Directors, Office of Congressional Workplace Rights, transmitting notification of proposed rulemaking, pursuant to 2 U.S.C. 1384(b)(3); Public Law 104-1, Sec. 304(b)(3); (109 Stat. 29); jointly to the Committees on House Administration and Education and the Workforce.

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. COURTNEY (for himself, Mr. SCOTT of Virginia, Mr. BACON, Ms. ADAMS, Mr. FITZPATRICK, and Mr. VAN DREW):

H.R. 2663. A bill to direct the Secretary of Labor to issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes; to the Committee on Education and the Workforce, and in addition to the Committees on Energy and Commerce, and 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 Ms. DELBENE:

H.R. 2664. A bill to provide for coordination between Federal agencies regarding the decarbonization, development, certification, and deployment of aircraft, vessels, and medium and heavy duty transportation vehicles, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce, and Science, Space, and Technology, 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. CLARKE of New York (for herself, Mr. CRENSHAW, Ms. DEGETTE, and Mr. BURGESS):

H.R. 2665. A bill to amend title XIX of the Social Security Act to delay certain disproportionate share hospital payment reductions under the Medicaid program; to the Committee on Energy and Commerce.

By Mr. GUTHRIE (for himself, Ms. ESHOO, Mr. JOYCE of Pennsylvania, Mr. AUCHINCLOSS, Mrs. MILLER-MEEKS, and Mr. PETERS):

H.R. 2666. A bill to amend title XIX of the Social Security Act to codify value-based purchasing arrangements under the Medicaid program and reforms related to price reporting under such arrangements, 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. BOST (for himself, Ms. SEWELL, Mr. MURPHY, Mr. MRVAN, and Ms. TENNEY):

H.R. 2667. A bill to amend the Tariff Act of 1930 to increase civil penalties for, and improve enforcement with respect to, customs fraud, and for other purposes; to the Committee on Ways and Means.

By Ms. CHU (for herself, Mr. COHEN, Mr. RASKIN, Ms. SCHRIER, Mr. GOTTHEIMER, Ms. BONAMICI, Ms. NORTON, Mr. MCGOVERN, and Mr. SHERMAN):

H.R. 2668. A bill to award a Congressional Gold Medal, collectively, to the American individuals that were active in aiding and rescuing Jews and other refugees during the period of Nazi Germany's genocidal ''Final Solution'' policy to murder every Jew in Europe, in recognition of their contributions, which resulted in tens of thousands of Jews and others being spared from almost certain death; to the Committee on Financial Services.

By Mr. CLEAVER:

H.R. 2669. A bill to authorize appropriations for occupational education and training programs of the Bureau of Prisons, and for other purposes; to the Committee on the Judiciary.

By Mr. ROGERS of Alabama (for himself and Mr. SMITH of Washington):

H.R. 2670. A bill to authorize appropriations for fiscal year 2024 for military activities of the Department of Defense and for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; to the Committee on Armed Services.

By Mr. COSTA (for himself and Mr. CURTIS):

H.R. 2671. A bill to amend the Water Infrastructure Finance and Innovation Act of 2014

with respect to budgetary treatment of certain amounts of financial assistance, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, 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. DUNN of Florida (for himself, Mr. GRAVES of Louisiana, and Mr. SOTO):

H.R. 2672. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for the authority to reimburse local governments or electric cooperatives for interest expenses, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. ESTES (for himself, Mr. LARSON of Connecticut, Mr. LAHOOD, Ms. DELBENE, Mr. ARRINGTON, Mr. PANETTA, Mr. BUCHANAN, Mr. BLUMENAUER, Mr. SMITH of Nebraska, Mr. PASCRELL, Mr. KELLY of Pennsylvania, Mr. DAVIS of Illinois, Mr. SCHWEIKERT, Ms. SEWELL, Mr. WENSTRUP, Mr. KILDEE, Mr. FERGUSON, Mr. BEYER, Mr. SMUCKER, Mr. EVANS, Mr. HERN, Ms. BONAMICI, Mrs. MILLER of West Virginia, Mr. STANTON, Mr. KUSTOFF, Ms. DAVIDS of Kansas, Mr. FITZPATRICK, Mr. VEASEY, Mr. MOORE of Utah, Mr. NEGUSE, Ms. VAN DUYNE, Ms. SLOTKIN, Mr. FEENSTRA, Ms. WEXTON, Mr. CAREY, Mr. CUELLAR, Mr. BARR, Mr. GOTTHEIMER, Mr. BACON, Ms. BROWNLEY, Mr. HUIZENGA, Mr. MORELLE, Mr. JOHNSON of Ohio, Mr. COURTNEY, Mr. CARTER of Georgia, Mr. CONNOLLY, Mrs. LESKO, Mr. TRONE, Mr. RESCHENTHALER, Ms. ROSS, Mrs. HARSHBARGER, Mr. MOULTON, Mr. CALVERT, Mr. KHANNA, Mr. CRAWFORD, Ms. SCHOLTEN, Mr. DAVIDSON, Ms. TITUS, Mr. MANN, Ms. STEVENS, Mr. MOOLENAAR, Ms. KAPTUR, Mr. JOYCE of Pennsylvania, Ms. SHERRILL, Mr. BOST, and Ms. BLUNT ROCHESTER):

H.R. 2673. A bill to amend the Internal Revenue Code of 1986 to restore the deduction for research and experimental expenditures; to the Committee on Ways and Means.

By Mr. GAETZ (for himself and Mr. BIGGS):

H.R. 2674. A bill to amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to prohibit training that includes information on insider threats, and for other purposes; to the Committee on Oversight and Accountability.

By Mr. GALLEGO:

H.R. 2675. A bill to amend the Internal Revenue Code of 1986 to waive installment agreement fees for taxpayers with an income below 250 percent of the Federal poverty level and taxpayers using direct debit, and for other purposes; to the Committee on Ways and Means.

By Mr. GOMEZ (for himself, Ms. NORTON, Mrs. WATSON COLEMAN, Mr. BLUMENAUER, Ms. PRESSLEY, Ms. STANSBURY, Ms. TLAIB, Ms. BUSH, Ms. LEE of California, Ms. SCHAKOWSKY, Ms. TOKUDA, Ms. CHU, Mr. GARCÍA of Illinois, Ms. MENG, Ms. JAYAPAL, Mr. GRIJALVA, Mr. ESPAILLAT, Mr. DAVIS of Illinois, Ms. DELAURO, Mr. CASAR, Ms. BARRAGÁN, Mr. POCAN, Mr. PAYNE, Mr. DESAULNIER, Mr. TAKANO, Ms. OMAR, and Mr. MCGOVERN):

H.R. 2676. A bill to amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes; to the Committee on Ways and Means.

By Mr. JOYCE of Ohio (for himself and Ms. OCASIO-CORTEZ):

H.R. 2677. A bill to authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses, and for other purposes; to the Committee on the Judiciary.

By Mr. KRISHNAMOORTHI (for himself, Mr. CLOUD, Ms. OCASIO-CORTEZ, and Mr. NEGUSE):

H.R. 2678. A bill to amend chapter 131 of title 5, United States Code, to prevent Members of Congress and their spouses and dependent children from trading stocks and owning stocks, and for other purposes; to the Committee on House Administration, and in addition to the Committees on Oversight and Accountability, and the Judiciary, 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. KUSTER (for herself, Mr. CARTER of Georgia, Ms. ESHOO, and Mr. GUTHRIE):

H.R. 2679. A bill to amend the Public Health Service Act, the Employee Retirement Income Security Act, and the Internal Revenue Code of 1984 to increase oversight of pharmacy benefits manager services, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, and 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. KUSTOFF (for himself, Ms. WASSERMAN SCHULTZ, Mr. GARAMENDI, and Mr. MILLER of Ohio):

H.R. 2680. A bill to provide for the restoration of legal rights for claimants under holocaust-era insurance policies; to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, 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. KUSTOFF:

H.R. 2681. A bill to provide a taxpayer bill of rights for small businesses; to the Committee on Ways and Means, and in addition to the Committee on Oversight and Accountability, 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. LEE of California (for herself, Mr. JOYCE of Ohio, Mr. BLUMENAUER, Ms. STRICKLAND, Ms. DELBENE, Ms. TITUS, Ms. MACE, Mr. COHEN, Ms. SCHAKOWSKY, Mr. CARTER of Louisiana, Ms. NORTON, Ms. JACKSON LEE, Mrs. CHERFILUS-MCCORMICK, and Ms. JACOBS):

H.R. 2682. A bill to allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by a State or Indian Tribe, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, and Veterans' 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 Ms. MACE (for herself and Mr. CARTER of Louisiana):

H.R. 2683. A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to make certain contributions to local authorities to mitigate the risk of flooding on local property adjacent to medical facilities of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. NORMAN (for himself, Mr. LALOTA, Mr. WEBER of Texas, Ms. MACE, and Mrs. MILLER of Illinois):

H.R. 2684. A bill to amend the Internal Revenue Code of 1986 to increase the limitation on capital losses and index the limitation to inflation; to the Committee on Ways and Means.

By Mr. OWENS (for himself, Mr. COSTA, Mr. NEWHOUSE, Mr. BOST, Mr. STAUBER, Mr. ROSENDALE, and Mr. WITTMAN):

H.R. 2685. A bill to require the Secretary of Energy to provide technology grants to strengthen domestic mining education, and for other purposes; to the Committee on Natural Resources.

By Mr. PASCRELL (for himself, Mr. BEYER, and Ms. PORTER):

H.R. 2686. A bill to amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of personal service income earned in pass-thru entities; to the Committee on Ways and Means.

By Mrs. PELTOLA:

H.R. 2687. A bill to amend the Alaska Native Claims Settlement Act to exclude certain payments to aged, blind, or disabled Alaska Natives or descendants of Alaska Natives from being used to determine eligibility for certain programs, and for other purposes; to the Committee on Natural Resources.

By Ms. PORTER (for herself, Mr. CONNOLLY, and Mr. MFUME):

H.R. 2688. A bill to amend the Internal Revenue Code of 1986 to require electronically prepared tax returns to include scannable code when submitted on paper; to the Committee on Ways and Means.

By Ms. PORTER (for herself, Mr. CONNOLLY, Mr. MFUME, Ms. NORTON, Ms. TITUS, Mr. KILMER, Mr. GARCÍA of Illinois, Mr. CASE, Ms. JAYAPAL, Mr. CARTWRIGHT, and Mr. PHILLIPS):

H.R. 2689. A bill to improve the service delivery of agencies and public perception of agency interactions, and for other purposes; to the Committee on Oversight and Accountability, and in addition to the Committees on Foreign Affairs, Ways and Means, Natural Resources, Agriculture, Energy and Commerce, Education and the Workforce, Veterans' Affairs, Homeland Security, Small Business, and Armed Services, 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. PRESSLEY (for herself, Ms. OMAR, Mrs. WATSON COLEMAN, Mrs. BEATTY, Mr. BOWMAN, Ms. CLARKE of New York, Ms. ADAMS, Mr. CASAR, Ms. JACOBS, Ms. TLAIB, Mr. CARTER of Louisiana, Ms. OCASIO-CORTEZ, Mr. JOHNSON of Georgia, Ms. LEE of California, Ms. VELÁZQUEZ, Ms. MENG, Mr. GREEN of Texas, Mr. TRONE, Ms. JAYAPAL, and Mr. DESAULNIER):

H.R. 2690. A bill to reduce exclusionary discipline practices in schools, and for other purposes; to the Committee on Education and the Workforce.

By Mrs. RODGERS of Washington (for herself and Mr. PALLONE):

H.R. 2691. A bill to promote hospital and insurer price transparency; to the Committee on Energy and Commerce.

By Ms. SANCHEZ:

H.R. 2692. A bill to amend title XX of the Social Security Act to provide grants and training to support area agencies on aging or other community-based organizations to address social isolation among vulnerable older adults and adults with disabilities; to the Committee on Ways and Means.

By Ms. SCHOLTEN (for herself and Mrs. GONZÁLEZ-COLÓN):

H.R. 2693. A bill to amend title 14, United States Code, to make appropriations for Coast Guard pay in the event an appropriations Act expires before the enactment of a new appropriations Act, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. SIMPSON:

H.R. 2694. A bill to amend the Infrastructure Investment and Jobs Act to authorize the use of funds for certain additional Carey Act projects, and for other purposes; to the Committee on Natural Resources.

By Mr. STANTON (for himself, Mr. SCHWEIKERT, Mr. VASQUEZ, and Mr. PFLUGER):

H.R. 2695. A bill to amend the Agricultural Act of 2014 to provide emergency relief to producers of livestock with herds adversely affected by Mexican gray wolves, and for other purposes; to the Committee on Agriculture.

By Ms. TENNEY (for herself, Mr. THOMPSON of California, Mr. POSEY, Ms. SEWELL, Mr. YAKYM, Ms. WASSERMAN SCHULTZ, and Mr. FERGUSON):

H.R. 2696. A bill to amend the Internal Revenue Code of 1986 to make permanent the 7-year recovery period for motorsports entertainment complexes; to the Committee on Ways and Means.

By Mrs. TORRES of California (for herself, Ms. MENG, Ms. JAYAPAL, Mr. MCGOVERN, Ms. BARRAGÁN, Ms. LEE of California, Ms. SCHAKOWSKY, Ms. JACOBS, Mr. ESPAILLAT, Mrs. NAPOLITANO, Mr. HUFFMAN, Mr. CASAR, Ms. VELÁZQUEZ, Ms. NORTON, Mr. GARCÍA of Illinois, Ms. CLARKE of New York, Ms. TOKUDA, Mr. JOHNSON of Georgia, Mr. CÁRDENAS, Ms. SALINAS, and Mr. GRIJALVA):

H.R. 2697. A bill to establish the right to counsel, at Government expense for those who cannot afford counsel, for people facing removal; to the Committee on the Judiciary.

By Mr. TRONE (for himself and Ms. WATERS):

H.R. 2698. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to condition eligibility for grants under the Edward Byrne Memorial Justice Assistance Grant Program, and for other purposes; to the Committee on the Judiciary.

By Mr. YAKYM:

H.J. Res. 55. A joint resolution proposing a balanced budget amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. GREEN of Tennessee:

H.J. Res. 56. A joint resolution proposing an amendment to the Constitution of the United States to require three-fifths majorities for bills increasing taxes; to the Committee on the Judiciary.

By Mr. KILEY:

H.J. Res. 57. A joint resolution proposing an amendment to the Constitution of the United States relative to the election of Senators; to the Committee on the Judiciary.

By Mr. MOORE of Alabama (for himself, Mr. GOOD of Virginia, Mr. SELF, and Mr. BIGGS):

H.J. Res. 58. A joint resolution proposing an amendment to the Constitution of the United States to repeal the sixteenth article of amendment; to the Committee on the Judiciary.

By Mrs. DINGELL (for herself, Ms. ADAMS, Mr. EVANS, Mr. TONKO, Ms. CRAIG, Ms. JACOBS, Ms. BALINT, Ms. BARRAGÁN, Ms. KAPTUR, Ms. VELÁZQUEZ, Mr. PAYNE, Ms. MENG, Ms. BUSH, Ms. LOIS FRANKEL of Florida, Ms. STEVENS, Mr. GOMEZ, Mr. VEASEY, Mrs. WATSON COLEMAN, Mr. SCHIFF, Mr. DELUZIO, Ms. LEE of California, Ms. JAYAPAL, Mr. ALLRED, and Ms. WILLIAMS of Georgia):

H. Res. 303. A resolution recognizing the roles and the contributions of care workers in the United States and expressing support for the designation of April 2023 as ''Care Worker Recognition Month''; to the Committee on Education and the Workforce, and in addition to the Committee on Energy and Commerce, 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. KEATING (for himself, Mr. QUIGLEY, Ms. KAPTUR, and Mr. FITZPATRICK):

H. Res. 304. A resolution commending the International Criminal Court's issuance of an arrest warrant for Vladimir Putin, President of the Russian Federation, and Maria Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation, for two war crimes related to the forcible deportation of Ukrainian children from occupied areas of Ukraine to the Russian Federation; to the Committee on Foreign Affairs.

By Mrs. LESKO (for herself, Mr. DUNN of Florida, Mr. WEBSTER of Florida, Mr. KELLY of Pennsylvania, Ms. BROWNLEY, Mr. GROTHMAN, and Ms. TENNEY):

H. Res. 305. A resolution expressing support for the designation of April 18, 2024, as ''National Amateur Radio Operators Day''; to the Committee on Oversight and Accountability.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,

Mr. DAVIS of Illinois introduced a bill (H.R. 2699) for the relief of Felipe Diosdado; which was referred to the Committee on the Judiciary.

CONSTITUTIONAL AUTHORITY AND SINGLE SUBJECT STATEMENTS

Pursuant to clause 7(c)(1) of rule XII and Section 3(c) of H. Res. 5 the following statements are submitted regarding (1) the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution and (2) the single subject of the bill or joint resolution.

By Mr. COURTNEY:

H.R. 2663.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8

The single subject of this legislation is:

workplace safety and violence prevention

By Ms. DELBENE:

H.R. 2664.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8

The single subject of this legislation is:

transportation decarbonization

By Ms. CLARKE of New York:

H.R. 2665.

Congress has the power to enact this legislation pursuant to the following:

Title I, Section 8

The single subject of this legislation is:

Health

By Mr. GUTHRIE:

H.R. 2666.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8 of the United States Constitution

The single subject of this legislation is:

This is a single issue health care bill.

By Mr. BOST:

H.R. 2667.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8, Clause 18

The single subject of this legislation is:

Foreign Trade

By Ms. CHU:

H.R. 2668.

Congress has the power to enact this legislation pursuant to the following:

Clause 1 of Article 1, Section 8 of the United States Constitution

The single subject of this legislation is:

This is a bill to award a Congressional Gold Medal, collectively, to the American individuals that were active in aiding and rescuing Jews and other refugees during the Holocaust, in recognition of their contributions, which resulted in tens of thousands of Jews and others being spared from almost certain death.

By Mr. CLEAVER:

H.R. 2669.

Congress has the power to enact this legislation pursuant to the following:

Due to Article I of the Constitution

The single subject of this legislation is:

Bureau of Prison Education & Training Programs

By Mr. ROGERS of Alabama:

H.R. 2670.

Congress has the power to enact this legislation pursuant to the following:

clause 1, clause 12, clause 13, and clause 14 of section 8 of article I of the Constitution.

The single subject of this legislation is:

national defense.

By Mr. COSTA:

H.R. 2671.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8 of the U.S. Constitution.

The single subject of this legislation is:

Water resources development.

By Mr. DUNN of Florida:

H.R. 2672.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8.

The single subject of this legislation is:

To provide financial assistance to a local government or electric cooperative as reimbursement for qualifying interest on disaster-related loans.

By Mr. ESTES:

H.R. 2673.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 1: ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States,''

The single subject of this legislation is:

To provide for the immediate deduction of research and development expenditures.

By Mr. GAETZ:

H.R. 2674.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, clauses 1 and 18, and possibly others. The bill merely relates to conditions of federal government operations.

The single subject of this legislation is:

to amend the NO FEAR Act of 2002 to ensure that statutorily-mandated whisteblower training throughout the federal government is not done at the same time as discretionary ''insider threat'' training.

By Mr. GALLEGO:
H.R. 2675.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8
The single subject of this legislation is:
Instalement agreement user fees
By Mr. GOMEZ:
H.R. 2676.
Congress has the power to enact this legislation pursuant to the following:
Clause 1 of Section 8 of Article 1 of the Constitution and Amendment XVI of the Constitution.
The single subject of this legislation is:
Taxation
By Mr. JOYCE of Ohio:
H.R. 2677.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8, Clause 1
Article I, Section 8, Clause 18
The single subject of this legislation is:
To authorize the Attorney General to make grants to States and units of local government to reduce the financial and administrative burden of expunging convictions for cannabis offenses.
By Mr. KRISHNAMOORTHI:
H.R. 2678.
Congress has the power to enact this legislation pursuant to the following:
U.S. Constitution Section 1, Article 8
The single subject of this legislation is:
To amend chapter 131 of title 5, United States Code, to prevent Members of Congress and their spouses and dependent children from trading stocks and owning stocks.
By Ms. KUSTER:
H.R. 2679.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8, Clause 1 of the United States Constitution, the Taxing and Spending Clause: ''The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States...''
The single subject of this legislation is:
This bill increases oversight of pharmacy benefits managers.
By Mr. KUSTOFF:
H.R. 2680.
Congress has the power to enact this legislation pursuant to the following:
Under Article I, Section 8, the Necessary and Proper Clause. Congress shall have power to make all laws which shall be necessary and proper for carrying into Execution the foregoing powers and all Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof.
The single subject of this legislation is:
This bill will restore the rights of Holocaust-era insurance beneficiaries in recovering billions in unclaimed payments that were left behind amid the chaos and destruction of World War II.
By Mr. KUSTOFF:
H.R. 2681.
Congress has the power to enact this legislation pursuant to the following:
Under Article 1, Section 8, the Necessary and Proper Clause. Congress shall have power to make all laws which shall be necessary and proper for carrying into Execution the foregoing powers and all Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof.
The single subject of this legislation is:
This bill modifies certain tax enforcement procedures and requirements that affect small businesses and other taxpayers.
By Ms. LEE of California:
H.R. 2682.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8, Clause 18 of the Constitution
The single subject of this legislation is:
Health Care, Civil Rights, Vets
By Ms. MACE:
H.R. 2683.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8, Clause 1: ''The Congress shall have the power to . . . provide for the common defense and general welfare of the United States''
The single subject of this legislation is:
This bill authorizes the Department of Veterans Affairs (VA) to make contributions to local authorities to mitigate the risk of flooding on local property adjacent to VA medical facilities.
By Mr. NORMAN:
H.R. 2684.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8
The single subject of this legislation is:
Increases the capital loss limit against ordinary income from $3,000 to $13,000 and adjusts annually for inflation.
By Mr. OWENS:
H.R. 2685.
Congress has the power to enact this legislation pursuant to the following:
Article 1, section 8
The single subject of this legislation is:
Grant support for domestic mining education
By Mr. PASCRELL:
H.R. 2686.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8 of the United States Constitution.
The single subject of this legislation is:
Taxation.
By Mrs. PELTOLA:
H.R. 2687.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8, Clause 3.
The single subject of this legislation is:
Excluding all amounts distributed or benefits provided by a Settlement Trust to blind, disabled, and Alaska Native Elders and their descendants when determining eligibility for governmental benefits.
By Ms. PORTER:
H.R. 2688.
Congress has the power to enact this legislation pursuant to the following:
Section 8 of Article I of the Constitution
The single subject of this legislation is:
To amend the Internal Revenue Code of 1986 to require electronically prepared tax returns to include scannable code when submitted on paper.
By Ms. PORTER:
H.R. 2689.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8
The single subject of this legislation is:
To improve the service delivery of agencies and public perception of agency interactions, and for other purposes.
By Ms. PRESSLEY:
H.R. 2690.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8, Clause 18 of the United States
The single subject of this legislation is:
The single subject of this legislation is to reduce exclusionary discipline practices in schools.
By Mrs. ROGERS of Washington:
H.R. 2691.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8, Clause 3
The single subject of this legislation is:
To promote price transparency among hospitals and insurers on behalf of patients and employers.
By Ms. SÁNCHEZ:
H.R. 2692.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8
The single subject of this legislation is:
Health
By Ms. SCHOLTEN:
H.R. 2693.
Congress has the power to enact this legislation pursuant to the following:
Under Article I, Section 8 of the Constitution, Congress has the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof''
The single subject of this legislation is:
Coast Guard Pay
By Mr. SIMPSON:
H.R. 2694.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8
The single subject of this legislation is:
To authorizze the use of funds for certain additional Carey Act projects.
By Mr. STANTON:
H.R. 2695.
Congress has the power to enact this legislation pursuant to the following:
Article 1, Section 8
The single subject of this legislation is:
The single subject of this legislation is: to support cattle ranchers
By Ms. TENNEY:
H.R. 2696.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8
The single subject of this legislation is:
This bill would make permanent the seven-year cost recovery period for investments in motorsports entertainment complexes.
By Mrs. TORRES of California:
H.R. 2697.
Congress has the power to enact this legislation pursuant to the following:
According to Article 1: Section 8: Clause 18: of the United States Constitution, seen below, this bill falls within the Constitutional Authority of the United States Congress.
Article 1: Section 8: Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in
The single subject of this legislation is:
Establishes a right to legal representation.
By Mr. TRONE:
H.R. 2698.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8 of the Constitution of the United States.
The single subject of this legislation is:
This bill is about criminal justice reform
By Mr. DAVIS of Illinois:
H.R. 2699.
Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8, Clause 18 of the Constitution: To make all laws which shall be necessary and proper for carrying into Execution the powers enumerated under section 8 and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.
The single subject of this legislation is:

Private Bill

By Mr. YAKYM:

H.J. Res. 55.

Congress has the power to enact this legislation pursuant to the following:

Article V of the United States Constitution

The single subject of this legislation is:

This legislation would propose a balanced budget amendment to the Constitution of the United States.

By Mr. GREEN of Tennessee:

H.J. Res. 56.

Congress has the power to enact this legislation pursuant to the following:

Article V

The single subject of this legislation is:

An amendment to the Constitution of the United States to require three-fifths majorities for bills increasing taxes.

By Mr. KILEY:

H.J. Res. 57.

Congress has the power to enact this legislation pursuant to the following:

Article V

The single subject of this legislation is:

The following article is proposed as an amendment to the Constitution of the United States. No person shall be a Senator from a State unless such person has been elected by the people thereof.

By Mr. MOORE of Alabama:

H.J. Res. 58.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8

The single subject of this legislation is:

Proposing and amendment to the Constitution of the United States to repeal the sixteenth article of amendment.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions, as follows:

H.R. 24: Mr. STEUBE.
H.R. 45: Ms. SÁNCHEZ.
H.R. 49: Mr. DONALDS.
H.R. 53: Mr. DONALDS.
H.R. 82: Ms. GARCIA of Texas, Mr. EVANS, and Mr. JOHNSON of Ohio.
H.R. 190: Mrs. BICE.
H.R. 234: Mr. SELF.
H.R. 309: Mr. HIGGINS of New York, Mr. COURTNEY, and Mr. PETERS.
H.R. 319: Mr. BIGGS.
H.R. 371: Mr. SANTOS.
H.R. 372: Mr. HUDSON.
H.R. 396: Ms. LEE of Pennsylvania, Mr. MCGARVEY, and Ms. CROCKETT.
H.R. 411: Mr. MOORE of Alabama.
H.R. 412: Mr. SANTOS and Mr. NUNN of Iowa.
H.R. 431: Mr. HARRIS.
H.R. 435: Mr. TIMMONS.
H.R. 451: Mr. VEASEY and Ms. DAVIDS of Kansas.
H.R. 488: Mr. MEUSER.
H.R. 531: Mr. BABIN, Ms. DE LA CRUZ, Mr. BUCSHON, Mr. D'ESPOSITO, Mr.BANKS, and Mr. MILLER of Ohio.
H.R. 536: Ms. ESCOBAR.
H.R. 549: Ms. JACOBS and Mr. GROTHMAN.
H.R. 564: Mr. WALBERG.
H.R. 589: Mr. C. SCOTT FRANKLIN of Florida.
H.R. 592: Mr. DAVIDSON.
H.R. 594: Ms. LEE of California, Mrs. HAYES, and Mr. POCAN.
H.R. 595: Ms. LEE of California.
H.R. 603: Ms. OMAR and Mr. MULLIN.
H.R. 670: Mr. HIGGINS of New York and Ms. SEWELL.
H.R. 709: Ms. LEE of Pennsylvania.
H.R. 713: Mr. RESCHENTHALER.
H.R. 766: Mrs. KIM of California.
H.R. 797: Mr. CASAR and Mr. LIEU.
H.R. 801: Mr. SANTOS.
H.R. 802: Mr. KUSTOFF and Mr. VICENTE GONZALEZ of Texas.
H.R. 807: Mrs. LUNA.
H.R. 838: Mr. WESTERMAN.
H.R. 854: Mr. JACKSON of North Carolina.
H.R. 862: Mr. SANTOS.
H.R. 887: Mr. GROTHMAN and Mr. TIFFANY.
H.R. 902: Mr. BEAN of Florida.
H.R. 911: Mr. COURTNEY.
H.R. 932: Mr. GARCÍA of Illinois, Mr. MOONEY, Ms. JAYAPAL, Mr. POSEY, Ms. SCANLON, and Mr. BURCHETT.
H.R. 935: Mr. BOST and Mr. JOHNSON of Louisiana.
H.R. 955: Ms. CHU and Ms. BLUNT ROCHESTER.
H.R. 964: Mr. SCHIFF and Ms. STANSBURY.
H.R. 981: Ms. MOORE of Wisconsin.
H.R. 982: Mr. PAYNE and Ms. OMAR.
H.R. 1092: Ms. ROSS.
H.R. 1100: Mr. BIGGS.
H.R. 1133: Mrs. HAYES.
H.R. 1199: Mr. LIEU and Mr. KRISHNAMOORTHI.
H.R. 1204: Mr. SHERMAN and Mr. JACKSON of North Carolina.
H.R. 1230: Ms. VELÁZQUEZ.
H.R. 1233: Mr. LEVIN and Ms. PORTER.
H.R. 1267: Ms. KUSTER.
H.R. 1276: Mrs. HARSHBARGER.
H.R. 1282: Mr. BURGESS and Mr. PASCRELL.
H.R. 1291: Mr. LAWLER.
H.R. 1293: Mr. ESPAILLAT.
H.R. 1329: Ms. PEREZ and Mr. GRIJALVA.
H.R. 1404: Mr. DESAULNIER.
H.R. 1406: Mr. DUNN of Florida and Mr. FITZPATRICK.
H.R. 1413: Ms. GARCIA of Texas, Mr. JAMES, Ms. CROCKETT, and Mr. BURGESS.
H.R. 1437: Mr. BRECHEEN.
H.R. 1439: Ms. HOYLE of Oregon.
H.R. 1440: Ms. CRAIG.
H.R. 1447: Mr. MAGAZINER, Mr. NORCROSS, and Mr. DESAULNIER.
H.R. 1462: Ms. TENNEY.
H.R. 1465: Mr. RYAN and Ms. TOKUDA.
H.R. 1472: Mr. EVANS, Mr. DAVIS of North Carolina, Mr. LAWLER, and Mr. FITZPATRICK.
H.R. 1478: Mr. MCGARVEY.
H.R. 1484: Mr. CRENSHAW.
H.R. 1503: Mrs. KIM of California.
H.R. 1529: Mr. BUCHANAN, Mr. KILDEE, Mr. MCGARVEY, Ms. BROWNLEY, and Mr. SELF.
H.R. 1530: Mr. MCGARVEY, Ms. BROWNLEY, and Mr. SELF.
H.R. 1542: Mr. SANTOS.
H.R. 1581: Mr. TIMMONS.
H.R. 1591: Mr. BOST, Mr. COURTNEY, and Mrs. BICE.
H.R. 1597: Mr. TIFFANY.
H.R. 1602: Mr. RYAN and Mrs. DINGELL.
H.R. 1613: Mr. LANGWORTHY and Mr. PETERS.
H.R. 1637: Mr. MANN, Mr. FINSTAD, Mr. CARTWRIGHT, and Mr. POCAN.
H.R. 1685: Mr. PETERS.
H.R. 1692: Mr. MRVAN.
H.R. 1699: Mr. QUIGLEY, Mr. SOTO, and Ms. PINGREE.
H.R. 1716: Mr. NORCROSS and Mr. CARSON.
H.R. 1724: Mr. JOHNSON of South Dakota.
H.R. 1737: Mr. WESTERMAN and Ms. DAVIDS of Kansas.
H.R. 1742: Mr. PAYNE.
H.R. 1756: Mr. C. SCOTT FRANKLIN of Florida.
H.R. 1763: Ms. JACOBS, Mr. RYAN, and Ms. NORTON.
H.R. 1770: Mrs. MILLER of West Virginia, Mrs. STEEL, Ms. CRAIG, and Mrs. LESKO.
H.R. 1781: Ms. CROCKETT.
H.R. 1782: Mr. GREEN of Tennessee.
H.R. 1785: Mr. FERGUSON and Mr. CAREY.
H.R. 1788: Mr. POCAN, Mr. PAPPAS, and Ms. DELBENE.
H.R. 1794: Ms. MENG and Mr. LYNCH.
H.R. 1809: Mr. SCHNEIDER, Mr. SCHIFF, Mr. QUIGLEY, Ms. CRAIG, and Mr. KRISHNAMOORTHI.
H.R. 1815: Mr. LARSEN of Washington.
H.R. 1818: Mr. VAN DREW, Mr. KEAN of New Jersey, Mr. ELLZEY, and Ms. PEREZ.
H.R. 1823: Mr. WEBSTER of Florida and Mr. POSEY.
H.R. 1831: Mr. JACKSON of North Carolina.
H.R. 1833: Mr. FOSTER.
H.R. 1836: Mrs. STEEL and Mr. COSTA.
H.R. 1839: Mr. NUNN of Iowa, Mr. HARDER of California, Mrs. TRAHAN, Mr. KEAN of New Jersey, Ms. CRAIG, Mr. NORCROSS, Mr. QUIGLEY, and Ms. PEREZ.
H.R. 1843: Ms. SLOTKIN, Ms. VAN DUYNE, Ms. TENNEY, and Mr. GOODEN of Texas.
H.R. 2388: Ms. CROCKETT.
H.R. 2394: Mr. MOULTON.
H.R. 2420: Mr. SANTOS and Ms. CROCKETT.
H.R. 2431: Ms. SCHOLTEN and Ms. HOYLE of Oregon.
H.R. 2447: Mr. KIM of New Jersey and Mr. GIMENEZ.
H.R. 2451: Mr. GROTHMAN.
H.R. 2453: Mr. CLINE.
H.R. 2454: Mr. NORCROSS.
H.R. 2476: Mr. GROTHMAN.
H.R. 2481: Ms. OMAR.
H.R. 2494: Ms. TENNEY.
H.R. 2541: Mrs. LESKO.
H.R. 2547: Ms. DAVIDS of Kansas and Mr. BILIRAKIS.
H.R. 2550: Mr. COLE.
H.R. 2553: Mr. FITZGERALD, Mr. NEHLS, and Mr. BIGGS.
H.R. 2559: Mr. CARTER of Georgia, Ms. DEGETTE, Mr. BILIRAKIS, and Ms. SPANBERGER.
H.R. 2567: Ms. PINGREE.
H.R. 2570: Mr. BURCHETT.
H.R. 2572: Mrs. CHERFILUS-MCCORMICK.
H.R. 2642: Mr. PAYNE.
H.R. 2643: Mr. MAST.
H.J. Res. 11: Mrs. HARSHBARGER and Ms. DE LA CRUZ.
H.J. Res. 31: Ms. HAGEMAN.
H.J. Res. 45: Mr. MCCLINTOCK, Mr. CRAWFORD, Mrs. BOEBERT, Mr. OGLES, and Mr. DAVIDSON.
H.J. Res. 50: Mr. GOSAR, Mr. FINSTAD, and Mr. KELLY of Mississippi.
H.J. Res. 54: Mr. KEATING and Mr. García of Illinois.
H. Con. Res. 22: Mr. ALLRED.
H. Con. Res. 26: Ms. CRAIG and Mr. SANTOS.
H. Con. Res. 28: Mr. MOORE of Utah.
H. Con. Res. 33: Ms. JACOBS.
H. Res. 43: Ms. LEE of Pennsylvania.
H. Res. 77: Mr. MULLIN.
H. Res. 100: Mr. EDWARDS.
H. Res. 204: Mr. KRISHNAMOORTHI.
H. Res. 219: Mr. KRISHNAMOORTHI.
H. Res. 246: Ms. DELAURO, Mr. Cárdenas, Mrs. HAYES, and Mr. SWALWELL.
H. Res. 269: Mr. CARBAJAL.
H. Res. 271: Mr. VAN DREW.
H. Res. 277: Mr. COURTNEY.
H. Res. 280: Mr. D'ESPOSITO.
H. Res. 289: Mr. POCAN.
H. Res. 300: Ms. GREENE of Georgia.

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 118th CONGRESS, FIRST SESSION

Vol. 169 WASHINGTON, TUESDAY, APRIL 18, 2023 No. 64

Senate

The Senate met at 10 a.m. and was called to order by the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia.

PRAYER

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

Let us pray.

Eternal Spirit, You have said that the truth will set us free. We thank You that Your idea of freedom leads to harmony and productivity.

Lord, liberate our lawmakers from deceptions that misrepresent truth. Teach them the fine art of conciliation, and inspire them to choose roads that lead to progress. Lord, lift them above polarization, and give them the power to walk in Your light, to act in Your strength, to think with Your wisdom, to speak with Your truth, and to live in Your love.

We pray in Your preeminent Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 18, 2023.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Mr. WARNOCK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Radha Iyengar Plumb, of New York, to be a Deputy Under Secretary of Defense.

RECOGNITION OF THE MAJORITY LEADER

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

DEBT CEILING

Mr. SCHUMER. Mr. President, preserving the full faith and credit of the United States is one of the most important responsibilities that Members of Congress face. It requires cooperation, bipartisanship, and leaders who can instill confidence and calm to markets and working families alike.

But I cannot think of a worse message to send to the world than for Speaker MCCARTHY to travel all the way to New York, look Wall Street in the eye, and threaten that the United States will default on its debt unless Republicans get spending cuts first.

Why the Speaker traveled all the way to New York to give a speech that offered nothing new in substance or concept but the same dangerous message—different than what we have done in the past—is beyond me. If Speaker MCCARTHY continues in this direction, the United States is likely headed toward default.

But do you know what will avoid default? Republicans working with Democrats to avoid this crisis—all together—just as we did under Donald Trump.

The Speaker has insisted for months on cuts, though he has failed to offer any clarity about what kind of cuts Republicans want. House GOP leadership is presenting their wish list to their Members at a closed meeting this morning. No one should confuse this wish list as anything more than a recycling of the same bad ideas we have heard about for weeks, and it is still not clear that Speaker MCCARTHY has the votes to even pass this. Indeed, a handful of House GOP Members insist they won't raise the debt ceiling for anything, not even a GOP wish list.

One of the few specific items is the Speaker's laughable suggestion—and it is laughable—that we avoid default for only a year, ensuring that this dangerous crisis repeats itself in 12 months. Why the Speaker thinks anyone—anyone—would agree to have another debt ceiling crisis next year is beyond me.

Nobody is saying that there cannot be a conversation about what kind of cuts Republicans want, but it doesn't belong in this debate, plain and simple. It belongs in discussions over the budget that Congress has every year and not as a precondition to avoiding default.

So let me make this easy for my Republican colleagues. Don't bother with partisan wish lists and unrealistic proposals that will never solve this debt

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

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default crisis. Instead, avoid default using the same approach we did under President Trump twice and under President Biden once: Democrats and Republicans, working together, without preconditions. If Republicans agree to that, there will be no default.

FEDERAL BUREAU OF INVESTIGATION

Mr. President, now on GOP extremism and our FBI resolution, today, the Governor of Florida is meeting with a group of hard-right GOP extremists here in DC. As the Governor comes to the Nation's Capital, the ink is still not dry on the bill he signed a few days ago banning practically all abortions in Florida after just 6 weeks.

The Florida law is not the only one. Over a dozen States in the country now have near total bans on abortions. Idaho, for instance, is now the first State to explicitly outlaw out-of-State travel for abortions. That is sinister.

Freedom of choice is not the only victim of GOP radicalism. Over 11,000 Americans have now died from gun violence in the United States this year in school shootings, birthday parties, and New Year celebrations. But what are Republicans doing in response? They pose with machine guns on their Christmas cards. They gin up the NRA. They even expel State representatives who dare speak out against GOP inaction, as the Tennessee State House did to two members of color earlier this month.

Republican radicalism is even taking aim at law enforcement. A few weeks ago, President Trump called for cutting funding to the Department of Justice and the FBI because of personal grievances, and, to date, we have still yet to hear Speaker MCCARTHY or any Republican leader speak up against this dangerous idea.

But there is good news. The Members of this Chamber will have a chance to do the right thing and stand up for Federal law enforcement later this week. That is because, today, I will be introducing a resolution denouncing the former President's call to cut funding to our Federal law enforcement, and Senators will have to choose between standing with President Trump and his dangerous, dangerous view that we ought to cut funding for law enforcement and the FBI or will they stand with public servants to keep America safe? Again, where will they stand—with the former President's dangerous call to cut funding to Federal law enforcement or with the American people who want to be safe?

The FBI and DOJ do critical work to protect our communities against drug trafficking, gun violence, terrorism, and so much more. We just, yesterday, in New York saw an example where Federal law enforcement arrested two individuals for running a secret, unauthorized Chinese police station right in the middle of Lower Manhattan.

Do Republicans agree with President Trump that funding for Federal law enforcement who guard against terrorism and CCP encroachment should be cut or even eliminated? Again, this is the kind of resolution that should pass unanimously.

If Senate Republicans block this provision, they will be telling the American people that the GOP has been utterly consumed by extremism, where not women, not schools, not even Federal law enforcement are safe.

HOLOCAUST REMEMBRANCE DAY

Mr. President, now on Yom HaShoah and the campaign against anti-Semitism lifted by one patriotic American, today is Yom HaShoah, Holocaust Remembrance Day.

Each year on this day, we are called to do something that sounds simple: ''remember''—in Hebrew, ''zakar.'' But it is much more than mere recollection. It is a moral charge to ensure the Holocaust never, never fades from memory.

Two months ago, on my first codel as majority leader, I visited Yad Vashem in Jerusalem and the Dachau concentration camp in Germany. The trip was deeply personal for me because many of my ancestors were wiped out by the Nazis in western Ukraine.

Yom HaShoah is especially important today in the face of the pernicious, poisonous, and dangerous rise of anti-Semitism in our society. I commend the many dedicated individuals and organizations actively working to rekindle the light of tolerance that has kept anti-Semitism at bay. One important effort is done by Robert Kraft's Foundation to Combat Antisemitism, which recently launched its Stand Up to Jewish Hate campaign to raise awareness about the rise of anti-Semitism in America.

The Stand Up to Jewish Hate campaign is a powerful reminder that we must never allow anti-Semitism to flourish and that we all have a role to play in standing up against bigotry.

I want to thank Mr. Kraft's foundation for their essential work, and I ask unanimous consent to have printed into the RECORD at this point the transcript of one of his videos illustrating the efforts of the Stand Up to Jewish Hate campaign.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSCRIPT OF DIGITAL AD FROM STAND UP TO JEWISH HATE AND THE FOUNDATION TO COMBAT ANTISEMITISM

VISUAL ON SCREEN:

Black backdrop throughout the ad. A small blue square appears on the right side of the screen, representing the size of the population of Jewish Americans in the US.

TEXT ON SCREEN:

''Did you notice this blue square on your screen? Maybe you did. Maybe you didn't.''

VISUAL ON SCREEN:

Blue square moves closer to the center of the screen.

TEXT ON SCREEN:

''But that's the point. The size of this square is 2.4% of your screen.''

VISUAL ON SCREEN:

Blue square moves even closer to the center of the screen.

TEXT ON SCREEN:

''The same size of the Jewish population of in the US.''

VISUAL ON SCREEN:

Blue square moves to the very center of the screen and enlarges to take up nearly half the screen.

TEXT ON SCREEN:

''Yet Jews are on the receiving end of 55% of all religious crimes''

VISUAL ON SCREEN:

Photographs of anti-Semitic messages and crimes appear on screen, including a poster reading ''Wicked Jew Devils,'' ''Hitler was right'', and the image of graffiti of a swastika.

Headlines appear on screen: ''NYPD Warns about Possible Anti-Semitic protests.'' ''Law enforcement warns of Potential Neo-Nazi 'Day of Hate' ''

On screen appear photos of families grieving and police activity.

TEXT ON SCREEN:

''Show them your support. And share this blue square''

VISUAL ON SCREEN:

The Blue Square reappears next to the image of a hashtag.

Ten images of appear on screen showing supporters posting social media messages in support of Jewish Americans, using the hashtag and blue square

TEXT ON SCREEN:

''Let the Jewish community know they are not fighting alone. Anymore''

VISUAL ON SCREEN:

Blue square returns to the center, with a hashtag and final message

TEXT ON SCREEN:

Stand up to Jewish hate. StanduptoJewishhate.org. Paid for by the Foundation to Combat Anti-Semitism inc.

Mr. SCHUMER. On this solemn day—on this solemn day—we owe it to the survivors, their families, and the world to continue bearing witness to the tragic legacy of the Holocaust and keep repeating our conviction and our prayer: Never again.

BUSINESS BEFORE THE SENATE

Mr. President, on Senate business, it is a busy week here in the Senate. We are starting with a very important bill that is going to help so many communities, particularly rural and suburban communities in America, and that is the Fire Grants and Safety Act, which I expect to pass the Senate this week.

The overwhelmingly bipartisan legislation would ensure that two important Federal grant programs that support our firefighters—SAFER and AFG—remain available. We had a 96-to-nothing vote last month to move forward with the fire grants legislation, and I hope it portends swift action this week.

And on the nominations front, we are continuing to move ahead. On Thursday, the HELP Committee will hold a confirmation hearing for President Biden's nomination for Secretary of Labor, Julie Su. Julie Su is an outstanding nominee who will be a strong fighter for America's workers, and we should confirm her.

And for the information of all Senators, tomorrow, Members will receive a classified briefing from the administration on the leaked classified U.S. documents on the war in Ukraine.

INTERNAL REVENUE SERVICE

Mr. President, one final note on the IRS, today is Tax Day, and thanks to the additional resources provided to

the IRS in the Inflation Reduction Act, this tax-filing season has been much smoother for taxpayers.

Five thousand additional customer service agents were hired and call waiting times were reduced by 85 percent. There have been legitimate complaints across the country that when you call the IRS because you need help, it takes forever for them to answer. To reduce those by 85 percent because of the IRA bill that we just passed last summer is a very good thing. Thanks to our work, this party's work—it was opposed by every Republican—the IRA now has the resources to modernize the Agency and cut wait times, saving people heartache and making sure middle-class families get the credits they deserve. The Agency will do this while cracking down on tax enforcement for the uber-wealthy and biggest corporations.

I want to thank my colleagues for their work.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

JUDICIARY COMMITTEE

Mr. MCCONNELL. Mr. President, I want to address an extremely unusual request that our Democratic colleagues have made with respect to the Judiciary Committee.

Our dear friend Senator FEINSTEIN is a titanic figure and a stateswoman. Elaine and I have been honored to count the Senator and her late husband Dick as close, personal friends for many, many years. We miss our colleague. We wish her the very best for a speedy recovery and a smooth return.

In the meantime, our colleague's temporary absence has really not ground the Judiciary Committee to a halt. So far this Congress, the committee has reported out 40 judicial nominees—listen to this—more than half of them—more than half of them—on a bipartisan basis.

Let me say that again. More than two dozen judicial nominees have been reported out this Congress on bipartisan votes.

There are more than a dozen article III judges already waiting on the Executive Calendar, and a whole bunch of the nominees currently in committee are likely to receive bipartisan support as well. So the administration does not face any obstacle to moving nominees who are remotely qualified for the job. People who are mainstream and qualified have a path forward.

Yet some of the same far-left voices who have attacked Senator FEINSTEIN in the past are now suggesting that the Senate move her off the Judiciary Committee indefinitely—indefinitely. The stated reason, the supposed emergency, is that Senate Democrats are unable to push through the small fraction of their nominees who are so extreme—so extreme—and so unqualified that they cannot win a single Republican vote in Committee.

Let me say that again. The far left wants the full Senate to move a Senator off a committee so they can ram through a small sliver of their nominees who are especially extreme or especially unqualified.

There are four main nominees whom our Democratic colleagues are currently unable to move. One of them threatened an underage abuse victim while representing her prep school. One of them didn't know what article II of the Constitution says. One of them didn't know what a Brady motion is. The fourth one argued that the sex offender registry—listen to this—does not help keep children safe. Those are the four they are having a hard time moving. They are not on track to get bipartisan support.

It is purely the Democrats' political choice to hold relatively more reasonable nominees hostage so the unqualified ones can move in a pack. So even though they could move a number of less controversial nominees right now—right now—they want to sideline Senator FEINSTEIN so they can ram through the worst four as well.

I understand our Judiciary Committee colleagues report they cannot find a single past example where their committee let a Member be temporarily replaced in this fashion that some Democrats are advocating.

So let's be clear. Senate Republicans will not take part in sidelining a temporarily absent colleague off a committee just so Democrats can force through their very worst nominees.

The ACTING PRESIDENT pro tempore. The Republican whip.

TAX DAY

Mr. THUNE. Mr. President, today is Tax Day, and I think it is probably fair to say it is not most Americans' most favorite day. No one enjoys writing a check to the IRS or contemplating just how much of his or her yearly earnings goes to the Federal Government, especially when the Federal Government doesn't always make the best use of taxpayer dollars.

If you have a question for the IRS, things can get even more grim. The IRS does not exactly have a reputation for excellent customer service. During fiscal year 2021, the Agency answered just 11 percent of the 282 million calls it received—11 percent. That means that 250 million taxpayer calls went unanswered—250 million. And 2022 was barely better. During fiscal year 2022, 87 percent of taxpayer calls—87 percent—went unanswered. Any business with a customer service record like that would soon be out of business.

That is not even the worst of it. On top of its customer service problems, the IRS has a troubling record of mishandling taxpayer data. Everyone remembers the infamous targeting of conservative groups for extra scrutiny under the Obama IRS. Then there was the 2021 leak or hack of confidential taxpayer information that ended up in the hands of the left-leaning organization ProPublica and was used to advance a partisan agenda. Last September, the IRS reported that it had inadvertently posted confidential taxpayer data for around 120,000 individuals on its website. Then, after fixing its mistake, the IRS inadvertently made much of that same information public again just 2 months later.

It is no surprise that interacting with the IRS doesn't exactly inspire confidence. Given the IRS's record, you would think everyone could agree the Agency is ripe for reform. Democrats, however, apparently thought the Agency was simply ripe for more funding, a lot more funding—funding targeted not toward reforming taxpayer services but overwhelmingly toward increasing tax enforcement.

The so-called Inflation Reduction Act Democrats passed last August contained a staggering $80 billion for the IRS. Just 4 percent of that funding—4 percent out of $80 billion—was earmarked for improving taxpayer services. More than half, roughly $46 billion, was earmarked for increased audits and other tax collection efforts.

But that is not all. President Biden is now proposing to boost the IRS's budget by 15 percent next year—over and above the massive funding boost the IRS already received from the Inflation Reduction Act. And it doesn't even end there. The President's budget would also provide a separate and additional $29 billion to the IRS for enforcement—again, in addition to the $46 billion for enforcement the IRS received last August.

I don't need to tell anyone that President Biden's campaign to flood the IRS with unprecedented funding is motivated not by a desire to improve the Agency's performance but by a need to find money to help offset some of the cost of Democrats' Green New Deal schemes and other big-government spending.

There is reason to be concerned about where the President will be getting all this money he expects to collect. The IRS has pledged not to use its increased funding to raise audit rates on small businesses and households making under $400,000 a year ''relative to historic levels.'' But not only is it not clear what the Agency means by ''historic levels,'' there is also nothing to prevent the Biden IRS from going back on that commitment—if, for example, the President finds he can't pay for his Green New Deal schemes just by increasing audits of higher earning taxpayers.

Suddenly and dramatically increasing the size of any government Agency is a cause for concern. Are there plans in place to make sure the money is used wisely, efficiently? Can the Agency in question handle such a swift expansion? These are serious questions no matter what Agency we are talking about, but these questions are particularly relevant when the Agency in question—in this case, the IRS—is already doing a poor job of handling its basic responsibilities.

Any funding infusion like the $80 billion the IRS received in August should

be paired with commensurate oversight measures, including a requirement for a comprehensive strategy and effective execution from the IRS and appropriate safeguards and accountability for taxpayers. But that, interestingly enough, is something Democrats failed to include in their legislation, and they have shown little interest in IRS oversight since.

That cannot continue.

We need to put safeguards in place to ensure that the tens of billions of dollars Democrats have funneled to the IRS are being used responsibly and efficiently and that the IRS is not mismanaging its tax collection powers.

The National Taxpayer Advocate has noted that the money from the so-called Inflation Reduction Act has been ''disproportionately allocated for enforcement activities and should be reallocated to achieve a better balance with taxpayer service needs and IT modernization.''

''We need to put taxpayers first,'' the advocate said, and she is right. But, unfortunately, Democrats' priority is not taxpayers; it is tax collection.

Earlier this year, I introduced legislation along with Senator CHUCK GRASSLEY, cosponsored by all Senate Finance Committee Republicans, to improve oversight and hold the IRS accountable for its spending decisions. Our legislation, the IRS Funding Accountability Act, would require the IRS to provide Congress with an annual plan for how the Agency intends to use its new funding—a plan that could be rejected by Congress with a joint resolution of disapproval.

The IRS would also be required to provide Congress with quarterly updates on implementation of the spending plans, and there would be real consequences for failing to submit plans and reports on time, including the rescission of funds until the IRS complies with reporting requirements.

The IRS did recently release an underwhelming report on how it intends to spend its funding windfall, but the report, which was submitted more than 45 days late, was exceptionally vague and short on important details. Our legislation would require the IRS to put forward detailed plans on time and ensure that Congress has the ability to prevent misuse of funds or violations of taxpayer receipts. And I would hope that my Democrat colleagues would recognize the need for this kind of commonsense legislation.

Any massive funding infusion to a Federal Agency needs to be accompanied by meaningful oversight to protect taxpayer dollars and doubly so when it comes to an Agency like the IRS with a track record for poor customer service and mishandling Americans' priority information. As we move forward, I will continue to do everything I can to push for accountability at the IRS to make sure that taxpayers' rights are respected and that Americans' tax dollars are being used responsibly.

I yield the floor.

I suggest the absence of a quorum.

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

The senior assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. PADILLA). Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak and complete my remarks before the rollcall starts.

The PRESIDING OFFICER. Also without objection.

U.S. SUPREME COURT

Mr. DURBIN. Mr. President, the highest Court in America should not have the lowest standards when it comes to ethics, but for too long that has been the case for the U.S. Supreme Court. It definitely needs to change.

While the Senate was out of session for the Easter recess, the independent nonprofit news organization ProPublica published a series of stunning reports.

They found that a billionaire real estate developer and prominent Republican donor, Harlan Crow, has given Supreme Court Justice Clarence Thomas nearly 20 years of undisclosed luxury gifts and getaways: a lavish yacht vacation in Indonesia, private plane trips, visits to a deluxe mountainside resort, and more.

Then, just days ago, ProPublica found that in 2014, Crow's company bought properties owned by Thomas and his family, including the house where the Justice's mother still lives. These transactions were also hidden, undisclosed, even though Federal law clearly requires that they be reported publicly.

Let's be clear. Serving as a Federal judge, and especially a Supreme Court Justice, is one of the highest honors in the Nation that we can confer on an individual. But above all, it is a public service. Judges and Justices are entrusted by the American people to serve the public interest and administer equal justice under the law. That is why taxpayers and not billionaire donors fund judicial salaries, courthouses, and operations. Judges have a responsibility to put service to others ahead of their own personal self-interest.

But the conduct revealed in ProPublica's reporting tells a much different story. They show a Justice accepting secret, lavish luxury trips and real estate purchases from a wealthy donor with interests affected by the Court.

This is conduct we cannot tolerate, whether it is from a mayor, a city council member, or other elected official, and we certainly shouldn't tolerate it in the highest Court of the land. The Supreme Court needs to clean up its act and fast.

Throughout our history, ethics scandals at every level of government have inspired reform. Congress has repeatedly amended ethics laws governing the House and Senate to ensure that there is transparency and disclosure for the trips we take and the donations we receive. We have a Code of Official Conduct that we must follow and Ethics Committees that provide guidance and oversight for our activities. These committees can launch investigations and penalize misconduct when it occurs.

Congress has also passed numerous laws that affect the operation of the Federal judiciary, including the Supreme Court. We pass appropriations bills each and every year to cover judges' paychecks and the operations of our courthouses. We have enacted financial disclosure laws like the Ethics and Government Act and recusal laws like 28 U.S.C. 455 that apply to all Federal judges, including Supreme Court Justices.

We have long known there are shortcomings in the current ethics standards for the highest Court in the land, the Supreme Court. For example, the Justices do not consider themselves bound by the Code of Conduct that every other Federal judge follows. Additionally, they do not have clear and uniform processes for making and explaining their decisions on whether to recuse themselves from a case where there is a conflict of interest or an appearance of one. And as the recent ProPublica series has revealed, some Justices simply aren't telling the American people about the gifts and travel that they are accepting.

Frankly, the excuses we have heard thus far from Justice Thomas are laughable. Claiming that a private luxury yacht in Indonesia from a major political donor was ''personal hospitality'' that didn't need to be disclosed is an absurd conclusion, and it is insulting to the American people who expect Justices to be held to the same standards as anyone else in government.

That is why reform is essential. It is critical to our justice system and to our democracy that the American people have confidence that the judges and especially the Supreme Court Justices can't be bought and that they are serving the public interest and not their own personal interests.

In the past, Congress has stepped up to strengthen court ethics. Just last June, we passed the bipartisan Courthouse Ethics and Transparency Act which applies the STOCK Act's reporting and disclosure requirements to Federal judges and Justices. But the Supreme Court doesn't need to wait on Congress to clean up its act. The Justices could take action today if they wanted to, and if the Court fails to act, Congress must.

In the coming days, the Senate Judiciary Committee will hold a hearing on the need to restore public confidence in the highest Court of our land, the Supreme Court. This won't be our first hearing on the topic. We have held a

number of important hearings over the years on the need for judicial ethics reform, including an important hearing in the last Congress on the Court Subcommittee, chaired by Senator WHITEHOUSE of Rhode Island. Some on the Republican side may claim that this focus on ethics is just a reaction to decisions being handed down by the rightwing activist majority of the Supreme Court. To them I say, check the record.

I have been at this pursuit for more than 10 years. I wrote a letter, joined by Democratic colleagues, to the Chief Justice 11 years ago urging him to adopt a Code of Conduct. The Senate Judiciary Committee held a hearing in 2011 with Justices Scalia and Breyer. During that hearing, I asked them about Supreme Court ethics, which was in the news because of troubling reports even then of gifts being made by Mr. Harlan Crow. Unfortunately, Chief Justice Roberts rejected our call to act 10 years ago; and it appears that Harlan Crow took that as a sign that he should ante up and increase his largesse. Is it any wonder that we face a crisis of public confidence in the Supreme Court?

Our Constitution established a system of checks and balances between the branches of government, and it established a system in which no person is above the law.

There are few positions in our Federal Government more elevated than Supreme Court Justices, but Justices are public servants, and they must conduct themselves in that manner. Our job in the Senate Judiciary Committee, and in the Senate, is to make certain that they do—nothing less.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Idaho.

VOTE ON PLUMB NOMINATION

Mr. CRAPO. Mr. President, I ask unanimous consent that the rollcall begin immediately.

The PRESIDING OFFICER. Without objection.

The question is, Will the Senate advise and consent to the Plumb nomination?

Mr. CRAPO. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), and the Senator from New York (Mrs. GILLIBRAND) are necessarily absent.

The result was announced—yeas 68, nays 30, as follows:

[Rollcall Vote No. 84 Ex.]

YEAS—68

Baldwin	Heinrich	Romney
Bennet	Hickenlooper	Rosen
Blumenthal	Hirono	Rounds
Booker	Kaine	Sanders
Boozman	Kelly	Schatz
Brown	Kennedy	Schumer
Cantwell	King	Shaheen
Capito	Klobuchar	Sinema
Cardin	Luján	Smith
Carper	Manchin	Stabenow
Casey	Markey	Tester
Collins	McConnell	Thune
Coons	Menendez	Tillis
Cortez Masto	Merkley	Van Hollen
Cramer	Moran	Warner
Duckworth	Murkowski	Warnock
Durbin	Murphy	Warren
Ernst	Murray	Welch
Fetterman	Ossoff	Whitehouse
Fischer	Padilla	Wicker
Graham	Peters	Wyden
Grassley	Reed	Young
Hassan	Ricketts	

NAYS—30

Barrasso	Daines	Mullin
Blackburn	Hagerty	Paul
Braun	Hawley	Risch
Britt	Hoeven	Rubio
Budd	Hyde-Smith	Schmitt
Cassidy	Johnson	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Sullivan
Crapo	Lummis	Tuberville
Cruz	Marshall	Vance

NOT VOTING—2

Feinstein	Gillibrand

The nomination was confirmed.

The PRESIDING OFFICER (Mr. HICKENLOOPER). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 57, Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General.

Charles E. Schumer, Richard J. Durbin, Catherine Cortez Masto, Sheldon Whitehouse, Sherrod Brown, Margaret Wood Hassan, Raphael G. Warnock, Gary C. Peters, Jack Reed, Christopher A. Coons, Brian Schatz, Tina Smith, Ben Ray Luján, Elizabeth Warren, Martin Heinrich, Christopher Murphy, Tammy Baldwin, Alex Padilla.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mrs. GILLIBRAND) are necessarily absent.

The yeas and nays resulted—yeas 58, nays 40, as follows:

[Rollcall Vote No. 85 Ex.]

YEAS—58

Baldwin	Hirono	Rosen
Bennet	Kaine	Sanders
Blumenthal	Kelly	Schatz
Booker	Kennedy	Schumer
Brown	King	Shaheen
Cantwell	Klobuchar	Sinema
Cardin	Luján	Smith
Carper	Manchin	Stabenow
Casey	Markey	Tester
Collins	Menendez	Tillis
Coons	Merkley	Van Hollen
Cornyn	Moran	Warner
Cortez Masto	Murkowski	Warnock
Duckworth	Murphy	Warren
Durbin	Murray	Welch
Fetterman	Ossoff	Whitehouse
Graham	Padilla	Wyden
Hassan	Peters	Young
Heinrich	Reed	
Hickenlooper	Romney	

NAYS—40

Barrasso	Fischer	Ricketts
Blackburn	Grassley	Risch
Boozman	Hagerty	Rounds
Braun	Hawley	Rubio
Britt	Hoeven	Schmitt
Budd	Hyde-Smith	Scott (FL)
Capito	Johnson	Scott (SC)
Cassidy	Lankford	Sullivan
Cotton	Lee	Thune
Cramer	Lummis	Tuberville
Crapo	Marshall	Vance
Cruz	McConnell	Wicker
Daines	Mullin	
Ernst	Paul	

NOT VOTING—2

Feinstein	Gillibrand

The PRESIDING OFFICER (Mr. LUJÁN). The yeas are 58, the nays are 40.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 1:19 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. LUJÁN).

EXECUTIVE CALENDAR—Continued

NOMINATION OF AMY LEFKOWITZ SOLOMON

Mr. DURBIN. Mr. President, this week, the Senate will vote to confirm Amy Solomon as Assistant Attorney General for the Office of Justice Programs—OJP—within the Department of Justice.

Ms. Solomon is a devoted public servant whose policy expertise and commitment to the rule of law will serve

the Justice Department and communities across America. She has spent nearly a decade working at OJP during the Obama and Biden administrations, and she has served as the Principal Deputy Assistant Attorney General for OJP since 2021.

Throughout her career, Ms. Solomon has led efforts to lower recidivism, improve parole systems, and equip members of law enforcement with the tools they need to combat crime. Previously, she worked at Arnold Ventures and the Urban Institute, where she spearheaded policy research on policing, prisons, and crime-reduction programs.

A graduate of the Harvard Kennedy School of Government, Ms. Solomon has distinguished herself—both inside and outside of government—as a foremost expert in creating a more efficient, evenhanded criminal justice system that protects our communities and our families.

In a testament to her qualifications and temperament, Ms. Solomon has been endorsed by the International Association of Chiefs of Police, the Correctional Leaders Association, and several former OJP officials.

After more than 5 years without a Senate-confirmed head of OJP, Ms. Solomon's confirmation is long overdue. With her years of experience within the Agency and her deep insights into our Nation's criminal justice system, she will be ready to lead OJP from day one.

I urge my colleagues to join me in voting for her confirmation.

VOTE ON SOLOMON NOMINATION

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Solomon nomination?

Mr. SCHATZ. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), is necessarily absent.

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 86 Ex.]

YEAS—59

Baldwin	Hickenlooper	Romney
Bennet	Hirono	Rosen
Blumenthal	Kaine	Sanders
Booker	Kelly	Schatz
Brown	Kennedy	Schumer
Cantwell	King	Shaheen
Cardin	Klobuchar	Sinema
Carper	Luján	Smith
Casey	Manchin	Stabenow
Collins	Markey	Tester
Coons	Menendez	Tillis
Cornyn	Merkley	Van Hollen
Cortez Masto	Moran	Warner
Duckworth	Murkowski	Warnock
Durbin	Murphy	Warren
Fetterman	Murray	Welch
Gillibrand	Ossoff	Whitehouse
Graham	Padilla	Wyden
Hassan	Peters	Young
Heinrich	Reed	

NAYS—40

Barrasso	Fischer	Ricketts
Blackburn	Grassley	Risch
Boozman	Hagerty	Rounds
Braun	Hawley	Rubio
Britt	Hoeven	Schmitt
Budd	Hyde-Smith	Scott (FL)
Capito	Johnson	Scott (SC)
Cassidy	Lankford	Sullivan
Cotton	Lee	Thune
Cramer	Lummis	Tuberville
Crapo	Marshall	Vance
Cruz	McConnell	Wicker
Daines	Mullin	
Ernst	Paul	

NOT VOTING—1

Feinstein

The nomination was confirmed.

The PRESIDING OFFICER (Mr. WELCH). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

The majority leader.

LEGISLATIVE SESSION

FIRE GRANTS AND SAFETY ACT

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate resume legislative session and resume consideration of S. 870.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 870) to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs.

Pending:

Schumer amendment No. 58, to add an effective date.

UNANIMOUS CONSENT AGREEMENT—S. 870

Mr. SCHUMER. Mr. President, I ask unanimous consent that the cloture motion with respect to S. 870 be withdrawn and that the only amendments in order to the bill be the following: Lee No. 80; Scott No. 81; Hagerty No. 72, as modified; Van Hollen No. 85; Sullivan No. 83; and Paul No. 79; that if offered, the Senate vote in relation to the amendments listed at a time to be determined by the majority leader following consultation with the Republican leader; that following disposition of the above amendments, amendment No. 58 be withdrawn; that the bill, as amended, if amended, be considered read a third time and the Senate vote on passage of the bill; that 60 affirmative votes be required for the adoption of these amendments and passage of the bill, with the exception of the Sullivan and Paul amendments; and that there be 2 minutes for debate equally divided between the two leaders or their designees prior to each vote, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SCHUMER. For the information of the Senate, the vote on the Lee amendment will be at approximately 4:30 p.m. today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

S. 870

Ms. COLLINS. Mr. President, I am delighted that the Senate is proceeding to consideration of the Fire Grants and Safety Act.

This bipartisan legislation, which my colleague from Michigan, Senator PETERS, the chairman of the Homeland Security Committee, and I have introduced, is cosponsored by our fellow congressional Fire Caucus chairs: Senators MURKOWSKI, TESTER, and CARPER. Our bill would extend critical FEMA fire prevention programs, some of which are set to expire at the end of this fiscal year.

Mr. President, your State of Vermont and mine are a lot alike. Firefighters are critical to the safety of our communities, whether they are small or large.

Firefighters across Maine and the country courageously serve their communities. Recognizing their commitment in 2000 and 2003, I helped create FEMA's firefighter grant programs as part of a bipartisan effort to ensure that firefighters have the adequate staffing, equipment, and training to do their essential jobs as effectively and safely as possible. At that time, I was the chair or ranking member of the Senate Homeland Security Committee.

The Fire Grants and Safety Act would reauthorize four critical firefighting and emergency services programs: the U.S. Fire Administration, which provides training and data to State and local fire departments, as well as education and awareness for the public; the Assistance to Firefighters Grant Program, known as the AFG, which helps to equip and train firefighters and emergency personnel; the Fire Prevention and Safety Grant Program, which provides resources to carry out fire prevention education and training; and the Staffing for Adequate Fire and Emergency Response Program, better known as the SAFER Program, which helps our local fire departments recruit, hire, and retain additional firefighters.

Since October of 2020, fire departments across Maine have received just under $12 million from the AFG and SAFER grant programs. These critical investments in local, rural fire departments supported replacements of decades-old fire engines and obsolete breathing apparatuses. They also allowed for the hiring of additional firefighters, thus helping to ensure that Maine communities continue to provide excellent public safety services to our residents.

I have visited many of the fire stations around the State, and I have seen firsthand the difference these Federal grant programs make in improving the safety of our firefighters who risk their lives to protect ours. Many of the fire stations in Maine are decades or even a century old. They need updated equipment. They need better breathing

equipment. They need better fire engines. That is the purpose of many of these programs.

They also are helped by these programs in getting a sufficient number of firefighters and emergency medical personnel. Fire chiefs across the State of Maine tell me of the critical importance of these programs in helping their local fire departments keep their communities safe. And that is one reason that this bill has such broad support from the International Association of Firefighters, the International Association of Fire Chiefs—the list goes on and on and on.

Failure to reauthorize these programs would lessen the ability of our firefighters to perform their vital jobs and thus would reduce the safety of the public. So I urge all of my colleagues to support the swift passage of this legislation to support our firefighters. We simply cannot allow these vital programs to expire.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, I rise today to highlight the importance of supporting the brave men and women who protect us every day in all 50 States. As I laid out on this floor last month, the fires that we face are getting worse, not better. Every day, there are more fires ravaging our communities and more folks relying on firefighters for protection.

Just last week, almost 4,000 acres in our neighboring State of New Jersey were scorched by the Jimmy's Waterhole fire, forcing evacuations from something like 170 buildings and homes.

In Pennsylvania, over 2,500 acres were burned and over 150 homes threatened, forcing the Pennsylvania Turnpike to temporarily close.

Let me just make this as clear and as strong as I can. We have to support our firefighters. We have to support our firefighters so that when they bravely run toward danger to help others, they are well prepared; they are properly trained and equipped.

That is one of the reasons why I continue to colead the Fire Grants and Safety Act with my colleagues on the Congressional Fire Service Caucus. Firefighters put their lives on the line for us every day—every day—and it is our duty to provide them with the necessary support that they need.

I am proud to join alongside Senators GARY PETERS, SUSAN COLLINS, and LISA MURKOWSKI in fighting for this crucial legislation to better ensure that our firefighters are armed with the tools that they need to get the job done on behalf of other people.

Today, I want to talk for a few minutes, if I could, about the Fire Grants and Safety Act and how it will actually have an impact on communities not just on the east coast, not just on the west coast, the middle of our country, but all over the United States of America.

At a high level, this bill reauthorizes three critical Federal programs that support the local fire departments. Let me break it down just a little bit, if I could.

First, this legislation will reauthorize the Federal Emergency Management Agency Staffing for Adequate Fire and Emergency Response—also known as the SAFER Grant Program. The SAFER Grant Program provides funding for career, for volunteer, and some combination of local fire departments to increase the number of men and women on duty at any point in time.

The job of a firefighter can be incredibly demanding, and baseline industry standards include protocols like 24-hour staffing to make sure our communities have adequate protection of all hours of day and night.

The SAFER Grant Program also provides funding to recruit staff so that we can ensure staffing needs can actually be met. For example, SAFER grants could help ensure that more personnel are properly trained and available on the ground to assist in major fires in the areas that need it the most.

In States like Delaware, where the majority of our firefighters are volunteers, it is particularly important that staffing needs are met and resources are provided so that all first responders are ready to take on each day that lies ahead of them.

The Fire Grants and Safety Act also reauthorizes the Assistance to Firefighters Grant Program. The Assistance to Firefighters Grant Program helps local fire departments and EMS organizations to fulfill equipment and training needs, like firetrucks and protective gear, all of which lead to a more effective emergency response.

But firefighters do a whole lot more than just put out fires—I think the Presiding Officer and other of our colleagues know. Annually, there are over 36 million emergency calls that fire services across the country respond to.

Let me say that again. There are over 36 million emergency calls that fire services respond to across the country. That is not going down. That is going up. I think it increased about 20 percent over the last dozen or so years.

Just a few weeks ago, in my own State, a strong, dangerous tornado struck Southern Delaware in the area of Sussex County, our southernmost county, near a community called Greenwood and another community called Bridgeville. It was our firefighters who showed up to lead people to safety.

We lost a grandfather when the tornado struck Bridgeville, as I recall. I think he was in his seventies. He left behind a family.

Ensuring that funding is provided for EMS alongside fire services is critical to the emergency response.

Finally, the Fire Grants and Safety Act will reauthorize the U.S. Fire Administration to provide leadership, to provide coordination, and to provide training for first responders and healthcare leaders. Responding to emergencies is no small undertaking. It is a huge undertaking. In addition to our firefighters, healthcare leaders help to guide the disaster response by making sure that people are taken care of, both during and after emergency response.

The U.S. Fire Administration also plays a critical role in that coordinated effort, ensuring that our first responders are ready to handle hazards, from saving lives to preventing loss of homes and personal belongings.

Beyond the initial response, the Administration collects fire data, conducts important research and prevention methods, and hosts public safety information and fire service training. This proactive approach assists local fire departments in handling future emergencies and creates a more comprehensive approach to fire safety.

The lifesaving work made possible by these three Federal programs must continue, and we have the opportunity here in the Senate to make that happen. Last month, we came together—Democrats and Republicans—to vote to take up the Fire Grants and Safety Act. That vote passed by a whopping 96 to 0. As the Presiding Officer knows, that doesn't happen here every day, and it is a testament to the power of bipartisanship. It is also a testament to the critical role that firefighters play in communities across America.

Today, we will improve our emergency response, and we will make sure that our firefighters have, if not everything they need, more of what they need. I am pleased that our President has announced his support for this legislation. I want to strongly encourage our colleagues and friends over in the House of Representatives to do their part once we have taken care of business here and send the Fire Grants and Safety Act to the President's desk.

Mr. President, I want to go back a little in time. I remember a time when my sister and I were young and playing with other kids in our neighborhood. Maybe our cousins were with us. We had a firetruck. In fact, we had a couple of little firetrucks. We would take turns being a firefighter. Some days we would put out fires, and other days we would respond to imaginary weather events that endangered our community where we lived.

Later on, decades later, my sister would have her kids—a son and daughter—and my wife and I had a couple of boys, and one of their favorite toys was firetrucks. On more than a few occasions, they and their friends would come over to our house to play, and we would bring out the firetrucks.

They didn't have anything else to do but fight fires. For them, it was just

fun. They loved doing it—doing it with their neighbors and friends—and loved doing it with their cousins who might be visiting with us. That was fun for them.

In the real world, being a firefighter can be enormously satisfying. I don't know that I would say it is fun. It is dangerous, and there is a chance that someone will get hurt trying to help out other people, and the risks can be, as we know, great. I just want to make sure that those young kids who grow up to be firefighters—like the ones whom we honored this past month in the Bridgeville Fire Company in Southern Delaware—I just want to make sure they know that we value them. We value their service. We value their willingness to risk their own lives on behalf of other people, including people they may not even know.

In the legislation that is before us, we have the opportunity to make that clear to firefighters around the country—States large and small, east and west, blue and red—how much we value them and the service they provide to so many of us.

That is what I have today. I don't see anybody else yearning to address our colleagues.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

VLADIMIR KARA-MURZA

Mr. WICKER. Mr. President, I come before the Senate this afternoon to address the disturbing matter of Vladimir Kara-Murza and to call on the State Department to act and act decisively now on behalf of Mr. Kara-Murza.

Vladimir Kara-Murza is a courageous Russian leader and outspoken opponent of the dictatorship of President Putin there in Russia and a leader in the democracy effort in his home country of Russia.

Many colleagues, myself included, know Vladimir Kara-Murza personally. I admire him. I consider him a friend. Other Senators will remember who Mr. Kara-Murza is after I remind the Senate of his history.

Mr. Kara-Murza was the right-hand man of the late Russian opposition leader Boris Nemtsov. I say the late Russian leader because he was assassinated within the shadows of the Kremlin in 2015, after a career of courageous, outspoken opposition to the dictatorship in Russia. That was Boris Nemtsov.

His assistant and right-hand man, Kara-Murza, was just this week sentenced to a 25-year prison term in Russia, having already served 1 year in prison for the simple offense of speaking out on behalf of freedom and democracy in Russia.

Over the years, Vladimir Kara-Murza has spoken up against President Putin's invasion of Ukraine. He has spoken out against the suppression of human rights in Russia.

He has worked with members of Congress. He has worked with Senator CARDIN. He has worked with Senators like me and with former Senator John McCain. And he has been instrumental in getting us to pass and getting the administrations to sign important human rights legislation, like the Magnitsky Act, which has now been signed by 35 or more countries internationally, to crack down on those individuals within a dictatorship regime who have benefited from the violations of human rights.

How has Mr. Vladimir Kara-Murza paid for this offense of speaking out on behalf of democracy and freedom? He is the one who has twice been poisoned by the Putin regime—on two occasions. And they fumbled it twice. Now they have a third chance to kill him, and it may be that, unless the State Department acts quickly, the Putin regime may finally get their wish and see the obituary of Vladimir Kara-Murza.

His life is in danger now. Because of his previous poisonings, both of which he recovered from, he has suffered already from polyneuropathy. After a year in prison, he has lost 40 pounds. He has lost feeling in both of his feet now and is losing the feeling in one of his arms. That is the situation he finds himself in, the week when he was sentenced to a 25-year prison term simply for speaking out on behalf of freedom. Even under Russian law, a statutory scheme that none of us would approve of—even under Russian law—a diagnosis such as this would lead to the release of any prisoner, but not, apparently, for Vladimir Kara-Murza. Predictably, the Russian courts have violated their own law to keep him detained.

Today, we read about many victims of Russia's despotism. We have been talking this week about former U.S. Marine Paul Whelan, who has been sitting in a Russian prison since 2018 under fabricated charges, and then the recently detained Wall Street Journal reporter, Evan Gershkovich.

Those two individuals need our support and are getting the support of the State Department—the same support that Mr. Vladimir Kara-Murza needs now and that the Senate should demand of the State Department.

The State Department has the capability, as they have done for these two other prisoners, Gershkovich and Whelan. They have the ability to designate Mr. Kara-Murza as ''wrongfully detained'' under the Levinson Act. This classification would make the release of Vladimir Kara-Murza a top U.S. Government priority.

Granting this designation would be a major step forward and would raise this case to the highest level of attention within the State Department and with regard to their negotiations with the Kremlin. It would give negotiators new tools to act strongly and quickly. Strong action and quick action is needed now to save the very life of Vladimir Kara-Murza.

Efforts on his behalf could be conducted alongside the efforts that are being initiated for Mr. Whelan and Mr. Gershkovich, which I very much support.

I implore the State Department to elevate this case also and save the life of Vladimir Kara-Murza, and I implore all Members of Congress to join me in urging our government to take immediate action to support all three of these gentlemen.

Let's resolve that our government and our State Department act in every way possible to gain the release of these prisoners and in particular this prisoner whose life is hanging at the very moment by a thread.

I met with Vladimir Kara-Murza's wife only yesterday. She had met with the State Department, along with her attorneys, along with some advocates. Clearly, she fears for the life of her husband.

She is a resident of Northern Virginia, by the way, with two small children.

She fears for the life of her husband, and she worries about the future of herself and her children, but also she wonders why the State Department would not act in the most forceful way possible, and that is with this designation of ''wrongfully detained.''

Senator CARDIN and I will be speaking to Members of the Senate and the House about this. We will be passing around a letter to sign to the Secretary of State urging that this matter be given the highest consideration. And perhaps we can diplomatically obtain the release of this courageous person who has committed no crime and save the life of Vladimir Kara-Murza.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 80

Mr. LEE. Mr. President, wildfires pose a significant threat to the safety and well-being of our citizens, particularly those living near Federal lands. One way to protect against wildfires is with the use of fuel breaks.

Fuel breaks are—think of them as firewalls, firewalls for our communities. They are manmade areas with a reduced fuel load that are set up to act as a barrier to slow the spread of a wildfire. They slow it down and make it so the fire can't spread as quickly.

In 2021, Congress created a series of categorical exclusions specifically for the creation of fuel breaks. That was good. They were intended to protect communities adjacent to Federal land from the devastating effects of wildfires. However, the Federal Agencies responsible for implementing these

exclusions have been bogged down by regulatory delays.

These delays are really problematic, and they are adding up, especially in certain parts of the country where there is a lot of Federal land and where there is a lot of Federal land near where people live. For example, in California, there are 5.1 million homes in the wildland-urban interface. The Forest Service and the BLM will never have the capacity to protect these homes. The hands of the States shouldn't be tied while they watch their homes being burned.

So Congress did a good thing by creating these categorical exclusions, but it has been more or less rendered—I think by mistake—a dead letter in many areas because of these regulatory problems.

Rather than throwing the baby out with the bathwater, we need to make this one work. My amendment aims to do precisely that. It aims to create a process for States to assume responsibility for the environmental analysis, approval, and execution of these projects. By allowing States to take on these responsibilities, we can expedite these critical projects for community protection.

The safety and well-being of our citizens and our communities are at stake. By passing my amendment, we can take a significant step toward protecting our homes, communities, and critical infrastructure from the devastating effects of wildfires.

Mr. President, I call up my amendment No. 80 and ask that it be reported by number.

The PRESIDING OFFICER. The clerk will report the amendment by number.

The senior assistant legislative clerk read as follows:

The Senator from Utah [Mr. LEE] proposes an amendment numbered 80.

The amendment is as follows:

(Purpose: To make a categorical exclusion available for use on certain land by States and Indian Tribes through a project delivery program)

At the appropriate place, insert the following:

SEC. ____. STATE AND TRIBAL USE OF CATEGORICAL EXCLUSION FOR ESTABLISHMENT OF FUEL BREAKS IN FORESTS AND OTHER WILDLAND VEGETATION.

Section 40806 of the Infrastructure Investment and Jobs Act (16 U.S.C. 6592b) is amended by adding at the end the following:

''(g) STATE AND TRIBAL PROJECT DELIVERY PROGRAMS.—

''(1) IN GENERAL.—On request of a State or an Indian Tribe, the Secretary concerned shall enter into an agreement (which may be in the form of a memorandum of understanding) with the State or Indian Tribe, under which the Secretary concerned assigns, and the State or Indian Tribe assumes, the responsibilities of the Secretary concerned with respect to—

''(A) 1 or more projects under this section using the categorical exclusion established by subsection (b), including—

''(i) environmental review, consultation, and any other action required under any Federal environmental law with respect to the review or approval of a project, including the preparation of a supporting decision memorandum in accordance with subsection (b); and

''(ii) carrying out the forest management activities described in subsection (c) on public lands or National Forest System land in the State or under the jurisdiction of the Indian Tribe, as applicable; or

''(B) any other project on public lands or National Forest System land in the State or under the jurisdiction of the Indian Tribe, as applicable, using any other categorical exclusion that the Secretary concerned determines to be appropriate for use by the State or Indian Tribe, as applicable, to protect communities from wildfire.

''(2) COLLABORATION.—A State or an Indian Tribe may enter into an agreement under paragraph (1) in collaboration with a unit of local government, a private entity, or a community organization and associated contractors.

''(3) REQUIREMENTS.—

''(A) IN GENERAL.—A State or an Indian Tribe that assumes responsibilities under paragraph (1) shall be subject to the same procedural and substantive requirements as to which the Secretary concerned would be subject.

''(B) RETENTION OF RESPONSIBILITIES.—Any responsibility of the Secretary concerned that is not explicitly assigned to and assumed by a State or an Indian Tribe under an agreement under paragraph (1) shall remain the responsibility of the Secretary concerned.

''(C) PROHIBITION.—The Secretary concerned may not require a State or an Indian Tribe, as a condition on entering into an agreement under paragraph (1), to forgo any other means for carrying out the applicable project that is otherwise permissible under applicable law.

''(D) VERIFICATION OF RESOURCES.—As a condition on entering into an agreement under paragraph (1), the Secretary concerned may require a State or an Indian Tribe to verify that the State or Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.

''(4) AGREEMENTS.—An agreement under paragraph (1) shall—

''(A) be executed by the Governor or the top-ranking official of the State or Indian Tribe that is charged with responsibility for the applicable project;

''(B) be in such form as the Secretary concerned may prescribe;

''(C) provide that the State or Indian Tribe—

''(i) agrees to assume all or part of the responsibilities of the Secretary concerned;

''(ii) expressly consents to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary concerned assumed by the State or Indian Tribe;

''(iii) certifies that State or Tribal laws (including regulations) are in effect that—

''(I) authorize the State or Indian Tribe to take the actions necessary to carry out the responsibilities being assumed; and

''(II) provide that any decision regarding the public availability of a document under those State or Tribal laws is reviewable by a court of competent jurisdiction; and

''(iv) agrees to maintain the financial and personnel resources necessary to carry out the responsibilities being assumed;

''(D) require the State or Indian Tribe to provide to the Secretary concerned any information that the Secretary concerned reasonably considers necessary to ensure that the State or Indian Tribe is adequately carrying out the responsibilities assigned to the State or Indian Tribe;

''(E) have a term of not more than 5 years; and

''(F) be renewable.

''(5) JUDICIAL REVIEW.—

''(A) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction over any civil action against a State or an Indian Tribe for a failure to carry out any responsibility assigned to and assumed by the State or Indian Tribe under an agreement under paragraph (1).

''(B) LEGAL STANDARDS AND REQUIREMENTS.—A civil action described in subparagraph (A) shall be governed by the legal standards and requirements that would apply if the civil action were against the Secretary concerned had the Secretary concerned taken the relevant actions.

''(C) INTERVENTION.—The Secretary concerned may intervene in any civil action described in subparagraph (A).

''(6) STATE OR TRIBAL RESPONSIBILITY AND LIABILITY.—A State or an Indian Tribe that assumes responsibilities under an agreement under paragraph (1) shall be—

''(A) solely responsible for carrying out the responsibilities; and

''(B) solely liable for any action or failure to take an action in carrying out those responsibilities.

''(7) TERMINATION.—

''(A) IN GENERAL.—A State or an Indian Tribe may terminate an agreement entered into by the State or Indian Tribe under paragraph (1), at any time, by submitting to the Secretary concerned a notice not later than the date that is 90 days before the date of termination.

''(B) TERMS AND CONDITIONS.—A termination under subparagraph (A) shall be subject to such terms and conditions as the Secretary concerned may provide.

''(8) EDUCATION AND OTHER INITIATIVES.—The Secretary concerned, in cooperation with representatives of State and Tribal officials, may carry out education, training, peer-exchange, and other initiatives, as appropriate—

''(A) to assist States and Indian Tribes in developing the capacity to carry out projects under this subsection; and

''(B) to promote information-sharing and collaboration among States and Indian Tribes that are carrying out projects under this subsection.''.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I don't rise every day to oppose amendments offered by Senator LEE. I am afraid I am going to have to oppose this one for a couple of reasons.

One, as the chairman of the Senate Committee on Environment and Public Works and as a recovering Governor who has helped run a State and was actually the chair of the National Governors Association for a while, I believe this amendment undercuts the National Environmental Policy Act and the Federal Government's important role in managing our Federal lands.

While I appreciate the need for Federal Agencies and States to work together to minimize wildfire risks on our public lands, this amendment, I am sorry to say, misses the mark.

Specifically, this amendment would require—and I underline the word ''require''—this amendment would require the Forest Service and the Bureau of Land Management to allow States to take over Federal responsibilities for environmental reviews of many activities on public lands. This would be a

significant change in the management of our public lands, which belong, as we know, to all Americans.

Although Senator LEE's proposal is modeled on a program at the Department of Transportation that allows States to assume some responsibilities for highway projects, this amendment is far broader in scope and impact and lacks the numerous safeguards that are in place for the highway program.

For instance, this amendment establishes mandatory—I emphasize ''mandatory''—not discretionary assignment of responsibilities to States. It has no requirement, as best I can tell, for public notice and comment and does not require the Federal Agency to verify that the State has the resources and the personnel available to carry out Federal responsibilities. It also includes, as best I can tell, no auditing or monitoring requirements.

I am working with my colleagues, I believe on both sides of the aisle, on opportunities to improve environmental review procedures. But I must say, this is not the right vehicle or way to proceed on this provision, and I am reluctantly going to have to urge our colleagues to vote no on this particular amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, I appreciate the insight and the observations of my friend and distinguished colleague, the Senator from Delaware. I appreciate the amount of effort that he puts into this and I am sure a lot of hard work.

He raises some good points, and there are points that I might find persuasive if they were accurate. He seems to be under the impression that these would be broad categorical inclusions, that these procedures we contemplate would apply broadly to all Forest Service operations. It wouldn't. This is talking only about fuel breaks and only about fuel breaks in narrow sets of circumstances.

He suggested incorrectly that there is no requirement in place to make sure that the States have the resources financially, regulatorily, and otherwise to undertake the analysis contemplated under this. It does. He has been misinformed on that point.

Finally, I might feel differently about this if, like my friend from Delaware, if I were from a different State, if I were from the State of Delaware. But when you look at the Western United States, we have Federal land everywhere.

In every State to the east of Colorado's eastern border, the Federal Government owns less than 15 percent of the land in each State, and in most cases, it is in the single digits. In many States, it is in the low single digits. I don't remember what the percentage of land is in Delaware. I can find that out. But in Utah it is two-thirds of our land. It is 67 percent. In every State to the west of Colorado's Eastern Rim, it is more than 15 percent and usually a lot more than that. That affects people. These are people's homes, their livelihoods, their communities, their economies are all put in jeopardy by the fact that the Federal Government owns too much land. It owns so much land that no one would have the capacity to operate this. No one. It is impossible.

More than 5 million homes in California alone are in these affected areas. No matter how efficient we may be in the Forest Service, no matter how many employees we authorized them to hire, they are still not going to be able to keep up with it.

It is a matter of doing this or losing more property, losing more ecosystems and losing more homes and communities and sources of economic activity. That is what is at stake.

Now, if the points he made were factually correct or legally correct, he might be right, but they are not correct. We need this, and we need to pass this now.

Mr. President, thank you.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I don't think I have got this wrong. I may be mistaken, but I don't think so.

I would just say, again, Senator LEE's proposal appears to be modeling on a program at the Department of Transportation that allows States—and I underline ''allows States''—to assume some responsibilities, not all but some responsibilities, for highway projects.

Having said that, this amendment is far broader in scope and impact and lacks the numerous safeguards that are in place for the highway program. For example, this amendment establishes mandatory—mandatory, not discretionary—assignment of responsibilities to States. In doing that, it has no requirement for public notice. It does not require the Federal Agency to verify that the State has either the resources or the personnel available to carry out Federal responsibilities. Moreover, as best I can tell, this mandate includes no auditing or monitoring requirements. That should give all of us pause. That should give all of us pause and cause for concern.

Having said that, I am working with our colleagues on opportunities to improve environmental review procedures, but I just don't believe this is the right vehicle for the way to proceed on this particular provision. I look forward to discussing it further with our colleague from Utah in the days ahead, but for now I am going to urge our colleagues to vote no on this amendment.

Mr. LEE. Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. I will point to two things. First, on page 4 of the amendment, subdivision (D) Verification of Resources. This requires each State or Indian Tribe to go through a process to verify that they have got the resources to do it.

Turn to page 6. It is subject to full judicial review in the same way that they would be subject to judicial review if these actions were being undertaken by a Federal Agency. So the only difference is, these State and local governments, they have both the personnel, and they have the incentive to do it. Federal land managers can't and don't and won't ever be able to do this the same way State people, State officials, State governments, and local governments will be able to.

We either care about these communities or we don't. If we don't adopt this, we are effectively nullifying what Congress passed back in 2021, and we cannot do that.

Mr. President, I know of no further debate on this matter.

The PRESIDING OFFICER. Is there further debate?

Mr. CARPER. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am looking at the language of the amendment.

On page 4, subparagraph (D), which is entitled ''Verification of Resources,'' reads—I will read part of this. It says:

> As a condition on entering into an agreement under paragraph (1), the Secretary concerned may require a State or [may require] an Indian Tribe to verify that the State or an Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.

It doesn't say ''should.'' It doesn't say ''must.'' It says ''may require a State or . . . Indian tribe to verify that the State or Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.''

I, again, have significant concerns here. I appreciate the intent of the author of the amendment, but I will just reiterate again the concerns that the more I look at this, the more concerned I am. I would rather be less concerned but more concerned I have become.

With that, I yield back my time.

Mr. LEE. Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. The distinction he is dwelling on is the distinction on page 4, the ''may-shall'' distinction. The only way he can be right on this, of course, is if he presupposes that the Secretary is just not going to care; that the Secretary is not going to exercise that authority. It is not going to happen. I am sure he is not impugning a lack of concern on the part of the Secretary of Agriculture to do that. He wouldn't do that.

Secondly, look, if that is what is holding this up, if you want to switch—if you would be willing to support it if I made the ''may'' and turned it to a ''shall,'' I will do that right now. I will offer up a second-degree amendment to my own amendment right now, and we will do that. If the gentleman from Delaware were to agree to that, I would be fine with it, and we could get this passed.

Mr. CARPER. I am not prepared to know whether or not there are other safeguards—I appreciate the good intent that the Senator from Utah is showing. But standing here on the fly, I am just reluctant to say that if you change this one place and this one word in this proposal, then I am OK with all of it. I will need a little bit of time to work on it and decide. It is hard to do it on the fly.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, this is how the western lands suffer—people from the Eastern United States, with neither the knowledge nor the concern about how they are managed and don't care. And so while they passed something in 2021 to make these firebreaks easier to put in place, as a practical reality, the regulatory hurdles are proving too much. This would fix that. This is reasonable. There is nothing that the Senator from Delaware has pointed to that makes this amendment to this bill objectionable in any way. I urge my colleagues to support it.

And if you do so—if you come from the west of Colorado, you know exactly what I am talking about. If you come from the Eastern United States, I beg you to imagine, for a moment, that you represent a Western State, where we have experienced, in some cases, decades of drought and where we are sitting ducks, where we are an island of private land amidst a vast overwhelming sea of Federal land that is chronically mismanaged just because it is physically impossible for them to manage it properly to avoid this kind of thing. I urge you to be sympathetic to this and support it.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. This is the last thing I would say with respect to this amendment. If this amendment is not adopted, I would say to the Senator from Utah, I welcome the opportunity for my staff and your staff to sit down and talk through it and to better understand our concerns and better understand where you are coming from.

Mr. LEE. I would be happy to.

Mr. CARPER. Yes. We will keep on it.

Mr. LEE. Thank you.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. I appreciate the magnanimous offer from my colleague. I will take him up on that. I am still hoping that it will pass. It is still my hope that it should pass today.

Mr. President, I know of no further debate.

VOTE ON AMENDMENT NO. 80

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

Mr. LEE. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) is necessarily absent.

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—49

Barrasso	Grassley	Ricketts
Blackburn	Hagerty	Risch
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Britt	Hyde-Smith	Rubio
Budd	Johnson	Schmitt
Capito	Kennedy	Scott (FL)
Cassidy	Lankford	Scott (SC)
Cornyn	Lee	Sullivan
Cotton	Lummis	Thune
Cramer	Manchin	Tillis
Crapo	Marshall	Tuberville
Cruz	McConnell	Vance
Daines	Moran	Wicker
Ernst	Mullin	Young
Fischer	Murkowski	
Graham	Paul	

NAYS—50

Baldwin	Heinrich	Rosen
Bennet	Hickenlooper	Sanders
Blumenthal	Hirono	Schatz
Booker	Kaine	Schumer
Brown	Kelly	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Luján	Stabenow
Casey	Markey	Tester
Collins	Menendez	Van Hollen
Coons	Merkley	Warner
Cortez Masto	Murphy	Warnock
Duckworth	Murray	Warren
Durbin	Ossoff	Welch
Fetterman	Padilla	Whitehouse
Gillibrand	Peters	Wyden
Hassan	Reed	

NOT VOTING—1

Feinstein

The PRESIDING OFFICER (Mr. MARKEY). On this vote, the yeas are 49, the nays are 50.

Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is not agreed to.

The amendment (No. 80) was rejected.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT REQUEST

Mr. SCHUMER. Mr. President, few have left their mark on this country like our dear friend Senator DIANNE FEINSTEIN. She is a legend in California, the first woman Senator from the State.

She is a legend here in the Senate—the longest serving woman Senator in U.S. history. She built a reputation as an expert legislator on so many issues—gun violence, VAWA, the environment, women's rights, and so much more.

But her impact doesn't end there. DIANNE is a legend throughout the country. She shattered enumerable glass ceilings, moved countless mountains, and molded millions of minds. Few have accomplished as much in office as Senator FEINSTEIN.

Our colleague and friend has made her wish clear, that another Senator temporarily serve on the Committee on the Judiciary until she returns. I thank Senator CARDIN for agreeing to step in.

So today, I am acting not just as leader, but as DIANNE'S friend in honoring her wishes until she returns to the Senate. Mr. President, when someone as dear and as accomplished as Senator FEINSTEIN asks us for something so important to her, we ought to respect it.

I ask unanimous consent that the Senate proceed to the consideration of my resolution which is at the desk; I further ask unanimous consent the resolution be agreed to, that the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. I will be very brief. To my colleague and good friend Senator SCHUMER, I want to let you know that 99 Senators agree with what you said about Senator FEINSTEIN. We all hope—I am the ranking member of the Judiciary. She is a dear friend, and we hope for her speedy recovery and return back to the Senate.

But with all due respect to my colleague Senator SCHUMER, this is about a handful of judges that you can't get the votes for. I have been a pretty consistent vote in the Committee on the Judiciary in a bipartisan fashion. I understand you won the election and we lost. I want to make sure we process judges fairly.

The reason this is being made is to try to change the numbers on the committee in a way that I think would be harmful to the Senate and to pass out a handful of judges that I think should never be on the bench.

With that in mind and with all due respect to Senator FEINSTEIN, I object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Senator from Rhode Island.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Mr. President, I am here for now the 21st in my series of speeches about the scheme to capture and control our Supreme Court, a scheme to which rightwing special interests have devoted hundreds of millions of dark money dollars. The ingredients in this noxious cocktail are creepy rightwing billionaires, phony front groups, amenable justices, large sums of money, and secrecy.

This month, we have gotten a whole new look at how these ingredients mix.

According to extraordinary reporting by ProPublica, for more than 20 years, Justice Clarence Thomas has accepted luxury trips, virtually every year, from billionaire Harlan Crow without disclosing them. Here is how ProPublica described it:

> [Thomas] has vacationed on Crow's superyacht around the globe. He flies on Crow's Bombardier Global 5000 jet. He has gone with Crow to the Bohemian Grove, the exclusive California all-male retreat, and to

Crow's sprawling ranch in East Texas. And Thomas typically spends about a week every summer at Crow's private resort in the Adirondacks.

One of those trips has been valued at more than $500,000.

We have heard from civil servants who have to report a gift of $5. This Justice received a gift of a trip that they valued at $500,000. It was a trip to Indonesia on Crow's private jet, followed by, and I quote here, ''nine days of island-hopping . . . on a superyacht staffed by a coterie of attendants, and a private chef.'' And that is just one excursion. No telling how many others there were.

None of this was disclosed. The supposed rationale was that it was all ''personal hospitality.'' So let's set aside for one second the question of whether this actually was personal hospitality. Let's presume that there was personal hospitality here somewhere. What that overlooks is the problem of the personal hospitality exemption, which covers exemption from disclosure of ''food, lodging, or entertainment received as personal hospitality of an individual.'' Food, lodging, or entertainment—not transportation, not travel, not trips on Harlan Crow's private jet.

ProPublica was able to identify multiple trips that Thomas took on Crow's jet, and each one of those trips seems to be a slam dunk violation of this provision—not food, not lodging, not entertainment. Transportation.

It does not stop there. Additional reporting by ProPublica revealed more of Crow's undisclosed generosity. In 2014, Crow purchased from Thomas and his relatives three properties in Georgia, including the home where Thomas's mother lives. There seemed to be more collateral gifts in the form of renovations and an agreement that Thomas's mother would live there rent-free for the rest of her life.

There is much more to learn about this transaction, but back to the disclosure, here is what the law requires for property disclosures. It requires the disclosure of any purchase, sale, or exchange during the preceding calendar year which exceeds $1,000 in real property, other than property used solely as a personal residence of the reporting individual. If it is not your home, if it is any other real property, and if it is worth more than $1,000, the law requires that it be reported. Thomas disclosed none of this on the annual disclosure forms required by law.

This law applies across the government. This isn't something special for the Supreme Court. But transparency is especially important for judges, who must recuse themselves from cases if there is even an appearance of impropriety.

Purchasing Thomas's property and offering him free international vacations weren't the only favors bestowed by the billionaire. In 2011, the New York Times reported on him having ''done many favors for the justice and his wife,'' including using his company to finance what the Times called ''the multimillion-dollar purchase and restoration'' of a property where Justice Thomas's mother used to work; donating $175,000 to a Savannah library project dedicated to Justice Thomas; giving Justice Thomas a $19,000 Bible that belonged to Frederick Douglass; and ''providing $500,000 for Ginni Thomas [his spouse] to start a Tea Party-related group.''

Well, could any of that raise an appearance of impropriety or was it purely ''personal,'' nothing to do with the Court? Well, let's have a look at a picture that shows us a little illumination of that.

This is a painting that Harlan Crow commissioned during one of Thomas's visits to Crow's private, lakeside, Adirondack retreat. On the right here is Crow himself. Next to him is Justice Thomas.

Crow sits on the board of two conservative organizations that file briefs before the Supreme Court. Crow is also a donor to the Federalist Society, from which Trump's infamous Supreme Court list emerged. By the way, dark money surged into the Federalist Society during that period. Crow is also a political donor to Republican politicians.

Investigation would show whether all this amounted to enough business before the Court to create a conflict of interest, but the Supreme Court won't permit any investigation of its members.

Here on the left is the infamous Leonard Leo, the man behind that Trump Supreme Court list, whose three new Justices created the far-right supermajority that Justice Thomas now enjoys. Leo's front group, the Judicial Crisis Network, bought the campaign ads for the three Justices, paid for with dark money.

Here is a graphic I have used before showing Leonard Leo's flotilla of front groups that he uses. He has more. This is just one assortment of his front groups.

Here is the Judicial Crisis Network, which took checks as big as $17 million from anonymous donors and used that money to spend on ads for the confirmation of the three new Justices.

Leo is the one who helped the rightwing billionaires knock out Harriet Miers. Do you remember when she was a nominee for the Supreme Court by a Republican President? Knocked her out to make room for none other than Sam Alito to get onto the Court.

The campaign Leo oversaw by the billionaires to capture the Court has been tallied at more than $580 million—$580 million—much of it dark money. And he recently received from another creepy rightwing billionaire a $1.6 billion slush fund into yet another 501(c)(4) front group.

So it is deeply misleading to claim that Justice Thomas never vacationed with people who had business before the Court. Leonard Leo's business is the Court. The creepy billionaire's campaign was to capture the Court. Leo was the billionaire's contractor for construction of the Court that dark money built.

Personal hospitality. After Thomas gets on the Court, a major Republican donor befriends him, with half a million dollars for his spouse's activist group, a renovated home for his mother, and lavish undisclosed vacations, at which Thomas was sometimes accompanied by rightwing activists at the center of the scheme to capture the Court. And we are supposed to believe this is all legit? I don't think so.

Guess who else doesn't think so. Justice Thomas, who knew this smelled enough that he broke the disclosure law repeatedly to keep it secret.

Guess who else doesn't think so. Ask other Federal judges. They can't get away with this personal hospitality nonsense. They know that this is wrong and that it is embarrassing to the judiciary. That is why the Judicial Conference just cracked down on the personal hospitality shenanigans of their supreme court colleagues.

Thomas is feeling enough heat that he even released a public statement. ''Early in my tenure at the Court,'' he said, ''I sought guidance from my colleagues and others in the judiciary, and was advised that this sort of personal hospitality . . . was not reportable'' and that he has ''always sought to comply with disclosure guidelines.''

Wow, where to begin. First, who ''advised'' Thomas that this ''personal hospitality . . . was not reportable''? Whoever it was, they were wrong. I have spoken before about this personal hospitality issue. The reporting exemption for personal hospitality covers ordinary gifts of ''food, lodging, and entertainment'' from friends and family. There is not an exemption for transportation, for all that flying around the world in private jets. It just isn't there.

We don't know who advised him, but I can pretty surely tell you who didn't advise him; that is, the formal committees of the Judicial Conference that advise on ethics and financial disclosure issues. They have committees for this. That would be the obvious place to go for real advice. Yet all indications are that he did not. I suspect that Thomas knew they would not like the facts that he would have to disclose if he were to ask them in candor to offer an opinion on his situation. He also, I suspect, knew that he would not like the answer he would get. So he just didn't file.

The recent definition of ''personal hospitality'' that the Judicial Conference announced in response to 2 years of urging from me was intended to clarify what was already prohibited—a clarification that every other branch had already issued. And the reporting law never exempted private jet travel.

Thomas actually knew this because he had reported flying on Crow's private jet before, back in 1997. What changed?

Federal law is crystal clear on the need to report real estate transactions worth over $1,000. The law is so clear that CNN reported yesterday that Thomas will amend his disclosure report to include that sale.

According to what CNN called ''a source close to Thomas,'' Thomas ''has always filled out his forms with the help of his aides,'' and he didn't think he needed to report the sale because he didn't make any money off it. Well, that excuse might be believable if the statutory language weren't so clear—crystal clear—and if Thomas weren't what one commentator has called a ''repeat offender'' at disclosure.

In 2011, Thomas had to amend 13 years' worth of financial disclosure reports to add his wife's income from the Heritage Foundation, a dark money, conservative outfit which also files amicus briefs at the Supreme Court. He said it was a ''misunderstanding.''

Here is what he misunderstood: Financial Disclosure Report form; B, spouse's noninvestment income. ''If you were married during any portion of the reporting year, complete this section.'' Income: None or date and source. That is not complicated. Those instructions are simple. And, like his private jet travel, Justice Thomas had reported his wife's income before, back in 1996. What changed?

Congressman HANK JOHNSON and I sent a bicameral letter to Chief Justice Roberts urging him to get his courthouse in order and set up a means to investigate these and other serious allegations of misconduct. We also sent a letter to the Judicial Conference calling for the Conference to refer Justice Thomas to the Attorney General for failure to report his real estate transaction with Crow.

Here is how that works under the ethics law:

> The head of each Agency, or the Judicial Conference, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.
>
> The Attorney General [in turn] may bring a Civil Action against any individual . . . who knowingly or willfully fails to file or report any information that such individual is required to report.

That is not complicated.

And the Supreme Court is completely alone here in this peculiar approach to these issues. Wherever else you go in government, you will find an ethics code, and you will find a process for investigating and enforcing the ethics rules.

Congress has Ethics Committees. The executive branch has an ethics office and inspectors general. Federal courts have their own ethics process. Only the Supreme Court has none of that. No designated place to submit complaints. No investigative mechanism to review complaints. No impartial panel to decide complaints. No transparency.

All of that needs to change if we are to rebuild confidence in our highest Court.

Without investigation, it is impossible to determine if Justice Thomas violated still another Federal law by participating in cases implicating his wife's political activities. We need investigation to find out whether he broke that law.

Without investigation, there is no way to evaluate the ethics of the 20-year, $30 million private judicial lobbying campaign run by rightwing political activists who wined and dined Justices Thomas, Alito, and Scalia—the three Justices who, as the New York Times described it, ''proved amenable.'' Amenable.

Without any prospect of investigation, there is little reason for a Justice to comply with the ethics standards. When there is no ref, there is ultimately no rules. The rule that clearly pertains is that it is not OK to judge one's own case. That rule is so obvious, I hardly need to state it, and that rule is so old it is in Latin: ''Nemo judex in sua causa.'' No one should be judged in their own case. We know that Justice Thomas is familiar with this rule because he cited it in an opinion he wrote just a few years ago when he noted that ''At common law, a fair tribunal meant that 'no man shall be a judge in his own case.' ''

This good old rule, grounded in history and tradition, the present Supreme Court constantly and flagrantly flouts. That must stop. The Justices have lost the benefit of the doubt—240 years the Court went without needing this, but this Roberts Court has squandered the public's confidence with its behavior, and now there must be rules and process.

The Senate Judiciary Committee, along with my subcommittee, will hold a hearing to consider these issues. I hope our colleagues will take it seriously. Congressman HANK JOHNSON and I have introduced the Supreme Court Ethics, Recusal, and Transparency Act, which would solve a lot of this mess—this big, tragic, unnecessary, self-inflicted mess.

Let me conclude where I began, with that noxious cocktail of creepy rightwing billionaires, phony front groups, amenable Justices, large sums of money, and secrecy. It is a toxic brew. The ethics failures at the Court are just one part of that stinking cocktail. We have Justices picked in some backroom at the Federalist Society by creepy billionaires to put on a list for Donald Trump. We have Justices who came through a confirmation process so tainted with influence that the FBI was breaking its own procedures in background investigations and Senators were pulling screeching 180s on confirming Supreme Court Justices in an election year. Flotillas of front group amici—amici curiae—who won't tell who orchestrates and funds them appear in Court to tell those Justices what to do. And the Justices, with astonishing statistical reliability, do as they are told.

To get the results they want, the Justices smash through precedent, violate so-called conservative judicial principles, make up false facts, and change the applicable legal standards. All of this mess—all of it—is the product of that toxic brew of creepy rightwing billionaires, phony front groups, amenable Justices, large sums of money, and secrecy.

For now, let's at least fix the ethics mess and bring the Supreme Court into alignment with the rest of the Federal courts. The highest Court should not have the lowest standards.

To be continued.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. If I may interrupt the distinguished Senator from Alaska for 1 minute to do some closing business and then leave her the floor.

RESOLUTIONS SUBMITTED TODAY

Mr. WHITEHOUSE. On behalf of the majority leader, I ask unanimous consent that the Senate now proceed to the en bloc consideration of the following Senate resolutions introduced earlier today: S. Res. 160, 161, and 162.

There being no objection, the Senate proceeded to consider the resolutions en bloc.

Mr. WHITEHOUSE. I ask unanimous consent that the resolutions be agreed to, the preambles be agreed to, and the motions to reconsider be considered made and laid upon the table, all en bloc.

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

The resolutions were agreed to.

The preambles were agreed to.

(The resolutions, with their preambles, are printed in today's RECORD under ''Submitted Resolutions.'')

MORNING BUSINESS

NOTICE OF ADOPTION OF REGULATIONS FROM THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the notice of adoption of regulations from the Office of Congressional Workplace Rights be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMENDED NOTICE OF ADOPTION OF SUBSTANTIVE REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, April 18, 2023.

Hon. PATTY MURRAY,
President Pro Tempore of the U.S. Senate,
The United States Capitol,
Washington, DC.

DEAR MADAM PRESIDENT: Section 304(b)(3) of the Congressional Accountability Act

(CAA), 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board of Directors of the Office of Congressional Workplace Rights (Board) has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments pursuant to subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations 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 on which both Houses are in session following such transmittal.'' On February 2, 2009, the Board adopted regulations implementing section 206 of the CAA, which extends the rights and protections of the Uniformed Services Employment and Reemployment Act (USERRA) to covered employees in the legislative branch, and the Chair of the Board transmitted to the Office of the President Pro Tempore notice of such action together with copies of separate USERRA regulations adopted for the Senate, the House of Representatives, and the other covered entities and facilities.

The Board has since made additional minor amendments to its adopted USERRA regulations, as detailed in the *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval*, which accompanies this letter. The Board requests that the accompanying *Amended Notice* and amended regulations for the Senate, the House of Representatives, and the other covered entities, be published in the Senate version of the *Congressional Record* on the first day on which both Houses are in session following receipt of this transmittal, and that Congress approve the amended regulations.

Any inquiries regarding this notice should be addressed to Patrick N. Findlay, Executive Director of the Office of Congressional Workplace Rights, Room LA–200, 110 2nd Street, S.E., Washington, D.C. 20540; 202–724–9250.

Sincerely,

BARBARA CHILDS WALLACE,
Chair of the Board of Directors, Office of Congressional Workplace Rights.

Attachment.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

AMENDED NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

Substantive Regulations Adopted by the Board of Directors of the Office of Congressional Workplace Rights (Board) Extending Rights and Protections under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as required by 2 U.S.C. §1384, Congressional Accountability Act of 1995, as amended (CAA).

Background:

Section 304(b)(3) of the CAA, 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations 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 on which both Houses are in session following such transmittal.''

Section 206 of the CAA, 2 U.S.C. §1316, applies the rights and protections of USERRA, chapter 43 of title 38, to covered employees in the legislative branch. On April 21, 2008, and May 8, 2008, the Office of Congressional Workplace Rights (OCWR), then known as the Office of Compliance (OOC), published a Notice of Proposed Rulemaking (NPR) in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)). After notice and comment per section 304(b), on February 2, 2009, the Board adopted and submitted for publication in the *Congressional Record* its adopted substantive regulations regarding USERRA. 155 Cong. Rec. H783–H873, S1280–S1368 (daily ed. February 2, 2009). Congress has not yet acted on the Board's request for approval of these substantive regulations.

The purpose of this *Amended Notice of Adoption of Regulations and Transmittal for Congressional Approval* is to incorporate minor amendments to the Board's previously-adopted USERRA substantive regulations. These amendments are necessary in order to bring the regulations in line with recent changes to the CAA and the OCWR Procedural Rules. Specifically, on December 21, 2018, Congress passed the Congressional Accountability Act of 1995 Reform Act, Pub. L. 115–397. The CAA Reform Act changed the name of the Office of Compliance to the Office of Congressional Workplace Rights. In addition, the Board, consistent with Section 303 of the CAA, amended its Procedural Rules and submitted them for publication in the *Congressional Record* on June 19, 2019. 165 Cong. Rec. H4896–H4916, S4105–S4125 (daily ed. June 19, 2019). Amendments to the Board's adopted USERRA regulations are necessary in order to bring them in line with these recent changes.

Because the amendments to the Board's adopted USERRA regulations are minor, they do not require an additional general notice of proposed rulemaking or period for comments. *See* 2 U.S.C. §1384(e). Moreover, there have been no additional changes since 2009 to the relevant substantive regulations promulgated by the Secretary of Labor upon which the Board's USERRA regulations are based that would necessitate reopening the notice and comment period.

Because the USERRA substantive regulations previously adopted by the OCWR in 2009 have not yet been approved by Congress—and thus have not yet been formally issued or put into effect—this *Amended Notice of Adoption* incorporates the OCWR Board's prior discussion of the public comments it received in 2008, and those changes made by the OCWR in response, as reflected in the USERRA regulations adopted in 2009. This prior discussion is included herein for purposes of clarity and completeness, as the OCWR again requests that Congress approve its adopted USERRA regulations.

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking:

On April 21, 2008 and May 8, 2008, the Board published an NPR in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)).

Why did the Board propose these new Regulations?

Section 206 of the Congressional Accountability Act (''CAA''), 2 U.S.C. §1316, applies certain provisions of USERRA to the legislative branch. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits. Subsection 1316(c) requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may only modify the Department of Labor regulations if it can establish good cause as to why a modification would be more effective for the application of the protections to the legislative branch. In addition, section 304 of the CAA, 2 U.S.C. 1384, provides procedures for the rulemaking process in general.

What procedure followed the Board's Notice of Proposed Rulemaking?

The Board's Notice of Proposed Rulemaking included a 30-day comment period. A number of comments to the proposed substantive regulations were received from interested parties. The Board reviewed the comments from interested parties, made a number of changes to the proposed substantive regulations in response to comments, and on December 3, 2008, adopted the amended regulations.

What is the effect of the Board's "adoption" of these proposed substantive regulations?

Adoption of these substantive regulations by the Board does not complete the promulgation process. Pursuant to section 304 of the CAA, the procedure for promulgating such substantive regulations requires that:

(1) the Board issue proposed substantive regulations and publish 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; and

(3) after consideration of comments by the Board, that the Board adopt regulations and transmit 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*.

This *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval* completes the third step described above.

What are the next steps in the process of promulgation of these regulations?

Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. §1384(b)(4), the Board is required to ''include a recommendation in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.'' The Board recommends that the House of Representatives approve the ''H'' version of the regulations by resolution; that the Senate approve the ''S'' version of the regulations by resolution; and that the House and Senate approve the ''C'' version of the regulations applied to the other employing offices by a concurrent resolution. Alternatively, the House and the Senate could approve all three versions of the regulations by a single concurrent resolution.

Which employment and reemployment protections are applied to eligible employees in 2 U.S.C. §1316?

USERRA was enacted in December 1994, and the Department of Labor final regulations for the executive branch became effective in 2006. USERRA's provisions ensure that entry and re-entry into the civilian workforce are not hindered by participation in military service. USERRA provides certain reemployment rights; protection from discrimination based on military service, denial of an employment benefit as a result of military service; and protection from retaliation for enforcing USERRA protections.

The selected statutory provisions that Congress incorporated into the CAA and determined ''shall apply'' to eligible employees

in the legislative branch include nine sections: sections 4303(13), 4304, 4311(a) and (b), 4312, 4313, 4316, 4317, 4318, and paragraphs (1), (2)(A), and (3) of 4323(d) of title 38.

The first section, section 4303(13), provides a definition for ''service in the uniformed services.''

This is the only definition in USERRA that Congress made applicable to the legislative branch. Section 4303(13) references section 4304, which describes the ''character of service'' and illustrates situations that would terminate eligible employees' rights to USERRA benefits.

Congress applied section 4311 to the legislative branch in order to provide discrimination and retaliation protections, respectively to eligible and covered employees. Interestingly, although Congress adopted these protections, it did not adopt the legal standard by which to establish a violation of this section of the statute.

Sections 4312 and 4313 outline the reemployment rights that are provided to eligible employees. These rights are automatic under the statute, and if an employee meets the eligibility requirements, he or she is entitled to the rights provided therein.

Sections 4316, 4317, and 4318 provide language on the benefits given to eligible employees.

Are there veterans' employment regulations already in force under the CAA?

Yes. The Board has adopted and Congress has approved substantive regulations implementing the Veterans Employment Opportunities Act (VEOA) in the legislative branch. The Board has also submitted for congressional approval its amended substantive regulations implementing the Family and Medical Leave Act (FMLA) in the legislative branch, which, among other things, includes enhanced protections for servicemembers and veterans.

Why are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?

As the Board has identified ''good cause'' to modify the executive branch regulations to implement more effectively the rights and protections for veterans, there are some differences in other parts of the proposed regulations applicable to the Senate, the House of Representatives, and the other employing offices. Therefore, the Board is submitting three separate sets of regulations: an ''H'' version, an ''S'' version, and a ''C'' version, each denoting those provisions in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Are these adopted regulations also recommended by the Office of Congressional Workplace Rights' Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), these regulations have also been recommended by the Executive Director and Deputy Executive Directors of the Office of Congressional Workplace Rights.

Are these adopted CAA regulations available to persons with disabilities in an alternate format?

This Notice of Adoption of Substantive Regulations, and Submission for Congressional Approval is available on the Office of Congressional Workplace Rights website, www.ocwr.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print, Braille, or other alternative format. Requests for this Notice in an alternative format should be made to: the Office of Congressional Workplace Rights, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202–724–9250 (voice); 202–426–1913 (fax); or ocwrinfo@ocwr.gov.

Supplementary Information:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, became law on January 23, 1995, and was amended by the Congressional Accountability Act of 1995 Reform Act, PL 115–397, which was enacted on December 21, 2018. The CAA applies the rights and protections of 14 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. §1381) establishes the Office of Congressional Workplace Rights as an independent office within the Legislative Branch.

The Board's Responses to Comments
General Comments

The Board noted in the Notice of Proposed Regulations (NPR) that it had not identified any good cause for issuing three separate sets of regulations and that if the regulations were approved as proposed, there would be one text applicable to all employing offices and covered employees. During the notice and comment period, the Board received comments from the Committee on House Administration (CHA), Senate Employment Counsel (Counsel), and the United States Capitol Police (Capitol Police). All of the commenters noted, in different places throughout the regulations, the need for modifications that would apply specifically to the House, Senate or other employing offices. Although the Board has not found good cause to vary the Department of Labor (DOL) regulations in all instances where requested, there are a number of places where such variances are warranted. In light of that and the comment by the CHA that the Congressional Accountability Act (CAA) requires the publication of separate regulations for the Senate, House and other covered employees and employing offices, the Board has made that change and put forward three separate sets of regulations, an ''H'' version, an ''S'' version, and a ''C'' version, each denoting the provisions that are included in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Eligible Employees

In its comments, CHA maintained that the definition of ''eligible employee'' in the regulations is overly broad. Pointing to section 206(a)(2)(A) of the CAA, which defines an ''eligible employee'' as ''a covered employee performing service in the uniformed service, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon occurrence of any of the events enumerated in section 4304 of title 38,'' the CHA notes that the definition references only the present tense of the verb ''performing'' and makes no mention of the past tense. CHA also noted that section 206 does not define ''eligible employee'' to include an individual who was previously a member of the uniformed services or one who applies or has applied to perform service in the uniformed services. CHA acknowledged that this ''stands in marked contrast to the general USERRA statute's protection of individuals who currently serve as well as to those who have previously served, to those who have an obligation to serve, and to those who have applied to serve in the uniformed services (regardless of whether they actually served).'' CHA further recognized ''that USERRA's intent is to provide broad protections for those who serve and have served in the uniformed services . . .'' CHA commented that the regulations are inappropriately broad, notwithstanding language in section 206(a)(2)(A) that strongly suggests inclusion of an individual who has been honorably discharged and is therefore not currently serving, but who has served in the past.

The Board acknowledges the tension in the language in section 206(a)(2)(A), but does not agree with the conclusions reached by the CHA, that, absent a statutory amendment revising the definition in section 206(a)(2)(A), the proposed regulations should be revised to reflect that, ''as applied by the CAA, USERRA only protects employees who are currently 'performing service in the uniformed services.' ''

The Board's authority to promulgate substantive regulations is found in section 206 of the CAA, 2 U.S.C. §1316, which applies certain provisions of USERRA. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits.

Subsection 1316(c) of the CAA requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may modify the Department of Labor regulations only if it can establish good cause as to why a modification would be more effective for application of the protections to the legislative branch. The Board chooses to apply a broad definition of ''eligible employee.''

The Board does not read the ''performing service'' language in section 206(a)(2)(A) as limiting the discrimination protection of USERRA to only those employees who are currently serving in the uniformed services. Rather, we interpret the phrase ''performing service'' in this context to refer to covered employees who have some form of military status (i.e., those who have performed service or who have applied or have an obligation to perform military service, as well as those who are currently members of or who are serving in the uniformed services) as distinguished from covered employees who do not have this military status.

This application of the phrase ''performing service'' is supported by several indicia of Congressional intent. First, section 206(a)(2)(A) prohibits discrimination against eligible employees ''within the meaning of'' subsection (a) of section 4311 of title 38, which states:

> A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

Most, if not all, of these protections would be lost if the phrase ''performing service'' were applied to exclude covered employees who are not currently performing service at the moment of the alleged violation. It would vitiate the reemployment rights under USERRA because employees would lose their statutory rights at the moment of discharge, whether honorable or not. Similarly, had Congress intended to so limit the coverage of USERRA, it could have said that ''any'' discharge was a disqualifying condition, not those that are other than honorable.

Congressional intent is also reflected in the USERRA statute itself, passed in 1994,

which states, ''It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.'' 38 USC §4301(b). A narrow application of the phrase ''performing service'' would be directly contrary to this statement of the sense of Congress.

Finally, we note that after the CAA was enacted, Congress enacted the VEOA and thereby granted certain preferences in hiring and retention during layoffs to *all* covered employees who are ''veterans'' as defined in 5 U.S.C. §2108, or any superseding legislation. We conclude that Congress intended a broad application of the phrase ''performing service'' so that covered employees who will perform or have performed service are also protected against discrimination and the improper denial of reemployment or benefits.

In light of the above, the Board has found good cause to modify the Department of Labor's definition of ''eligible employee.'' Further, in order to avoid any confusion as to the application of the regulations to ''eligible'' employees, the Board has made the appropriate editorial changes throughout the adopted regulations.

Other Definitions

Section 1002.5 contains the definitions used in the regulations. Several commenters recommended that some of the definitions in this section be edited to be consistent with the CAA. Where appropriate, the Board has made those changes. One specific change was the substitution of ''Capitol Guide Service and Capitol Guide Board'' with ''Office of Congressional Accessibility Services,'' in light of Congress adopting PL 100–437 on October 20, 2008. The Board has modified its regulations to reflect this change in §1002.5(e)(3) in all versions and in §1002.5(k)(1) in the ''C'' version.

Section 1002.5(i) defines an employee of the House of Representatives. CHA noted that because there may be some joint employees of the House and Senate, the definition of an employee of the House of Representatives should also include individuals employed by the Senate. We agree and have made the necessary revisions.

Section 1002.5(k) defines employing office. CHA commented that the definition in §1002.5(k)(4) was broader than the definition of ''employing office'' in section 101(9) of the CAA. We note that during the rulemaking procedures for VEOA, the Board determined that in view of the selection process for certain Senate employees, the words ''or directed'' would be added to the definition of ''covered employee'' to include any employee who is hired at the direction of a Senator, but whose appointment form is signed by an officer of either House of Congress. Although we included such language in the proposed rules on USERRA, it appears that this language would be overreaching for the House and other employing offices. As the House has different methods of making appointments and selections, this language is unnecessary and may create confusion given the practices of the House. Accordingly, the Board has deleted this provision from the House and other employing offices version, but will include it in the Senate version.

Section 1002.5(l) defines health plan. The Capitol Police recommended that the language in the definition of health care plans be limited to the Federal Employees Health Benefits (FEHB) program. As discussed more fully below, the Board is mandated to follow, as closely as possible, the regulations applied to the executive branch. In view of the fact that the DOL regulations apply to federal employees in the executive branch who are also only covered under the FEHB Program, the Board finds that there is no good cause to limit the definition.

Section 1002.5(q) defines seniority. The Capitol Police also recommended that this definition of seniority be deleted because of potential conflict with definitions of seniority in various collective bargaining agreements. The Board has determined that there is no good cause for such a change. The definition in the adopted regulations is not limiting and is consistent with section 4316 of USERRA. Further, as DOL indicated in its notice to the final USERRA regulations, section 4316(a) of USERRA is not a statutory mandate to impose seniority systems on employers. Rather, USERRA requires only that those employers who provide benefits based on seniority restore the returning service member to his or her proper place on the seniority ladder. Because each employing office defines and determines how seniority is to be applied, the definition of seniority in the adopted regulations should not conflict with collective bargaining agreements.

Section 1002.5(s) defines undue hardship. The CHA has noted that in setting out the standards for considering when an action might require significant difficulty or expense, the proposed regulations did not include the language from §1002.5(n)(2) of the DOL's regulations. In the DOL's regulations, section 1002.5(n)(2) provides that an action may be considered to be an undue hardship if it requires significant difficulty or expense when considered in light of: the overall financial resources of the *facility or facilities* involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility. Section 1002.5(s)(2) of the proposed regulations similarly referred to the overall financial resources of the *employing office*. However, in view of the fact that employing offices also may have multiple facilities, the Board agrees with the CHA comments and finds that there is no good cause to delete what was §1002.5(n)(2) of the DOL regulations. Therefore, what was section 1002.5(n)(2) of the DOL regulations has been included in the adopted regulations as section 1002.5(s)(2) and subsequent sections have been renumbered accordingly.

The Relationship between USERRA and Other Laws, Contracts and Practices

Section 1002.7 states that USERRA supersedes any state and local law, contract, or policy that reduces or limits any rights or benefits provided by USERRA, but does not supersede those provisions that are more beneficial. Senate Employment Counsel commented that reference to the fact that USERRA supersedes any state and local laws is superfluous and does not apply to legislative offices. Further, Counsel recommended that the section referring to the fact that USERRA does not supersede more beneficial state or local laws be omitted. The Board acknowledges that state and local laws do not apply to federal employees or the employing offices covered under the CAA. Therefore, in order to avoid any confusion, the Board has made the appropriate changes.

Anti-Discrimination and Anti-Retaliation Provisions

As a general comment, the Capitol Police raised questions about the Board's reference in the notice to *Britton v. Office of the Architect of the Capitol*. The Capitol Police maintains that *Britton* is not applicable to section 4311(a) or (b) and that the USERRA regulations should not be changed to include substantive regulations under the CAA. The Board notes that the reference to the *Britton* case and retaliation under section 208 of the CAA is merely explanatory and not a part of the substantive regulations. In the NPR, there was a typographical error. The correct statement is that the Board does not propose a particular standard for claims of discrimination or retaliation brought by eligible employees under section 206. Any discussion referring to Section 206 retaliation is for explicative purposes only.

Section 1002.20, as set out in the proposed regulations, discussed the extent of the coverage of USERRA's prohibitions against discrimination and retaliation. Several commenters noted that section 1002.20 and 1002.21 were confusing and did not clearly differentiate discrimination and retaliation protections as applied by section 206 and section 208 of the CAA. The Board agrees and has modified section 1002.20 and replaced section 1002.21 with a new section to reflect that USERRA protects eligible employees in all positions with covered employing offices. Thus, because section 206 of the CAA only covers ''eligible employees'' as defined in section 1002.5(f), ''covered employees'' would only be protected by the anti-retaliation provisions under section 208 of the CAA.

Additionally, in its comments, the Capitol Police asked why the numbering of section 1002.20 and 1002.21 was reversed and why section 1002.22 covering the burden of proving discrimination or retaliation was excluded. The Board notes that it had good cause to delete section 1002.22 as Congress specifically did not adopt the ''but for'' test (38 U.S.C §4311 (c)(1) and (2)) and therefore it was confusing and unnecessary to include this provision. In view of the revisions to section 1002.20 and 1002.21 noted above, the Board has kept the order as it was in the proposed regulations to be more consistent with these edits.

Eligibility for Reemployment

As a general comment, the CHA noted that with respect to employees in the House, the statement in the NPR that ''it is not permitted for an employee to work for a Member office and a Committee at the same time'' is incorrect. Although this statement is not part of the substantive regulations, where there are variations in the employment requirements of different employing offices, the Board has made the necessary changes to each of the versions of the adopted regulations.

Section 1002.32 sets out the criteria that an employee must meet to be eligible under USERRA for reemployment after service in the uniformed services. The CHA recommended that this section be changed to be consistent with the definition of eligible employee in section 206(a)(2)(A) of the CAA, and for clarity as applied to individual employing offices that may cease to exist while an eligible employee is performing service. The Board agrees and has changed the House and Senate versions to reflect that generally, if an eligible employee is absent from a position in an employing office by reason of service in the uniformed services, he or she will be eligible for employment in the same employing office if that employing office continues to exist at such time.

Section 1002.34 of the proposed regulations established that USERRA applies to all covered employing offices of the legislative branch as defined in Subpart A, §1002.5(e). Both the Capitol Police and Senate Employment Counsel commented that the definition of ''employing office'' should be changed to track the CAA, rather than the definition in the proposed regulations. Thus, Counsel notes that any regulation the OCWR issues for an ''employing office'' should track 2 U.S.C. §1301(a)(9), and include the General Accounting Office and Library of Congress, as required under 2 U.S.C. §1316(a)(2)(C). The Board agrees and has changed the definition to more closely follow the CAA.

Section 1002.40 states that in protecting against discrimination in initial hiring decisions, an employing office need not actually

employ an individual to be his or her employer. The CHA commented that it is not correct to say that ''[a]n employing office need not actually employ an individual to be his or her 'employer.' '' The CHA noted that while the result is the same—an applicant who is otherwise an eligible employee cannot be discriminated against in initial employment based on his or her performing service in the uniformed service—to say that the employing office is his or her employer is incorrect. The Board agrees and has made the change to reflect that while an employing office may not technically be the ''employer'' of an applicant, the result is the same—the employing office is *liable* under the Act if it engages in discrimination against an applicant based on his or her performing service in the uniformed service.

Section 1002.120 allows an employee to seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. The proposed regulations stated that such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. The CHA has noted that because employees of the House are ''at-will,'' reference to termination and/or discipline for ''cause'' in this section is inapplicable and could be confusing. While the Board recognizes that employees of the House are ''at-will,'' the same issues raised by the CHA can apply to many executive branch and private sector employees, as well. In view of the fact that the DOL regulations contain the same provision, notwithstanding the different employment arrangements in the private sector and executive branch agencies, the Board finds no good cause to make the change.

Health and Pension Plan Coverage

USERRA ensures that eligible employees are provided with health and pension plan coverage on a continuing basis in certain circumstances and reinstatement of coverage upon reemployment. All of the commenters raised concerns over the inclusion of provisions concerning health and pension plan benefits and asked that these provisions be withdrawn or limited specifically to the specific health and pension plans covering federal employees. For example, the CHA notes that House employing offices do not provide health or retirement benefits to their employees and do not pay or administer contributions and/or premiums for such plans. Similarly, Senate Employment Counsel explained that while employees of Senate employing offices are entitled to health plan coverage and pension benefits under the FEHB and Civil Service Retirement System (CSRS) or the Federal Employment Retirement System (FERS), their respective employing offices do not provide the ''employer contribution'' for such coverage and do not determine when such coverage starts or is reinstated or any terms or conditions of the coverage. Moreover, while the Senate appropriates monies for any agency contribution to such plans, these contributions do not come from the monies appropriated to individual employing offices.

The Board recognizes that the role of the Senate and House employing offices in administering health and pension plans is somewhat attenuated. With the caveat in mind that it is the U.S. Office of Personnel Management that controls not only federal employee health plans, but pension plans as well, the Board nonetheless does not find good cause to exclude these provisions from the adopted regulations. In support of this, the Board notes that the DOL regulations cover federal employees in the executive branch who are also covered under the FEHB, CSRS and FERS. Moreover, USERRA itself states in section 4318 that a right provided under any Federal or State law governing pension benefits for governmental employees (except for benefits under the Thrift Savings Plan) is covered. The Board is not aware of every employment relationship in the legislative branch and there is always the possibility that there may be situations where employees are not covered under the FEHB or CSRS/FERS, or may be covered under craft union or multi-employer plans. The Board further notes that to the extent that an employing office does not control nor is responsible for assuring that eligible employees are properly covered under health and pension plans, these provisions would not apply. Although employing offices may not have direct control over health and pension plans, they are responsible for ensuring that eligible employees are covered by facilitating or requesting that the necessary contribution or funding is made. Rather than deleting sections of the regulations, the Board has revised the regulations to reflect the responsibility of the employing offices and where appropriate, has made changes to reflect that while employing agencies may not have control over the plans, they do have some responsibility in assuring that eligible employees are covered as required under USERRA.

Protection Against Discharge

Section 1002.247 protects an employee against discharge. Rather than state that a discharge except for cause is prohibited if an employee's most recent period of service was for more than 30 days, the proposed regulations stated that, because legislative employees are at will, a discharge without cause could create a rebuttable presumption of a violation. In its comments, the CHA notes that in modifying this section, the explanation regarding the discharge of a returning employee was unclear. The Board agrees that there is no ''good cause'' for making the revisions originally contained in the proposed regulations and has changed this section to be consistent with DOL regulations.

Enforcement of Rights and Benefits Against an Employing Office

Section 1002.303 requires that employees file a claim form with OCWR before making an election between requesting an administrative hearing or filing a civil action in Federal district court. The proposed regulations contained language that provided for ''covered'' rather than ''eligible'' employees to bring claims under USERRA to the OCWR.

The CHA commented that to be consistent with section 206(a)(2)(A) of the CAA, this provision should be modified to make clear that only ''eligible employees'' may bring claims under section 206. The Board agrees and because only eligible employees are covered under section 206 discrimination and retaliation provisions, this section has been modified.

Section 1002.312 provides for the various remedies that may be awarded for violations of USERRA, including liquidated damages. The CHA commented that because of a technical error in the CAA (a reference to section ''4323(c)'' rather than ''4323(d)''), there is no statutory authority to provide for liquidated damages remedies under USERRA. In its notice of rulemaking, the Board noted the same error. Congress subsequently corrected this typographical error by way of the adoption of the CAA Reform Act, making clear its intent that the liquidated damages provision of USERRA be applied under the CAA.

Under section 1002.310 and 1002.314 of the proposed regulations, respectively, fees and court costs may not be charged against individuals claiming rights under the CAA and courts and/or hearing officers may use their equity powers in actions or proceedings under the Act. The CHA commented that because section 1002.314 and the first sentence of section 1002.310 are based on sections of USERRA that are not incorporated by the CAA (sections 4323(e) and 4323(h) respectively), these provisions should be deleted from the adopted regulations. The Board has reviewed these comments and while we would find that, notwithstanding any ''technical'' error, the CAA does incorporate the remedies set out in section 1002.314 (a)–(c), we agree that the CAA does not include the remedies articulated in sections 4323(e) and 4323(h) of USERRA. As the first sentence in section 1002.310 of the proposed regulations does appear to mirror section 4323(h) of USERRA and section 002.314 of the proposed regulations similarly mirrors section 4323(e), in order to avoid any confusion, the Board has found good cause to delete these provisions. The Board has retained the part of section 1002.310 pertaining to the awarding of fees and costs. As discussed in the NPR, the Board found that the DOL regulations permitting an award of fees and court costs for an individual who has obtained counsel and prevailed in his or her claim against the employer was consistent with section 225(a) of the CAA, permitting a prevailing covered employee to be awarded reasonable fees and costs. To be more fully consistent with the CAA, the Board has kept its modification of the language removing the requirement that the individual retain private counsel as a condition of such an award.

Text of USERRA Regulations
"H" Version

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix ''H.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?
§ 1002.2 Is USERRA a new law?
§ 1002.3 When did USERRA become effective?
§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?
§ 1002.5 What definitions apply to these USERRA regulations?
§ 1002.6 What types of service in the uniformed services are covered by USERRA?
§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan

coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Member of the House of Representatives; (2) a committee of the House of Representatives or a joint committee of the House of Representatives and the Senate (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.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military

training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

§ 1002.19 What activity is protected from employer retaliation by USERRA?

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

§ 1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

§ 1002.60 Does USERRA cover an individual attending a military service academy?

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

§ 1002.116 Is the time period for reporting back to an employing office extended if

the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

§ 1002.118 Is an application for reemployment required to be in any particular form?

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

§ 1002.136 Who determines the characterization of service?

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office, if that employing office continues to exist at such time, by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in §§1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in §1002.139. The employment position to which the eligible employee is entitled is described in §§1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and

such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his

or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at § 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as

characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in §1002.5(s) and discussed in §1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during,

the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in § 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in § 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to § 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by § 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in § 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

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PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay

that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in §§ 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in § 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in §§ 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period

of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in § 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated,

or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See § 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or

she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5(e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"S" Version

When approved by the Senate for the Senate, these regulations will have the prefix ''S.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?

§ 1002.2 Is USERRA a new law?

§ 1002.3 When did USERRA become effective?

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

§ 1002.5 What definitions apply to these USERRA regulations?

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years

had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Senator; (2) a committee of the Senate or a joint committee of the House of Representatives and the Senate; (3) any other office headed by a person with the final authority to appoint, or be directed by a Member of Congress to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the Senate.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office

can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?
§ 1002.19 What activity is protected from employer retaliation by USERRA?
§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?
§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C—Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?
§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?
§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?
§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?
§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?
§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?
§ 1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"
§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"
§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"
§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"
§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"
§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"
§ 1002.60 Does USERRA cover an individual attending a military service academy?
§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?
§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?
§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?
§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?
§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?
§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?
§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?
§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?
§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?
§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?
§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?
§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?
§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?
§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?
§ 1002.118 Is an application for reemployment required to be in any particular form?
§ 1002.119 To whom must the eligible employee submit the application for reemployment?
§ 1002.120 If the eligible employee seeks or obtains employment with an employer

other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

§ 1002.136 Who determines the characterization of service?

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office, if that employing office continues to exist at such time, by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status.

It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(A) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later

than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the

service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in section 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in section 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to section 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by section 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in section 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

PROMPT EMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

§ 1002.181 How is "prompt reemployment" defined?

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

§ 1002.192 How is the specific reemployment position determined?

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

§ 1002.195 What other factors can determine the reemployment position?

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

§ 1002.211 Does USERRA require the employing office to use a seniority system?

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

§ 1002.248 What constitutes cause for discharge under USERRA?

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

§ 1002.260 What pension benefit plans are covered under USERRA?

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of

service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together

with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a

pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"C" Version

When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix ''C.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?

§ 1002.2 Is USERRA a new law?

§ 1002.3 When did USERRA become effective?

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

§ 1002.5 What definitions apply to these USERRA regulations?

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory

provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) Act or USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former 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 Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) Employee of the Capitol Police includes any member or officer of the Capitol Police.

(i) Employee of the House of Representatives includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer 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 (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the Office of Congressional Accessibility Services; (2) the Capitol Police Board; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Government Accountability Office; (7) the Library of Congress; or (8) the Office of Congressional Workplace Rights.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter

that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

§ 1002.19 What activity is protected from employer retaliation by USERRA?

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

§ 1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

§ 1002.60 Does USERRA cover an individual attending a military service academy?

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

§ 1002.118 Is an application for reemployment required to be in any particular form?

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

§ 1002.136 Who determines the characterization of service?

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for

training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the

uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters)

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If

it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office

during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan

sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in section 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in section 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to section 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by section 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in section 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

§ 1002.181 How is "prompt reemployment" defined?

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

§ 1002.192 How is the specific reemployment position determined?

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

§ 1002.195 What other factors can determine the reemployment position?

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

§ 1002.211 Does USERRA require the employing office to use a seniority system?

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

PROTECTION AGAINST DISCHARGE

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PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a

skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more non-essential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases.

However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause —

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work

or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Make-up contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the

employee would have received but for the period of uniformed service.

(b)(1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(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 USERRA. 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) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

FIRE GRANTS AND SAFETY ACT

Mr. DURBIN. Mr. President, this week, the Senate will consider legislation to protect and support firefighters across the country: the Fire Grants and Safety Act.

Every day, our Nation's bravest run headfirst toward danger to extinguish fires and defend our communities. And they do it without a moment's hesitation—no matter the risks they face. We saw that last week, when a 2-day chemical fire raged at a plastics recycling plant in Richmond, IN, forcing thousands of people to evacuate. Firefighters worked around the clock, while inhaling toxic plumes, to battle the flames and protect families. This was just weeks after firefighters in East Palestine, OH, responded to a similar crisis, when a train carrying toxic chemicals derailed and exploded into a raging ball of fire.

But it is not only huge, headline-making fires that expose firefighters to dangerous pollutants; it is nearly every household fire, as well. The No. 1 line-of-duty cause of death for firefighters is occupational cancer from toxic exposure. And yet fire departments still lack critical equipment—like self-contained breathing apparatuses—that protect firefighters from toxic gases. Even when departments do have this gear on-hand, it can be dangerously outdated. In many cases, this equipment is nearing—or past—its expiration date, oftentimes by 10 years or more.

Before the recess, the Senate voted 96–0 to advance the Fire Grants and Safety Act, which would help fire departments obtain updated, lifesaving equipment. It would reauthorize two grant programs through 2030: the AFG Program and the SAFER Program.

Whether career, volunteer, or combination fire departments, AFG helps ensure that they have the resources they need to train and equip personnel. And SAFER helps with hiring and staffing to ensure 24/7 community protection. In the history of these programs, AFG has provided $8.1 billion to fire departments, and SAFER has provided $5.2 billion. We need to pass this bill before these programs expire on September 30, so our fire departments have the resources and personnel they need to keep our communities safe.

150TH ANNIVERSARY OF REID'S ORCHARD

Mr. MCCONNELL. Mr. President, I would like to recognize a beloved family business, native to Kentucky, that celebrates its 150th anniversary this year. Reid's Orchard started in a similar fashion to most entrepreneurial success stories in this country: an immigrant who journeyed to America in search of a better life for himself and his family. Allan Reid left his little village in Scotland in 1873, setting up shop in New York City with his two brothers in the tobacco industry. Allan started out bookkeeping, but the young and ambitious Scot quickly realized that it wasn't bookkeeping or tobacco that interested him, it was

peaches, which he found wildly outpaced the quality of fruit available back in Europe.

Allan soon left New York City to set up a peach and apple orchard in Daviess County, KY—where the business is still run today. His orchard quickly became a well-run enterprise and a leader in agricultural production and technology. In admirable fashion, Allan gave back to his community in more ways than just his delicious fruit. This peach pioneer would go on to serve two terms as a Kentucky State Representative and play an instrumental role in the construction and expansion of roads throughout this region of the Commonwealth. Allan's sons, Robert Reid, Jr., and John, would later join the family business with this same sense of community until Allan's great-grandson, Billy, would enter the business and form Reid's Orchard, as it is known today.

Since taking the helm, Billy has brought the orchard to new heights, expanding his family's business into a successful year-round operation, a popular community-gathering point, and a local staple of Owensboro. Today, Reid's Orchard caters to Kentuckians across the Commonwealth, offering a wide array of delicious produce and seasonal favorites that include apples, cider, strawberries, flowers, pies, pumpkins, and my personal favorite, peaches. My staff will tell you, amusingly, that peach-picking season is a highly anticipated event for me. Every August, I look forward to sampling Billy's peaches.

To the delight of many, the orchard's success has allowed the family to expand beyond its farm business. Each year, the orchard puts on an annual summer festival, hosting some of country music's biggest names—an impressive feat for a family-run business in Western Kentucky and a further testament to Reid's widespread popularity. For 37 years straight, the orchard would also host its popular Apple Festival. In fact, this festival is so popular locally that the Owensboro community plans to carry on the tradition each fall.

When it is not hosting popular community events, Reid's Orchard regularly welcomes families who have traveled far and wide to pick produce in the orchard, learn about farm life, and let their kids roam free across its 250 acres.

Billy's impressive stewardship of the family business and commitment to his local community have earned him the admiration of Owensboro locals, as well as Kentuckians across the Commonwealth. I am proud to call Billy a longtime friend, a friendship that extends beyond his delicious peach deliveries and spans over 20 years.

From Allan Reid's early love for peaches to Billy's thoughtful expansion of his great-grandfather's legacy, the story of Reid's Orchard has been defined by hard work and ingenuity. It is an American story, a story that renews our gratitude for this Nation, its opportunity, and its promise.

On behalf of the Senate, I would like to recognize the Reid family for their countless contributions to the Bluegrass, and congratulate Reid's Orchard for 150 years in operation of the American Dream.

VOTE EXPLANATION

Mr. HEINRICH. Mr. President, on April 17, 2023, I was unavoidably absent for rollcall vote No. 83. My absence was due to a family commitment that could not be moved. Had I been present, I would have voted yea on vote No. 83.

RECOGNIZING THE BOYS AND GIRLS CLUB OF DOUGLAS

Mr. BARRASSO. Mr. President, I rise today to celebrate the tremendous service provided by the Boys and Girls Club of Douglas, WY.

On April 22, 2023, the Boys and Girls Club of Douglas will host its ninth annual Commit to Kids fundraising event. Douglas Mayor Kim Pexton will be the emcee. Former Police Chief Ron Casalenda is the live auctioneer. Esther Martin of Cheyenne, the Wyoming Boys and Girls Club 2023 State Youth of the Year, will also speak.

For over 20 years, the Boys and Girls Club of Douglas has made a positive difference in the lives of children in Converse County. Every day, the Club fulfills its mission ''to inspire all youth, especially those who need us the most.'' The Club strives to help young people reach their full potential as productive, responsible, and caring citizens.

In September 2002, the Boys and Girls Club started meeting at a local primary school. With an increase in membership, they then relocated to the Douglas Roller Skating Rink. The need for a dedicated facility became clear. In 2020, the dream of their own building was realized.

The Club's new facility, located at 802 Riverbend Drive, has over 13,000 square feet. The Club successfully funded the innovative new space primarily with donations and private partnership funds. Designed with the local youth in mind, the building provides a safe, nurturing, and inspiring space to develop and learn. There is also administrative space, a teen center, an arts and crafts area, tech room, game area, a kitchen, and a gymnasium with climbing wall.

The Club serves 300 youth, ages 5–18, by focusing on three priority outcomes: academic success, good character and citizenship, and healthy lifestyles. Club members participate in afterschool, summer, and teen programs with academic, career development, character and leadership, sports and recreation, and homeschool curricula. Meals are provided for all members who need them. During the Covid-19 pandemic, many kids fell behind in their schoolwork. With the Club's reading program, students were able to get back on track. Every August, there is no better place to be than the Wyoming State Fair Parade in Douglas. I look forward to seeing the Boys and Girls Club float, along with the bright and engaged faces of its members.

Never losing sight of its values, volunteers, staff, and board members remain dedicated to meeting the needs of children as they grow into young adults. Today, the Club staff and board members include:

Jay Butler, Board Chairman
Travis Wells, Board Vice-Chair
Lindsey Hanks, Board Secretary
Catherine Nicholas, Board Treasurer
Carl Kosters, Board Member
Joe Schell, Board Member
Paige Rider, Board Member
Shawn Wilde, Board Member
Todde Moore, Board Member
Joe Burke, Chief Executive Officer
Robert Ricks, Unit Director
Carrise Moon, Special Programs Coordinator
Amy Lolley, Grants Manager/Marketing Specialist
Amy Rudloff, Bookkeeper
Tania Malone, Office Administrator
Heidi Toone, Kitchen Manager
Brendon Amble, Health & Wellness Specialist
Addy Sexson, Life Skills Specialist
Holly Winters, STEM Specialist
Baylea Senger, Art Specialist
Whitney Tomlinson, Teen & Workforce Specialist
Taylor Ward, Youth Development Professional
Zoey Redfern, Youth Development Professional
Katelynn Hill, Youth Development Professional
Hesston Haskins, Youth Development Professional

A special thank you to board chairman Jay Butler, along with his wife Linda, who provided a matching gift of $100,000 in honor of this event. All funds raised will go to current Club operations.

It is an honor for me to rise in recognition of the great work done by the Boys and Girls Club of Douglas, WY. The Club demonstrates how important it is to invest our time, experience, and resources in the children of our communities. Bobbi joins me in extending our very best wishes.

ADDITIONAL STATEMENTS

REMEMBERING RALPH ''TEDDY'' BROWN, SR.

• Mr. BLUMENTHAL. Mr. President, I rise today with a heavy heart to pay tribute to Ralph ''Teddy'' Brown, Sr., a dedicated police officer, community leader, and friend to many. Sadly, Mr. Brown passed away on March 14, 2023, at the age of 82. He will be remembered for his commitment to his country and community of West Haven, CT, and his love for his family.

Born in Ansonia, CT, Teddy served in the U.S. Air Force and was stationed in Washington State. It was there he met Carroll, who would become his wife of

65 years. After Teddy's military service ended, the Browns moved to West Haven, CT, where they have been deeply enmeshed in the community for over six decades.

In 1977, at the age of 37, Teddy made history as one of the first three Black police officers in the city of West Haven. He ably served the department for 28 years, retiring as a detective sergeant. On the force, Teddy was known as a positive role model for all, particularly for West Haven's youngest residents.

After his retirement, Teddy continued his outstanding legacy of community service. He served as commissioner on West Haven's Parks and Recreation Board and president of the West Haven Library Board. He continued to elevate future generations by coaching youth basketball.

Teddy was also one of the strongest supporters of the West Haven Black Coalition, founded by his wife Carroll in 1986. This long-standing community organization has disbursed more than $200,000 in scholarships to students, in recognition of their academic achievements, leadership skills, and community service. For the past 37 years, Teddy was a strong advocate for the coalition, contributing financially to the scholarships and supporting Carroll's great work. The West Haven Black Coalition is a remarkable testament to the Browns' dedication to their community.

Through his decades of service as a law enforcement officer and a civic leader, Teddy left a lasting impact on everyone around him. But he will be remembered first and foremost as a man who loved his family. He led by example as a mentor and a role model to countless young people.

My wife Cynthia and I extend our deepest sympathies to Teddy's family during this difficult time, particularly to his wife Carroll, his three sons, and his grandchildren. May their many wonderful memories of Teddy be a blessing. I hope my colleagues will join me in honoring Teddy's life and legacy, both large and lasting.●

75TH ANNIVERSARY OF SKY TAVERN

● Ms. CORTEZ MASTO. Mr. President, I rise today to recognize the 75th anniversary of Sky Tavern. In 1948, determined to help young Nevadans learn how to ski, Marcelle ''Marce'' Herz filled her station wagon up with kids and drove up the Mt. Rose Highway, fit them with equipment and gear, and began teaching them about the sport and the environment around them. Ms. Herz's efforts eventually led to the creation of the Sky Tavern's Jr. Ski Program, which has taught over 100,000 Reno area youth how to ski and snowboard and continues to serve over 2,000 children each winter.

Today, Sky Tavern is a nonprofit organization that provides summer and winter outdoor sports training, competitions, recreation, and events that are open to all in the region. Sky Tavern's goal and mission is to give as many youth as possible the opportunity to engage in outdoor sports and recreation—no matter their financial or physical abilities—providing lifelong experiences that promote personal growth and responsibility. Operated by a volunteer workforce, Sky Tavern is a shining example of what is possible through strong community engagement. From the instructors down to the lift operators, nearly everyone helping Sky Tavern achieve its mission is taking time out of their personal lives to do so. At its core, Sky Tavern runs on the spirit of giving back, while also striving to fulfill founder Marce Herz's goal of helping any child learn to ski and have fun doing it.

There are many examples of how Sky Tavern has helped people grow through their love of the outdoors. Sky Tavern Ski Program alumni include Olympians such as three-time medalist David Wise, Lane Spina, and Tamara McKinney. Sky Tavern's promise to give opportunities to anyone, regardless of their physical or financial ability is the cornerstone that they operate on. The specially trained volunteer staff in their adaptive program are dedicated to helping children with disabilities learn how to ski and enjoy the outdoors. That dedication has yielded results; several Paralympians, including Gold-medalist Ricci Kilgore can trace their roots back to Sky Tavern.

Congratulations to Sky Tavern on its 75th anniversary. I look forward to seeing their continued impact on the lives of young people in Nevada.●

TRIBUTE TO COLONEL WILLIAM V. WENGER

● Mr. COTTON. Mr. President, it is my privilege to recognize the tremendous accomplishments of COL William V. Wenger on the occasion of his receipt of the Distinguished Eagle Scout Award from the Boy Scouts of America and the National Eagle Scout Association. Colonel Wenger has lived a life of honor, faith, and service. He is a patriot who has made America a safer and better nation.

Colonel Wenger served in the U.S. Army for more than 42 years, commanding American soldiers across the country and around the world. He served in the Gulf war, helped reestablish order in Los Angeles after the Rodney King riots, and provided military support to law enforcement after the 1994 Northridge earthquake.

In 2000, Colonel Wenger retired from the military, only to return to Active service after the September 11 terrorist attacks. He then volunteered for two tours of duty in both Iraq and Afghanistan, where he worked to bring stability, security, and the rule of law to lands haunted by terrorism. Among other contributions, he trained Iraqi and Afghan police and led counter-IED training efforts to save the lives of his fellow coalition soldiers and police.

Throughout his military career, Colonel Wenger demonstrated extraordinary tactical, strategic, combat advisory, and logistical leadership abilities. He consistently volunteered for difficult assignments, overcame daunting challenges, and relentlessly pursued excellence. He is precisely the kind of clear-eyed, tough minded, mission-oriented leader that every soldier should aspire to become.

In the civilian world, Colonel Wenger has earned distinction as a manager, trainer, author, business leader, and professor of business, history, and military science. He is husband to Robin D. Wenger and father to two sons, John Paul and Patrick.

He is also a committed philanthropist who participates in his local Kiwanis, Rotary Club, and Knights Templar, among other civic organizations. He is a U.S. Army Reserve ambassador and a leader of the Employer Support of the Guard and Reserve, which supports our Reserve servicemembers, their families, and their employers. The ESGR recently awarded Colonel Wenger its highest award, the prestigious James Roche Spirit of Volunteerism Award.

More than any other civic organization, however, Colonel Wenger has demonstrated an exceptional, lifelong commitment to the Boy Scouts of America. He joined the Boy Scouts in 1954 and earned his Eagle Scout Award in 1963. He has since served in senior positions in the organization, including being elected the chief of the Tribe of Tahquitz. While serving in Iraq and Afghanistan, he devoted much of his limited free time to support the development of the Boy Scouts and Girl Scouts in those nations. For his work, he will receive the highest honor bestowed by Scouting on April 23—an honor well earned.

A nation is only as good as its people. America is not made great by its geography or its founding documents alone. It is made great by the patriots who serve the Nation and make us proud when we look up and salute the American flag. It is made great by men who dedicate decades of their lives to protect this Nation in uniform, more than half a century to educating our youth to be ''physically strong, mentally awake, and morally straight,'' and who spend their later years teaching young adults about our Nation's history. In short, it is made great by men like Colonel Wenger.

On behalf of a grateful nation, I would like to thank Colonel Wenger for his contributions to our Republic.●

REMEMBERING IRMA CANTU ACOSTA

● Mr. PADILLA. Mr. President, I rise today to celebrate the life of Irma Cantu Acosta, a titan in Southern Californian real estate and a beloved wife, mother, and grandmother.

Irma grew up in Los Angeles after her parents, Tomasita Saenz Cantu and

Benjamin Cantu, moved their family from Texas to California in 1950. She graduated from Theodore Roosevelt High School and attended Stockton Bible College in Stockton, CA. But after only one semester, as her son Gary says, Irma and her high school sweetheart Ernie ''missed each other too much,'' and they chose to get married in 1962. Together, they had three children—Gary, Yvette and Daliah Lynn—before Irma started what would become a highly accomplished career in real estate.

Because of her intelligence and uncompromising drive, she quickly became an association executive for the Montebello Board of Realtors, where she would serve for 43 years. While there, she received numerous awards for both her personal and professional achievements, including Woman of the Year for her record in association management.

As a founding board member of the National Association of Hispanic Real Estate Professionals, she helped make the dream of homeownership possible for more Latinos. She served as a mentor to countless real estate professionals and business owners, providing guidance and care to the next generation of business leaders in Montebello.

Throughout our Nation's long and storied history, there have been leaders, allies, and advocates who have chosen not just to work hard and succeed in their chosen fields, but to turn around and help others achieve the American dream. Irma was one of those leaders. In the families she helped, the mentees she guided, and in her three strong, compassionate children, Irma kept that dream alive. What better gift to leave behind than hope for the next generation.

California's thoughts are with Irma's husband Ernie; her children Gary, Yvette, and Daliah Lynn; and all those who knew and loved her.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Kelly, one of his secretaries.

PRESIDENTIAL MESSAGE

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY THAT WAS ORIGINALLY DECLARED IN PROCLAMATION 10371 OF APRIL 21, 2022, WITH RESPECT TO THE RUSSIAN FEDERATION AND THE EMERGENCY AUTHORITY RELATING TO THE REGULATION OF THE ANCHORAGE AND MOVEMENT OF RUSSIAN-AFFILIATED VESSELS TO UNITED STATES PORTS—PM 8

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, within 90 days prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency declared in Proclamation 10371 of April 21, 2022, with respect to the Russian Federation and the emergency authority relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports, is to continue in effect beyond April 21, 2023.

The policies and actions of the Government of the Russian Federation to continue the premeditated, unjustified, unprovoked, and brutal war against Ukraine continue to constitute a national emergency by reason of a disturbance or threatened disturbance of international relations of the United States. Therefore, I have determined that it is necessary to continue the national emergency declared in Proclamation 10371.

JOSEPH R. BIDEN, Jr.
THE WHITE HOUSE, *April 18, 2023.*

MESSAGE FROM THE HOUSE

At 11:28 a.m., a message from the House of Representatives, delivered by Mrs. Alli, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1151. An act to hold the People's Republic of China accountable for the violation of United States airspace and sovereignty with its high-altitude surveillance balloon.

The message also announced that pursuant to section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a), and the order of the House of January 9, 2023, the Speaker appoints the following Member on the part of the House of Representatives to the Migratory Bird Conservation Commission: Mr. THOMPSON of California.

The message further announced that pursuant to 22 U.S.C. 3003, and the order of the House of January 9, 2023, the Speaker appoints the following Members on the part of the House of Representatives to the Commission on Security and Cooperation in Europe: Mr. COHEN of Tennessee, Mr. CLEAVER of Missouri, and Mr. VEASEY of Texas.

The message also announced that pursuant to 22 U.S.C. 1928a, and the order of the House of January 9, 2023, the Speaker appoints the following Members on the part of the House of Representatives to the United States Group of the NATO Parliamentary Assembly: Mr. CONNOLLY of Virginia, Ms. SÁNCHEZ of California, Mr. LARSEN of Washington, and Mr. BOYLE of Pennsylvania.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1151. An act to hold the People's Republic of China accountable for the violation of United States airspace and sovereignty with its high-altitude surveillance balloon; to the Committee on Foreign Relations.

MEASURES DISCHARGED PETITION

We, the undersigned Senators, in accordance with chapter 8 of title 5, United States Code, hereby direct that the Senate Committee on Veterans' Affairs be discharged from further consideration of S.J. Res. 10, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services'', and, further, that the joint resolution be immediately placed upon the Legislative Calendar under General Orders.

Tommy Tuberville, Roger F. Wicker, Mike Lee, Marsha Blackburn, Rick Scott, John Cornyn, Roger Marshall, Cynthia M. Lummis, Ted Cruz, Katie Boyd Britt, Kevin Cramer, Mike Crapo, Steve Daines, John Thune, Pete Ricketts, Joni K. Ernst, Rand Paul, Jerry Moran, Deb Fischer, John Kennedy, Mitch McConnell, James Lankford, Markwayne Mullin, Mike Rounds, Marco Rubio, James E. Risch, Todd Young, Tom Cotton, Eric Schmitt, Thom Tillis, Lindsey Graham.

MEASURES DISCHARGED

The following joint resolution was discharged from the Committee on Veterans' Affairs, by petition, pursuant to 5 U.S.C. 802(c), and placed on the calendar:

S.J. Res. 10. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services''.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–905. A communication from the Director, Naval Reactors, Naval Nuclear Propulsion Program, transmitting, pursuant to law, the Naval Nuclear Propulsion Program's reports on environmental monitoring and radioactive waste disposal, radiation exposure, and occupational safety and health; to the Committee on Armed Services.

EC–906. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Privacy Act of 1974; Implementation'' (RIN0790–AL11) received in the Office of the President of the Senate on

March 28, 2023; to the Committee on Armed Services.

EC–907. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Personal Protective Equipment and Certain Items from Non-Allied Foreign Nations (DFARS Case 2022–D009)'' (RIN0750–AL60) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–908. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Treatment of Incurred Independent Research and Development Costs (DFARS Case 2017–D018)'' (RIN0750–AJ27) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–909. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Revision of Definition of 'Commercial Item' (DFARS Case 2018–D066)'' (RIN0750–AL60) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–910. A communication from the President of the United States, transmitting, pursuant to law, a report of the continuation of the national emergency with respect to specified harmful activities of the Government of the Russian Federation that was originally declared in Executive Order 14024 of April 15, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC–911. A communication from the President of the United States, transmitting, pursuant to law, a report on the continuation of the national emergency that was originally declared in Executive Order 13536 of April 12, 2010, with respect to Somalia; to the Committee on Banking, Housing, and Urban Affairs.

EC–912. A communication from the Chief of Staff of the Council of Economic Advisers, Executive Office of the President, transmitting, pursuant to law, a report relative to a vacancy in the position of Chair of the Council of Economic Advisers, Executive Office of the President, received during adjournment of the Senate in the Office of the President of the Senate on April 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–913. A communication from the Sanctions Regulations Advisor, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Belarus Sanctions Regulations'' received in the Office of the President of the Senate on April 17, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–914. A communication from the Associate General Counsel for Legislation and Regulations, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Reinstatement of HUD's Discriminatory Effects Standard'' (RIN2529–AB02) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–915. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13611 with respect to Yemen; to the Committee on Banking, Housing, and Urban Affairs.

EC–916. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13667 with respect to the Central African Republic; to the Committee on Banking, Housing, and Urban Affairs.

EC–917. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13338 with respect to Syria; to the Committee on Banking, Housing, and Urban Affairs .

EC–918. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13894 with respect to the situation in and in relation to Syria; to the Committee on Banking, Housing, and Urban Affairs.

EC–919. A communication from the Senior Congressional Liaison, Legal Division, Bureau of Consumer Financial Protection, transmitting, pursuant to law, a report entitled ''Agency Contact Information'' ; to the Committee on Banking, Housing, and Urban Affairs.

EC–920. A communication from the Acting Executive Director of Minority and Women Inclusion, Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the Office of the Comptroller's 2022 Office of Minority and Women Inclusion Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–921. A communication from the Chairman, Federal Financial Institutions Examination Council, transmitting, pursuant to law, the Council's 2022 Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–922. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 14046 with respect to Ethiopia; to the Committee on Banking, Housing, and Urban Affairs.

EC–923. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13224 with respect to persons who commit, threaten to commit, or support terrorism; to the Committee on Banking, Housing, and Urban Affairs.

EC–924. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 14024 with respect to specified harmful foreign activities of the Government of the Russian Federation; to the Committee on Banking, Housing, and Urban Affairs.

EC–925. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Increased Forty-Year Term for Loan Modifications'' (RIN2502–AJ59) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–926. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Adjustable Rate Mortgages: Transitioning from LIBOR to Alternate Indices'' (RIN2502–AJ51) received in the Office of the President of the Senate on March 20, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–927. A communication from the President and Chair of the Export-Import Bank, transmitting, pursuant to law, the Uniform Resource Locator (URL) for the Bank's Annual Performance Plan for fiscal year 2024, and the Annual Performance Report for fiscal year 2022; to the Committee on Banking, Housing, and Urban Affairs.

EC–928. A communication from the Acting Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Inflation Adjustment of Civil Monetary Penalties'' received in the Office of the President of the Senate on March 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–929. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13664 with respect to South Sudan; to the Committee on Banking, Housing, and Urban Affairs.

EC–930. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Increased Forty-Year Term for Loan Modifications'' (RIN2502–AJ59) received in the Office of the President of the Senate on March 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–931. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Test Procedure for Consumer Boilers'' (RIN1904–AE83) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Energy and Natural Resources.

EC–932. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps'' (RIN1904–AE42) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Energy and Natural Resources.

EC–933. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Test Procedure for Television Sets'' (RIN1904–AD70) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Energy and Natural Resources.

EC–934. A communication from the Principal Deputy Assistant Secretary for Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, a report entitled ''Seventh Biennial Report to Congress: Estimates of Natural Gas and Oil Reserves, Reserves Growth, and Undiscovered Resources in Federal and State Waters off the Coasts of Texas, Louisiana, Mississippi, and Alabama''; to the Committee on Energy and Natural Resources.

EC–935. A communication from the Administrator of the Environmental Protection

Agency, transmitting, pursuant to law, a report entitled ''Great Lakes Restoration Initiative Report''; to the Committee on Environment and Public Works.

EC–936. A communication from the Supervisor, Human Resources Management Division, Environmental Protection Agency, transmitting, pursuant to law, seven (7) reports relative to vacancies in the Environmental Protection Agency, received in the Office of the President of the Senate on April 17, 2023; to the Committee on Environment and Public Works.

EC–937. A communication from the Biologist of the Branch of Recovery and Conservation Planning, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Guam Kingfisher, of Sihek, on Palmyra Atoll, USA'' (RIN1018–BF61) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Environment and Public Works.

EC–938. A communication from the Chair of the United States Nuclear Regulatory Commission, transmitting, a response relative to Executive Order 14074, 'Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety'; to the Committee on Environment and Public Works.

EC–939. A communication from the Biologist of the Branch of Domestic Listing, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bog Buck Moth'' (RIN1018–BF69) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Environment and Public Works.

EC–940. A communication from the Biologist of the Branch of Domestic Listing, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Longsolid and Round Hickorynut and Designation of Critical Habitat'' (RIN1018–BD32) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Environment and Public Works.

EC–941. A communication from the Attorney-Advisor, Office of General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy for the position of Administrator, Federal Highway Administration, Department of Transportation, received during adjournment of the Senate in the Office of the President of the Senate on March 02, 2023; to the Committee on Environment and Public Works.

EC–942. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards'' (FRL No. 8670–02–OAR) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Environment and Public Works.

EC–943. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Michigan; Interim Final Determination To Stay and Defer Sanctions in the Detroit Sulfur Dioxide Nonattainment Area'' (FRL No. 10788–03–R5) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Environment and Public Works.

EC–944. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Wood Preserving Area Sources Technology Review; Technical Correction for Surface Coating of Wood Building Products'' (FRL No. 8473–03–OAR) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–945. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; North Dakota; Revisions to Permitting Rules; and Correction'' (FRL No. 8683–02–R8) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–946. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Missouri; Restriction of Visible Air Containment Emissions'' (FRL No. 10184–02–R7) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–947. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards; Correction'' (FRL No. 10209–02–OAR) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–948. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program; Diesel Opacity Cutpoints'' (FRL No. 10210–02–R2) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–949. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; California; Ventura County Air Pollution Control District'' (FRL No. 10294–02–R9) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–950. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Designation of Areas for Air Quality Planning Purposes; California; Coachella Valley Ozone Nonattainment Area; Reclassification to Extreme'' (FRL No. 10502–02–R9) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–951. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Georgia; Macon Area Limited Maintenance Plan for the 1997 9-Hour Ozone NAAQS'' (FRL No. 10510–02–R4) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–952. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Tennessee; Eastman Chemical Company Nitrogen Oxides SIP Call Alternative Monitoring'' (FRL No. 10541–02–R4) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–953. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Healthcare Fraud Prevention Partnership Report on Real-Time Analytics''; to the Committee on Finance.

EC–954. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting the first of several legislative proposals that support the President's Fiscal Year 2024 budget request for the Department of Homeland Security; to the Committee on Finance.

EC–955. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Treatment of certain nonfungible tokens as collectibles'' (Notice 2023–27) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Finance.

EC–956. A communication from the Assistant General Counsel, General Law, Ethics, and Regulation, Department of the Treasury, transmitting, pursuant to law, a report relative to a vacancy in the position of Commissioner of Internal Revenue, Department of Treasury received in the Office of the President of the Senate on March 29, 2023; to the Committee on Finance.

EC–957. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 45J Credit for Production of Electricity from Advanced Nuclear Power Facilities'' (Notice 2023–24) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Finance.

EC–958. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Procedure: Certified Professional Employer Organization Application and Maintenance'' (Rev. Proc. 2023–18) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Finance.

EC–959. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the intent to exercise the authorities under section 506(a)(1) of the FAA to provide military assistance to Ukraine, including for self-defense and border security operations; to the Committee on Foreign Relations.

EC–960. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled ''Determination Under Section 506(a)(1) of the Foreign Assistance

Act of 1961 (FAA) to Provide Military Assistance to Ukraine''; to the Committee on Foreign Relations.

EC–961. A communication from the Regulatory Policy Analyst, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medical Devices; Orthopedic Devices; Classification of Spinal Spheres for Use in Intervertebral Fusion Procedures'' (RIN0910–AI32) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Health, Education, Labor, and Pensions.

EC–962. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Scarlett's Sunshine on Sudden Unexpected Death Act''; to the Committee on Health, Education, Labor, and Pensions.

EC–963. A communication from the Regulatory Policy Analyst, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Mammography Quality Standards Act'' (RIN0910–AH04) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Health, Education, Labor, and Pensions.

EC–964. A communication from the Security Officer II of the Office of Senate Security, transmitting, pursuant to law, a report regarding Risk Management and Mitigation Plan (OSS–2023–0374); to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SCHATZ, from the Committee on Indian Affairs, without amendment:

S. 385. A bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes (Rept. No. 118–9).

By Mr. BROWN, from the Committee on Banking, Housing, and Urban Affairs:

Special Report entitled ''Report on the Activities of the Committee on Banking, Housing, and Urban Affairs of the United States Senate During the 117th Congress'' (Rept. No. 118–10).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. SINEMA (for herself and Mr. BRAUN):

S. 1172. A bill to amend title 28, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished to veterans in non-Department of Veterans Affairs facilities, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. WHITEHOUSE (for himself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. DURBIN, Mrs. FEINSTEIN, Ms. HIRONO, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MERKLEY, Mr. PADILLA, Mr. REED, Mr. SANDERS, Mr. VAN HOLLEN, and Ms. WARREN):

S. 1173. A bill to ensure high-income earners pay a fair share of Federal taxes; to the Committee on Finance.

By Mr. WHITEHOUSE:

S. 1174. A bill to amend the Internal Revenue Code of 1986 to increase funding for Social Security and Medicare; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself and Mr. CORNYN):

S. 1175. A bill to establish incentive pay for positions requiring specialized skills to combat fentanyl trafficking, and for other purposes; to the Committee on the Judiciary.

By Ms. BALDWIN (for herself, Mr. CASEY, Mr. MERKLEY, Mr. BENNET, Ms. DUCKWORTH, Ms. STABENOW, Mr. WHITEHOUSE, Mr. SCHATZ, Mr. HICKENLOOPER, Ms. HASSAN, Mr. HEINRICH, Mr. PADILLA, Mr. MARKEY, Ms. WARREN, Mr. REED, Mr. VAN HOLLEN, Mr. MENENDEZ, Mr. BLUMENTHAL, Mr. MURPHY, Mr. CARDIN, Mrs. MURRAY, Mr. WELCH, and Mr. SANDERS):

S. 1176. A bill to direct the Secretary of Labor to issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORNYN:

S. 1177. A bill to provide a taxpayer bill of rights for small businesses; to the Committee on Finance.

By Mr. SANDERS (for himself and Ms. WARREN):

S. 1178. A bill to amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes; to the Committee on Finance.

By Mr. RUBIO (for himself, Ms. ROSEN, Mr. CRAMER, and Mr. SCOTT of Florida):

S. 1179. A bill to provide for the restoration of legal rights for claimants under holocaust-era insurance policies; to the Committee on the Judiciary.

By Mr. RUBIO (for himself and Mr. SCOTT of Florida):

S. 1180. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for the authority to reimburse local governments or electric cooperatives for interest expenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1181. A bill to amend the Federal Deposit Insurance Act to improve financial stability, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 1182. A bill to amend the Public Health Service Act to increase the transparency and accountability of the drug discount program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. RUBIO (for himself and Ms. HASSAN):

S. 1183. A bill to prohibit discrimination on the basis of mental or physical disability in cases of organ transplants; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BLACKBURN (for herself, Mr. MARSHALL, Mr. TILLIS, Mr. BRAUN, Mr. RUBIO, and Mr. CRAMER):

S. 1184. A bill to direct the Comptroller General of the United States to conduct a study to evaluate the activities of sister city partnerships operating within the United States, and for other purposes; to the Committee on Foreign Relations.

By Mr. DAINES (for himself, Mr. BOOZMAN, Mr. BRAUN, Mr. WICKER, Mr. RISCH, Mr. CRAPO, Mrs. HYDE-SMITH, Mr. TILLIS, Mr. MARSHALL, Ms. LUMMIS, Mr. SCOTT of Florida, Mr. BARRASSO, Mr. RICKETTS, Mr. CRAMER, Mr. MULLIN, Mr. HOEVEN, Mr. SULLIVAN, Mrs. FISCHER, Mr. COTTON, Mr. THUNE, Mr. BUDD, Mrs. CAPITO, Mr. ROUNDS, Mr. HAWLEY, and Mr. TUBERVILLE):

S. 1185. A bill to prohibit the Secretary of the Interior and the Secretary of Agriculture from prohibiting the use of lead ammunition or tackle on certain Federal land or water under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MARKEY (for himself, Mr. MERKLEY, Ms. WARREN, Mr. MURPHY, Mr. VAN HOLLEN, Ms. SMITH, Mr. WELCH, and Mr. SANDERS):

S. 1186. A bill to restrict the first-use strike of nuclear weapons; to the Committee on Foreign Relations.

By Mrs. GILLIBRAND (for herself, Mr. BOOKER, Mr. PADILLA, Mr. MARKEY, Mr. SANDERS, Ms. WARREN, and Mr. MERKLEY):

S. 1187. A bill to establish the right to counsel, at Government expense for those who cannot afford counsel, for people facing removal; to the Committee on the Judiciary.

By Mr. LEE (for himself and Mr. SCOTT of Florida):

S. 1188. A bill to help individuals receiving assistance under the supplemental nutrition assistance program in obtaining self-sufficiency, to provide information on total spending on means-tested welfare programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOOKER (for himself, Ms. CORTEZ MASTO, Mr. MARKEY, Ms. WARREN, Mr. PADILLA, Mr. BLUMENTHAL, Mrs. MURRAY, Mr. MENENDEZ, Ms. DUCKWORTH, Ms. SMITH, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. DURBIN, Ms. STABENOW, Ms. ROSEN, Mr. SANDERS, Mr. BROWN, Mr. MERKLEY, and Ms. KLOBUCHAR):

S. Res. 159. A resolution recognizing the designation of the week of April 11 through April 17, 2023, as the sixth annual ''Black Maternal Health Week'' to bring national attention to the maternal health crisis in the United States and the importance of reducing maternal mortality and morbidity among Black women and birthing persons; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BLUMENTHAL (for himself and Mr. MURPHY):

S. Res. 160. A resolution commending and congratulating the University of Connecticut men's basketball team for winning the 2023 National Collegiate Athletic Association Men's Basketball Championship; considered and agreed to.

By Mr. KING (for himself, Mr. DAINES, Mr. PADILLA, Mr. CRAMER, Ms. CORTEZ MASTO, Mr. MARSHALL, Mr. REED, Mr. TILLIS, Mr. WYDEN, Mr. BARRASSO, Ms. HASSAN, Mrs. CAPITO, Mr. COONS, Mr. BUDD, Mr. KAINE, Mr. ROUNDS, Mr. BENNET, Mr. RUBIO, Ms. SINEMA, Ms. COLLINS, Mr. WARNER, Mrs. HYDE-SMITH, Mr. HEINRICH, Mr. WICKER, Mrs. MURRAY, Mr. GRAHAM, Mr. VAN HOLLEN, Mr. SCOTT of Florida, Mr. MARKEY, Mr. CASSIDY, Mr.

LUJÁN, Mr. HOEVEN, Ms. HIRONO, Mr. BRAUN, Mr. TESTER, Mr. BOOZMAN, Ms. BALDWIN, Mr. COTTON, Ms. WARREN, Mr. YOUNG, Mr. HICKENLOOPER, Mr. KENNEDY, Ms. CANTWELL, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. MURPHY, Ms. ROSEN, Mr. BLUMENTHAL, Mr. MANCHIN, Ms. DUCKWORTH, Mr. PETERS, Mrs. FEINSTEIN, Mr. CARPER, Mr. CARDIN, Mr. DURBIN, Ms. STABENOW, Mr. WELCH, Mrs. SHAHEEN, and Mr. SCOTT of South Carolina):

S. Res. 161. A resolution designating the week of April 22 through April 30, 2023, as ''National Park Week''; considered and agreed to.

By Mr. MANCHIN (for himself, Mr. WICKER, Mrs. CAPITO, Mr. HEINRICH, and Mr. GRASSLEY):

S. Res. 162. A resolution designating the week of April 17 through April 23, 2023, as ''National Osteopathic Medicine Week''; considered and agreed to.

By Ms. KLOBUCHAR (for herself and Mr. TUBERVILLE):

S. Res. 163. A resolution supporting the goals and ideals of National Public Safety Telecommunicators Week; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. DAINES, the name of the Senator from Missouri (Mr. HAWLEY) was added as a cosponsor of S. 16, a bill to prohibit the award of Federal funds to an institution of higher education that hosts or is affiliated with a student-based service site that provides abortion drugs or abortions to students of the institution or to employees of the institution or site, and for other purposes.

S. 26

At the request of Mr. HAGERTY, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 26, a bill to amend the Internal Revenue Code of 1986 to repeal the amendments made to reporting of third party network transactions by the American Rescue Plan Act of 2021.

S. 138

At the request of Mr. MERKLEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 138, a bill to amend the Tibetan Policy Act of 2002 to modify certain provisions of that Act.

S. 305

At the request of Mr. BLUMENTHAL, the names of the Senator from Texas (Mr. CRUZ), the Senator from California (Mr. PADILLA) and the Senator from Hawaii (Ms. HIRONO) were added as cosponsors of S. 305, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the United States Marine Corps, and to support programs at the Marine Corps Heritage Center.

S. 308

At the request of Mr. ROMNEY, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 308, a bill to end the treatment of the People's Republic of China as a developing nation.

S. 359

At the request of Mr. WHITEHOUSE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 359, a bill to amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

S. 380

At the request of Mr. RUBIO, the name of the Senator from Nebraska (Mr. RICKETTS) was added as a cosponsor of S. 380, a bill to amend title 18, United States Code, to punish the distribution of fentanyl resulting in death as felony murder.

S. 408

At the request of Mr. WHITEHOUSE, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 408, a bill to amend the Internal Revenue Code of 1986 to impose a windfall profits excise tax on crude oil and to rebate the tax collected back to individual taxpayers, and for other purposes.

S. 443

At the request of Mr. BROWN, the name of the Senator from Nevada (Ms. ROSEN) was added as a cosponsor of S. 443, a bill to treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

S. 503

At the request of Ms. ROSEN, her name was added as a cosponsor of S. 503, a bill to establish the Space National Guard.

S. 545

At the request of Ms. BALDWIN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 545, a bill to protect the rights of passengers with disabilities in air transportation, and for other purposes.

S. 592

At the request of Ms. STABENOW, the name of the Senator from Nevada (Ms. CORTEZ MASTO) was added as a cosponsor of S. 592, a bill to amend title 38, United States Code, to increase the mileage rate offered by the Department of Veterans Affairs through their Beneficiary Travel program for health related travel, and for other purposes.

S. 596

At the request of Mr. KAINE, the name of the Senator from Tennessee (Mr. HAGERTY) was added as a cosponsor of S. 596, a bill to amend the Internal Revenue Code of 1986 to make employers of spouses of military personnel eligible for the work opportunity credit.

S. 597

At the request of Mr. BROWN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 597, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 614

At the request of Mr. COTTON, the name of the Senator from Ohio (Mr. VANCE) was added as a cosponsor of S. 614, a bill to codify the temporary scheduling order for fentanyl-related substances by adding fentanyl-related substances to schedule I of the Controlled Substances Act.

S. 632

At the request of Mr. RISCH, the name of the Senator from North Carolina (Mr. BUDD) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require the Bureau of Alcohol, Tobacco, Firearms and Explosives to establish an administrative relief process for individuals whose applications for transfer and registration of a firearm were denied, and for other purposes.

S. 657

At the request of Mr. CARDIN, the names of the Senator from Delaware (Mr. COONS), the Senator from Nevada (Ms. CORTEZ MASTO) and the Senator from West Virginia (Mrs. CAPITO) were added as cosponsors of S. 657, a bill to amend the Internal Revenue Code of 1986 to establish a tax credit for neighborhood revitalization, and for other purposes.

S. 789

At the request of Mr. VAN HOLLEN, the names of the Senator from Connecticut (Mr. MURPHY) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 789, a bill to require the Secretary of the Treasury to mint a coin in recognition of the 100th anniversary of the United States Foreign Service and its contribution to United States diplomacy.

S. 841

At the request of Mr. KAINE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 841, a bill to authorize the Caribbean Basin Security Initiative, to enhance the United States-Caribbean security partnership, to prioritize natural disaster resilience, and for other purposes.

S. 856

At the request of Mr. WICKER, the names of the Senator from Wyoming (Mr. BARRASSO) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 856, a bill to require the Federal Communications Commission to conduct a study and submit to Congress a report examining the feasibility of funding the Universal Service Fund through contributions supplied by edge providers, and for other purposes.

S. 871

At the request of Mr. LUJÁN, the names of the Senator from Oklahoma (Mr. LANKFORD) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 871, a bill to amend section 7014 of the Elementary and Secondary Education Act of 1965 to advance toward full Federal funding for impact aid, and for other purposes.

S. 895

At the request of Mr. BLUMENTHAL, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 895, a bill to provide for further comprehensive research at the National Institute of Neurological Disorders and Stroke on unruptured intracranial aneurysms.

S. 912

At the request of Mr. BARRASSO, the names of the Senator from South Dakota (Mr. ROUNDS) and the Senator from Arizona (Mr. KELLY) were added as cosponsors of S. 912, a bill to require the Secretary of Energy to provide technology grants to strengthen domestic mining education, and for other purposes.

S. 916

At the request of Mr. BLUMENTHAL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 916, a bill to limit and eliminate excessive, hidden, and unnecessary fees imposed on consumers, and for other purposes.

S. 963

At the request of Mr. LUJÁN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 963, a bill to provide enhanced student loan relief to educators.

S. 977

At the request of Mr. VAN HOLLEN, the names of the Senator from Delaware (Mr. COONS) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. 977, a bill to provide grants for fire station construction through the Administrator of the Federal Emergency Management Agency, and for other purposes.

S. 985

At the request of Mr. LANKFORD, the name of the Senator from Indiana (Mr. BRAUN) was added as a cosponsor of S. 985, a bill to amend the Higher Education Act of 1965 to ensure campus access at public institutions of higher education for religious groups.

S. 992

At the request of Mr. CRUZ, the name of the Senator from New Mexico (Mr. HEINRICH) was added as a cosponsor of S. 992, a bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to designate the Texas and New Mexico portions of the future Interstate-designated segments of the Port-to-Plains Corridor as Interstate Route 27, and for other purposes.

S. 1035

At the request of Mr. BARRASSO, the name of the Senator from Oklahoma (Mr. LANKFORD) was added as a cosponsor of S. 1035, a bill to prohibit funding for the Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change until China is no longer defined a developing country.

S. 1043

At the request of Mr. BARRASSO, the name of the Senator from Mississippi (Mrs. HYDE-SMITH) was added as a cosponsor of S. 1043, a bill to amend the Energy Policy and Conservation Act to modify standards for water heaters, furnaces, boilers, and kitchen cooktops, ranges, and ovens, and for other purposes.

S. 1102

At the request of Mr. BRAUN, the name of the Senator from Missouri (Mr. HAWLEY) was added as a cosponsor of S. 1102, a bill to protect the dignity of fetal remains, and for other purposes.

S. 1103

At the request of Mr. BRAUN, the name of the Senator from Alabama (Mrs. BRITT) was added as a cosponsor of S. 1103, a bill to provide for parental notification and intervention in the case of an unemancipated minor seeking an abortion.

S. 1108

At the request of Mr. THUNE, the name of the Senator from Ohio (Mr. VANCE) was added as a cosponsor of S. 1108, a bill to amend the Internal Revenue Code of 1986 to repeal the estate and generation-skipping transfer taxes, and for other purposes.

S. 1115

At the request of Mr. CASEY, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of S. 1115, a bill to require the Secretary of Labor to revise the Standard Occupational Classification System to accurately count the number of emergency medical services practitioners in the United States.

S. 1140

At the request of Mr. SCHATZ, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1140, a bill to amend the Public Health Service Act with respect to the designation of general surgery shortage areas, and for other purposes.

S.J. RES. 10

At the request of Mr. TUBERVILLE, the names of the Senator from Nebraska (Mr. RICKETTS) and the Senator from Indiana (Mr. YOUNG) were added as cosponsors of S.J. Res. 10, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services''.

S.J. RES. 23

At the request of Ms. LUMMIS, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S.J. Res. 23, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat''.

S. RES. 114

At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. Res. 114, a resolution urging the Government of Thailand to protect and uphold democracy, human rights, the rule of law, and rights to freedom of peaceful assembly and freedom of expression, and for other purposes.

S. RES. 134

At the request of Mr. SCHATZ, the name of the Senator from Massachusetts (Ms. WARREN) was added as a cosponsor of S. Res. 134, a resolution supporting the goals and ideals of the Rise Up for LGBTQI+ Youth in Schools Initiative, a call to action to communities across the country to demand equal educational opportunity, basic civil rights protections, and freedom from erasure for all students, particularly LGBTQI+ young people, in K–12 schools.

S. RES. 147

At the request of Mr. SCHATZ, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from New Jersey (Mr. BOOKER) were added as cosponsors of S. Res. 147, a resolution designating April 2023 as ''Preserving and Protecting Local News Month'' and recognizing the importance and significance of local news.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1181. A bill to amend the Federal Deposit Insurance Act to improve financial stability, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Madam President, today I am introducing the Bank Management Accountability Act along with Senator GRASSLEY. This bipartisan bill will make it easier for banking regulators to claw back compensation from directors and senior executives at failed systemically important banks and to ban those directors and executives from future participation in the financial industry.

We have recently experienced the failures of Silicon Valley Bank and Signature Bank, two systemically important banks each with assets exceeding $100 billion. Executives at these banks received exorbitant compensation as the banks took on excessive risks. The CEO of Silicon Valley Bank received $10 million in compensation in 2022 and sold $3.5 million of company stock in the days before the failure. The CEO of Signature Bank received $8.7 million in compensation in 2022 and sold millions of dollars' worth of company stock in the weeks and months before the failure.

The government declared the failures of Silicon Valley Bank and Signature Bank a ''systemic risk'' to the economy and stepped in with extraordinary backstops and emergency assistance, including protecting uninsured depositors. While these actions prevented contagion from spreading throughout

the financial system, these two failures are expected to cost the Federal Deposit Insurance Corporation's, FDIC's deposit insurance fund over $20 billion and have required the Federal Reserve to extend over $143 billion in credit to their successor banks. The FDIC needs stronger tools to prevent directors and senior executives from enriching themselves when their risky bets destabilize the financial sector and saddle the American people with the costs.

The bipartisan bill we are introducing aims to update the FDIC's outdated compensation clawback authority and weak financial industry ban authority. This bill will make directors and senior executives think twice before engaging in risky activities by allowing the FDIC to claw back the prior 2 years of their compensation if their bank fails. And to ensure that directors and senior executives cannot return to another bank and place depositors' funds at risk again, the bill would make it much easier for the FDIC to prohibit them from participating in the affairs of any financial company for at least two years.

Under existing law, high standards of liability significantly interfere with regulators' ability to seek restitution from directors and officers of failed banks and bar them from the industry. After the 2008 financial crisis, Congress established much more powerful clawback authority. But this tool is only available when the largest banks are unwound using a special process called ''orderly liquidation authority'' that the regulators have never used—even for the failures of Silicon Valley Bank and Signature Bank. That is why directors and senior executives at large banks rarely are subject to compensation clawbacks and financial industry bans, even if they are negligent in running their bank and the government ultimately needs to step in with extraordinary backstops and emergency assistance.

Our bill would apply the easier rules for clawing back compensation from Dodd-Frank's special ''orderly liquidation authority'' to a much broader set of banks, including Silicon Valley Bank and Signature Bank. It would also specify that recouped funds may not be paid out of directors' and officers' liability insurance coverage to make sure that they have true personal liability and skin in the game. Finally, it would lower the standard for barring directors and senior executives at failed systemically important banks from the financial industry. These updates would greatly enhance the banking regulators' ability to recover funds for the benefit of the taxpayers, to protect depositors from directors and senior executives who have already driven a bank into failure, and to provide powerful disincentives against excessive risk taking.

All of our constituents deserve strong bank regulators with the necessary tools to go after executives and directors at banks whose failures threaten the economy. The Bank Management Accountability Act will enhance our regulators' authorities to demand meaningful accountability from Wall Street and Silicon Valley, which in turn will increase confidence in our financial system. I urge our colleagues to support this important bipartisan legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 159—RECOGNIZING THE DESIGNATION OF THE WEEK OF APRIL 11 THROUGH APRIL 17, 2023, AS THE SIXTH ANNUAL ''BLACK MATERNAL HEALTH WEEK'' TO BRING NATIONAL ATTENTION TO THE MATERNAL HEALTH CRISIS IN THE UNITED STATES AND THE IMPORTANCE OF REDUCING MATERNAL MORTALITY AND MORBIDITY AMONG BLACK WOMEN AND BIRTHING PERSONS

Mr. BOOKER (for himself, Ms. CORTEZ MASTO, Mr. MARKEY, Ms. WARREN, Mr. PADILLA, Mr. BLUMENTHAL, Mrs. MURRAY, Mr. MENENDEZ, Ms. DUCKWORTH, Ms. SMITH, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. DURBIN, Ms. STABENOW, Ms. ROSEN, Mr. SANDERS, Mr. BROWN, Mr. MERKLEY, and Ms. KLOBUCHAR) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 159

Whereas, according to the Centers for Disease Control and Prevention, Black women in the United States are 2.6 times more likely than White women to die from pregnancy-related causes;

Whereas Black women in the United States suffer from life-threatening pregnancy complications, known as ''maternal morbidities'', twice as often as White women;

Whereas maternal mortality rates in the United States are—

(1) among the highest of any member country of the Organisation for Economic Co-operation and Development; and

(2) increasing rapidly, from 17.4 deaths per 100,000 live births in 2018, to 32.1 deaths per 100,000 live births in 2021;

Whereas the United States has the highest maternal mortality rate among affluent countries, in part because of the disproportionate mortality rate of Black women;

Whereas the rate of preterm birth among Black women is nearly 50 percent higher than the preterm birth rate among White or Hispanic women;

Whereas the high rates of maternal mortality among Black women span across—

(1) income levels;

(2) education levels; and

(3) socioeconomic status;

Whereas structural racism, gender oppression, and the social determinants of health inequities experienced by Black women and birthing persons in the United States significantly contribute to the disproportionately high rates of maternal mortality and morbidity among Black women and birthing persons;

Whereas racism and discrimination play a consequential role in maternal health care experiences and outcomes of Black birthing persons;

Whereas a fair and wide distribution of resources and birth options, especially with regard to reproductive health care services and maternal health programming, is critical to closing the racial gap in maternal health outcomes;

Whereas Black midwives, doulas, perinatal health workers, and community-based organizations provide holistic maternal care, but face structural and legal barriers to licensure, reimbursement, and provision of care;

Whereas COVID–19, which has disproportionately harmed Black people in the United States, is associated with an increased risk of adverse pregnancy outcomes and maternal and neonatal complications;

Whereas the COVID–19 pandemic has further highlighted issues within the broken health care system in the United States and the harm of that system to Black women and birthing persons;

Whereas data from the Centers for Disease Control and Prevention has indicated that Black women had the highest rate of maternal deaths related to COVID–19 in 2020 and 2021, at 13.2 per 100,000 live births, while the rate among White women was 4.5 per 100,000 live births;

Whereas, even as there is growing concern about improving access to mental health services, Black women are least likely to have access to mental health screenings, treatment, and support before, during, and after pregnancy;

Whereas Black pregnant and postpartum workers are disproportionately denied reasonable accommodations in the workplace, leading to adverse pregnancy outcomes;

Whereas Black pregnant people disproportionately experience surveillance and punishment, including shackling incarcerated people in labor, drug testing mothers and infants without informed consent, separating mothers from their newborns, and criminalizing pregnancy outcomes;

Whereas justice-informed, culturally congruent models of care are beneficial to Black women; and

Whereas an investment must be made in—

(1) maternity care for Black women and birthing persons, including support of care led by the communities most affected by the maternal health crisis in the United States;

(2) continuous health insurance coverage to support Black women and birthing persons for the full postpartum period up to at least 1 year after giving birth; and

(3) policies that support and promote affordable, comprehensive, and holistic maternal health care that is free from gender and racial discrimination, regardless of incarceration: Now, therefore, be it

Resolved, That the Senate recognizes that—

(1) Black women are experiencing high, disproportionate rates of maternal mortality and morbidity in the United States;

(2) the alarmingly high rates of maternal mortality among Black women are unacceptable;

(3) in order to better mitigate the effects of systemic and structural racism, Congress must work toward ensuring that the Black community has—

(A) safe and affordable housing;

(B) transportation equity;

(C) nutritious food;

(D) clean air and water;

(E) environments free from toxins;

(F) fair treatment within the criminal justice system;

(G) safety and freedom from violence;

(H) a living wage;

(I) equal economic opportunity;

(J) a sustained workforce pipeline for diverse perinatal professionals; and

(K) comprehensive, high-quality, and affordable health care with access to the full spectrum of reproductive care;

(4) in order to improve maternal health outcomes, Congress must fully support and encourage policies grounded in the human rights, reproductive justice, and birth justice frameworks that address Black maternal health inequity;

(5) Black women and birthing persons must be active participants in the policy decisions that impact their lives;

(6) in order to ensure access to safe and respectful maternal health care for Black birthing persons, Congress must reintroduce and pass the Black Maternal Health Momnibus Act of 2021 (S. 346, H.R. 959, 117th Congress); and

(7) ''Black Maternal Health Week'' is an opportunity to—

(A) deepen the national conversation about Black maternal health in the United States;

(B) amplify community-driven policy, research, and care solutions;

(C) center the voices of Black mothers, women, families, and stakeholders;

(D) provide a national platform for Black-led entities and efforts on maternal health, birth, and reproductive justice; and

(E) enhance community organizing on Black maternal health.

SENATE RESOLUTION 160—COMMENDING AND CONGRATULATING THE UNIVERSITY OF CONNECTICUT MEN'S BASKETBALL TEAM FOR WINNING THE 2023 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION MEN'S BASKETBALL CHAMPIONSHIP

Mr. BLUMENTHAL (for himself and Mr. MURPHY) submitted the following resolution; which was considered and agreed to:

S. RES. 160

Whereas, on Monday, April 3, 2023, the University of Connecticut's men's basketball team (referred to in this preamble as the ''UConn Huskies'') won the 2023 National Collegiate Athletic Association Men's Basketball Championship with a 76–59 win over the San Diego State Aztecs at NRG Stadium in Houston, Texas;

Whereas this is the UConn Huskies' fifth national championship, continuing the team's undefeated streak in national championship games;

Whereas the UConn Huskies earned all 5 national titles since 1999, a feat that no other college team has surpassed;

Whereas Adama Sanogo was named the Most Outstanding Player of the tournament, averaging 19.7 points per game with 4 double-doubles; and

Whereas the UConn Huskies won every National Collegiate Athletic Association tournament game by 13 points or more, becoming only the fifth team in history to do so: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Connecticut men's basketball team for winning the 2023 National Collegiate Athletic Association Men's Basketball Championship;

(2) congratulates the fans, students, and faculty of the University of Connecticut; and

(3) respectfully requests that the Secretary of the Senate transmit an enrolled copy of this resolution to—

(A) the President of the University of Connecticut, Radenka Maric; and

(B) the Head Coach of the University of Connecticut men's basketball team, Dan Hurley.

SENATE RESOLUTION 161—DESIGNATING THE WEEK OF APRIL 22 THROUGH APRIL 30, 2023, AS ''NATIONAL PARK WEEK''

Mr. KING (for himself, Mr. DAINES, Mr. PADILLA, Mr. CRAMER, Ms. CORTEZ MASTO, Mr. MARSHALL, Mr. REED, Mr. TILLIS, Mr. WYDEN, Mr. BARRASSO, Ms. HASSAN, Mrs. CAPITO, Mr. COONS, Mr. BUDD, Mr. KAINE, Mr. ROUNDS, Mr. BENNET, Mr. RUBIO, Ms. SINEMA, Ms. COLLINS, Mr. WARNER, Mrs. HYDE-SMITH, Mr. HEINRICH, Mr. WICKER, Mrs. MURRAY, Mr. GRAHAM, Mr. VAN HOLLEN, Mr. SCOTT of Florida, Mr. MARKEY, Mr. CASSIDY, Mr. LUJÁN, Mr. HOEVEN, Ms. HIRONO, Mr. BRAUN, Mr. TESTER, Mr. BOOZMAN, Ms. BALDWIN, Mr. COTTON, Ms. WARREN, Mr. YOUNG, Mr. HICKENLOOPER, Mr. KENNEDY, Ms. CANTWELL, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. MURPHY, Ms. ROSEN, Mr. BLUMENTHAL, Mr. MANCHIN, Ms. DUCKWORTH, Mr. PETERS, Mrs. FEINSTEIN, Mr. CARPER, Mr. CARDIN, Mr. DURBIN, Ms. STABENOW, Mr. WELCH, Mrs. SHAHEEN, and Mr. SCOTT of South Carolina) submitted the following resolution; which was considered and agreed to:

S. RES. 161

Whereas, on March 1, 1872, Congress established Yellowstone National Park as the first national park for the enjoyment of the people of the United States;

Whereas, on August 25, 1916, Congress established the National Park Service with the mission to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of current and future generations;

Whereas the National Park Service continues to protect and manage the majestic landscapes, hallowed battlefields, and iconic cultural and historical sites of the United States;

Whereas the units of the National Park System can be found in every State and many territories of the United States and many of those units embody the rich natural and cultural heritage of the United States, reflect a unique national story through people and places, and offer countless opportunities for recreation, volunteerism, cultural exchange, education, civic engagement, and exploration;

Whereas, in 2022, the national parks of the United States attracted nearly 312,000,000 recreational visits, an increase of 5 percent over 2021 visitation levels;

Whereas visits and visitors to the national parks of the United States are important economic drivers, responsible for contributing $42,500,000,000 in spending to the national economy in 2021;

Whereas the dedicated employees of the National Park Service carry out their mission to protect the units of the National Park System so that the vibrant culture, diverse wildlife, and priceless resources of these unique places will endure for perpetuity; and

Whereas the people of the United States have inherited the remarkable legacy of the National Park System and are entrusted with the preservation of the National Park System throughout its second century: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 22 through April 30, 2023, as ''National Park Week''; and

(2) encourages the people of the United States and the world to responsibly visit, experience, recreate in, and support the treasured national parks of the United States.

SENATE RESOLUTION 162—DESIGNATING THE WEEK OF APRIL 17 THROUGH APRIL 23, 2023, AS ''NATIONAL OSTEOPATHIC MEDICINE WEEK''

Mr. MANCHIN (for himself, Mr. WICKER, Mrs. CAPITO, Mr. HEINRICH, and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 162

Whereas there are more than 141,500 osteopathic physicians and 36,500 osteopathic medical students in the United States;

Whereas osteopathic physicians and medical students train at high-caliber schools of osteopathic medicine across the United States, including in rural communities;

Whereas osteopathic physicians have made significant contributions to the healthcare system of the United States since the founding of osteopathic medicine in 1892;

Whereas osteopathic medicine emphasizes a whole-person, patient-centric approach to healthcare, and osteopathic physicians play an important role in the healthcare system of the United States;

Whereas osteopathic physicians have been critical in the fight against the COVID–19 pandemic and have worked on the front lines treating patients;

Whereas osteopathic physicians train and practice in all medical specialties and practice settings;

Whereas osteopathic physicians and medical students in the United States are dedicated to improving the health of their communities through efforts to increase education and awareness and by delivering high-quality health services; and

Whereas osteopathic physicians practice in every State: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 17 through April 23, 2023, as ''National Osteopathic Medicine Week'';

(2) recognizes the contributions of osteopathic physicians to the healthcare system of the United States; and

(3) celebrates the role that colleges of osteopathic medicine play in training the next generation of physicians.

SENATE RESOLUTION 163—SUPPORTING THE GOALS AND IDEALS OF NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK

Ms. KLOBUCHAR (for herself and Mr. TUBERVILLE) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. RES. 163

Whereas public safety telecommunications professionals play a critical role in emergency response;

Whereas the work that public safety telecommunications professionals perform goes far beyond simply relaying information between the public and first responders;

Whereas, when responding to reports of missing, abducted, and sexually exploited children, the information obtained and actions taken by public safety telecommunications professionals form the foundation for an effective response;

Whereas, when a hostage taker or suicidal individual calls 911, the first contact that individual has is with a public safety telecommunications professional, whose negotiation skills can prevent the situation from worsening;

Whereas, during crises, public safety telecommunications professionals, while collecting vital information to provide situational awareness for responding officers—

(1) coach callers through first aid techniques; and

(2) give advice to those callers to prevent further harm;

Whereas the work done by individuals who serve as public safety telecommunications professionals has an extreme emotional and physical toll on those individuals, which is compounded by long hours and the around-the-clock nature of the job;

Whereas public safety telecommunications professionals should be recognized by all levels of government for the lifesaving and protective nature of their work;

Whereas major emergencies, including natural disasters and the coronavirus disease 2019 (COVID–19) pandemic, highlight the dedication of public safety telecommunications professionals and their important work in protecting the public and police, fire, and emergency medical officials; and

Whereas public safety telecommunications professionals are often called as witnesses to provide important testimony in criminal trials: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of National Public Safety Telecommunicators Week;

(2) honors and recognizes the important and lifesaving contributions of public safety telecommunications professionals in the United States; and

(3) encourages the people of the United States to remember the value of the work performed by public safety telecommunications professionals.

AMENDMENTS SUBMITTED AND PROPOSED

SA 85. Mr. VAN HOLLEN (for himself, Ms. MURKOWSKI, and Mr. OSSOFF) submitted an amendment intended to be proposed by him to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table.

SA 86. Mr. VAN HOLLEN (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 83 submitted by Mr. MCCONNELL (for Mr. SULLIVAN) and intended to be proposed to the bill S. 870, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 85. Mr. VAN HOLLEN (for himself, Ms. MURKOWSKI, and Mr. OSSOFF) submitted an amendment intended to be proposed by him to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ASSISTANCE TO FIREFIGHTERS FIRE STATION CONSTRUCTION GRANTS.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Emergency Management Agency.

(2) CAREER FIRE DEPARTMENT.—The term ''career fire department'' means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

(3) COMBINATION FIRE DEPARTMENT.—The term ''combination fire department'' means a fire department that has—

(A) paid firefighting personnel; and

(B) volunteer firefighting personnel.

(4) EMS.—The term ''EMS'' means emergency medical services.

(5) NONAFFILIATED EMS ORGANIZATION.—The term ''nonaffiliated EMS organization'' means a public or private nonprofit EMS organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator finds that EMS are adequately provided by a fire department.

(6) VOLUNTEER FIRE DEPARTMENT.—The term ''volunteer fire department'' means a fire department that has an all-volunteer force of firefighting personnel.

(b) GRANT PROGRAM.—The Administrator shall establish a grant program to provide financial assistance to entities described in subsection (c) to modify, upgrade, and construct fire and EMS department facilities.

(c) ELIGIBLE APPLICANTS.—The Administrator may make a grant under this section to the following:

(1) Career, volunteer, and combination fire departments.

(2) Fire training facilities.

(3) Nonaffiliated EMS organizations, combination and volunteer emergency medical stations (except that for-profit EMS organizations are not eligible for a grant under this section).

(d) APPLICATIONS.—An entity described in subsection (c) seeking a grant under this section shall submit to the Administrator an application in such form, at such time, and containing such information as the Administrator determines appropriate.

(e) MEETING FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Administrator shall convene a meeting of qualified members of national fire service organizations and, at the discretion of the Administrator, qualified members of EMS organizations to obtain recommendations regarding the criteria for the awarding of grants under this section.

(2) QUALIFICATIONS.—For purposes of this subsection, a qualified member of an organization is a member who—

(A) is recognized for firefighting or EMS expertise;

(B) is not an employee of the Federal Government; and

(C) in the case of a member of an EMS organization, is a member of an organization that represents—

(i) EMS providers that are affiliated with fire departments; or

(ii) nonaffiliated EMS providers.

(f) PEER REVIEW OF GRANT APPLICATION.—The Administrator shall, in consultation with national fire service and EMS organizations, appoint fire service personnel to conduct peer reviews of applications received under subsection (d).

(g) PRIORITY OF GRANTS.—In awarding grants under this section, the Administrator shall consider the findings and recommendations of the peer reviews carried out under subsection (f).

(h) USES OF FUNDS.—

(1) IN GENERAL.—A recipient of a grant under this section may use funds received for the following:

(A) Building, rebuilding, or renovating fire and EMS department facilities.

(B) Upgrading existing facilities to install exhaust emission control systems, install backup power systems, upgrade or replace environmental control systems (such as HVAC systems), remove or remediate mold, and construct or modify living quarters for use by male and female personnel.

(C) Upgrading fire and EMS stations or building new stations.

(2) CODE COMPLIANT.—In using funds under paragraph (1), a recipient of a grant under this section shall meet 1 of the 2 most recently published editions of relevant codes and standards, especially codes and standards that—

(A) require up-to-date hazard resistant and safety provisions; and

(B) are relevant for protecting firefighter health and safety.

(i) GRANT FUNDING.—

(1) IN GENERAL.—The Administrator shall allocate grant funds under this section as follows:

(A) 25 percent for career fire and EMS departments.

(B) 25 percent for combination fire and EMS departments.

(C) 25 percent for volunteer fire and EMS departments.

(D) 25 percent to remain available for competition between the various department types.

(2) INSUFFICIENT APPLICATIONS.—If the Administrator does not receive sufficient funding requests from a particular department type described in subparagraphs (A) through (C) of paragraph (1), the Administrator may make awards to other departments described in such subparagraphs.

(3) LIMITATION ON AWARDS AMOUNTS.—A recipient of a grant under this section may not receive more than $7,500,000 under this section.

(j) PREVAILING RATE OF WAGE AND PUBLIC CONTRACTS.—

(1) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(2) OVERTIME.—Each employee described in paragraph (1) shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek, as the case may be.

(3) ASSURANCES.—The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that the labor standards described in paragraphs (1) and (2) will be maintained upon the construction work.

(4) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the labor standards described in paragraphs (1) and (2), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

(5) PUBLIC CONTRACTS.—Contractors and subcontractors performing construction work pursuant to this section shall procure only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States in accordance with the requirements (and exceptions thereto) applicable to Federal agencies under chapter 83 of title 41, United States Code.

(k) APPLICABILITY.—Chapter 10 of title 5, United States Code, shall not apply to activities carried out pursuant to this section.

(l) REPORTING REQUIREMENTS.—

(1) ANNUAL REPORT TO ADMINISTRATOR OF FEMA.—Not later than 1 year after the date of enactment of this Act, and annually thereafter during the term of a grant awarded under this section, the recipient of the grant shall submit to the Administrator a report describing how the recipient used the amounts from the grant.

(2) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter until the date on which the rebuilding or renovation of fire facilities and stations are completed using grant funds under this section, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report that provides an evaluation of the effectiveness of the grants awarded under this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $750,000,000 for fiscal year 2024 to carry out this section. Funds appropriated under this Act shall remain available until expended.

SA 86. Mr. VAN HOLLEN (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 83 submitted by Mr. MCCONNELL (for Mr. SULLIVAN) and intended to be proposed to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. ASSISTANCE TO FIREFIGHTERS FIRE STATION CONSTRUCTION GRANTS.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Emergency Management Agency.

(2) CAREER FIRE DEPARTMENT.—The term ''career fire department'' means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

(3) COMBINATION FIRE DEPARTMENT.—The term ''combination fire department'' means a fire department that has—

(A) paid firefighting personnel; and

(B) volunteer firefighting personnel.

(4) EMS.—The term ''EMS'' means emergency medical services.

(5) NONAFFILIATED EMS ORGANIZATION.—The term ''nonaffiliated EMS organization'' means a public or private nonprofit EMS organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator finds that EMS are adequately provided by a fire department.

(6) VOLUNTEER FIRE DEPARTMENT.—The term ''volunteer fire department'' means a fire department that has an all-volunteer force of firefighting personnel.

(b) GRANT PROGRAM.—The Administrator shall establish a grant program to provide financial assistance to entities described in subsection (c) to modify, upgrade, and construct fire and EMS department facilities.

(c) ELIGIBLE APPLICANTS.—The Administrator may make a grant under this section to the following:

(1) Career, volunteer, and combination fire departments.

(2) Fire training facilities.

(3) Nonaffiliated EMS organizations, combination and volunteer emergency medical stations (except that for-profit EMS organizations are not eligible for a grant under this section).

(d) APPLICATIONS.—An entity described in subsection (c) seeking a grant under this section shall submit to the Administrator an application in such form, at such time, and containing such information as the Administrator determines appropriate.

(e) MEETING FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Administrator shall convene a meeting of qualified members of national fire service organizations and, at the discretion of the Administrator, qualified members of EMS organizations to obtain recommendations regarding the criteria for the awarding of grants under this section.

(2) QUALIFICATIONS.—For purposes of this subsection, a qualified member of an organization is a member who—

(A) is recognized for firefighting or EMS expertise;

(B) is not an employee of the Federal Government; and

(C) in the case of a member of an EMS organization, is a member of an organization that represents—

(i) EMS providers that are affiliated with fire departments; or

(ii) nonaffiliated EMS providers.

(f) PEER REVIEW OF GRANT APPLICATION.—The Administrator shall, in consultation with national fire service and EMS organizations, appoint fire service personnel to conduct peer reviews of applications received under subsection (d).

(g) PRIORITY OF GRANTS.—In awarding grants under this section, the Administrator shall consider the findings and recommendations of the peer reviews carried out under subsection (f).

(h) USES OF FUNDS.—

(1) IN GENERAL.—A recipient of a grant under this section may use funds received for the following:

(A) Building, rebuilding, or renovating fire and EMS department facilities.

(B) Upgrading existing facilities to install exhaust emission control systems, install backup power systems, upgrade or replace environmental control systems (such as HVAC systems), remove or remediate mold, and construct or modify living quarters for use by male and female personnel.

(C) Upgrading fire and EMS stations or building new stations.

(2) CODE COMPLIANT.—In using funds under paragraph (1), a recipient of a grant under this section shall meet 1 of the 2 most recently published editions of relevant codes and standards, especially codes and standards that—

(A) require up-to-date hazard resistant and safety provisions; and

(B) are relevant for protecting firefighter health and safety.

(i) GRANT FUNDING.—

(1) IN GENERAL.—The Administrator shall allocate grant funds under this section as follows:

(A) 25 percent for career fire and EMS departments.

(B) 25 percent for combination fire and EMS departments.

(C) 25 percent for volunteer fire and EMS departments.

(D) 25 percent to remain available for competition between the various department types.

(2) INSUFFICIENT APPLICATIONS.—If the Administrator does not receive sufficient funding requests from a particular department type described in subparagraphs (A) through (C) of paragraph (1), the Administrator may make awards to other departments described in such subparagraphs.

(3) LIMITATION ON AWARDS AMOUNTS.—A recipient of a grant under this section may not receive more than $7,500,000 under this section.

(j) PREVAILING RATE OF WAGE AND PUBLIC CONTRACTS.—

(1) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(2) OVERTIME.—Each employee described in paragraph (1) shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek, as the case may be.

(3) ASSURANCES.—The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that the labor standards described in paragraphs (1) and (2) will be maintained upon the construction work.

(4) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the labor standards described in paragraphs (1) and (2), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

(5) PUBLIC CONTRACTS.—Contractors and subcontractors performing construction work pursuant to this section shall procure only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States in accordance with the requirements (and exceptions thereto) applicable to Federal agencies under chapter 83 of title 41, United States Code.

(k) APPLICABILITY.—Chapter 10 of title 5, United States Code, shall not apply to activities carried out pursuant to this section.

(l) REPORTING REQUIREMENTS.—

(1) ANNUAL REPORT TO ADMINISTRATOR OF FEMA.—Not later than 1 year after the date of enactment of this Act, and annually thereafter during the term of a grant awarded under this section, the recipient of the grant shall submit to the Administrator a report describing how the recipient used the amounts from the grant.

(2) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter until the date on which the rebuilding or renovation of fire facilities and stations are completed using grant funds under this section, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report that provides an evaluation of the effectiveness of the grants awarded under this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $750,000,000 for fiscal year 2024 to carry out this section. Funds appropriated under this Act shall remain available until expended.

AUTHORITY FOR COMMITTEES TO MEET

Mr. CARPER. Madam President, I have 11 requests for committees to

meet during today's session of the Senate. They have the approval of the Majority and Minority Leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

COMMITTEE ON ARMED SERVICES

The Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 9:30 a.m., to conduct a hearing.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

The Committee on Banking, Housing, and Urban Affairs is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing on nominations.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

The Committee on Energy and Natural Resources is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing.

COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a briefing.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

The Committee on Homeland Security and Governmental Affairs is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing.

COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing on nominations.

SELECT COMMITTEE ON INTELLIGENCE

The Select Committee on Intelligence is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a closed briefing.

SUBCOMMITTEE ON AIRLAND

The Subcommittee on Airland of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE, AND NUCLEAR SAFETY

The Subcommittee on Clean Air, Climate, and Nuclear Safety of the Committee on Environment and Public Works is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON INTELLECTUAL PROPERTY

The Subcommittee on Intellectual Property of the Committee on the Judiciary is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON STRATEGIC FORCES

The Subcommittee on Strategic Forces of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 4:45 p.m., to conduct a hearing.

PRIVILEGES OF THE FLOOR

Mr. CARPER. Madam President, before I begin my floor remarks, let me just ask unanimous consent that several individuals who serve in my personal office and on the Senate Committee on Environment and Public Works majority staff be granted privileges of the floor for the remainder of this Congress. Their names are Daniel Kim, Victoria Carle, Linnea Saby, Nicole Comisky, and Matthew Marzano.

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

Ms. MURKOWSKI. Madam President, I ask unanimous consent that privileges of the floor be granted to my fellows for the rest of the year: Abbie Lyons, Aaron Stuvland, Doson Nguyen, and Robert Bruce.

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

ORDERS FOR WEDNESDAY, APRIL 19, 2023

Mr. WHITEHOUSE. I further ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. on Wednesday, April 19; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; that following the conclusion of morning business, the Senate resume consideration of Calendar No. 28, S. 870; further, at 11:30 a.m., the Senate vote on the Paul and Hagerty amendments as provided under the previous order; that following the disposition of the Hagerty amendment, Senator TUBERVILLE or his designee be recognized to make a motion to proceed to Calendar No. 35, S.J. Res. 10; that the time until 4:15 p.m. be equally divided between the two leaders or their designees and with the final 15 minutes equally divided in the same form; that the Senate recess from 3 p.m. until 4 p.m. to allow for the all-Senators briefing, with the time counting equally to both sides.

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

ORDER FOR ADJOURNMENT

Mr. WHITEHOUSE. If there is no further business to come before the Senate, I ask that it stand adjourned under the previous order, following the remarks of Senator MURKOWSKI, to whom I express gratitude for her courtesy.

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

The Senator from Alaska.

S. 870

Ms. MURKOWSKI. Mr. President, I am pleased that we are at this point in the Senate calendar when we are talking about legislation on the floor. We have S. 870, which is the Fire Grants and Safety Act. I am a sponsor, a proud cosponsor of this measure.

My State of Alaska routinely faces severe fire seasons every year. As co-chair of the Senate Fire Caucus, I follow these issues very carefully. Whether they are wildland fires or fires in our urban centers, I believe we have a bill in front of us, a measure in front of us, that deserves all of our support.

The Fire Grants and Safety Act is a pretty simple bill. It is not very often that we actually have things that are simple and short, and this one is just a few pages long. It reauthorizes the U.S. Fire Administration, the Assistance to Firefighters Grant Program, as well as the Staffing for Adequate Fire and Emergency Response Grant Program. That is the SAFER Program. It reauthorizes all of these through 2030, instead of allowing them to expire next year. The Fire Administration's authorization is increased slightly, but the rest are basically straight extensions here.

As I mentioned, it is a pretty simple bill, but I think it is important to appreciate and understand the importance because sometimes I think these programs are underappreciated. They help our local fire departments recruit personnel—pretty important, we have got to get those firefighters to us—but not only to recruit them but to retain them as well. It also helps allow them to purchase updated vehicles and equipment.

We also help our fire stations by providing for safety and rescue training as well as health screenings.

The Fire Grants and Safety Act is also a very timely measure and not just because we are looking at these programs nearing their expiration date, but our U.S. Fire Administrator has reminded us that ''America is still burning.'' That is the quote. Last year, fires destroyed over 1 million structures and over 7.5 million acres of land across the country.

Again, in the State of Alaska, it is not unusual that we have 1 million-plus acres burn each season, and in many seasons, well more than a million.

But in addition to dealing with the impact to the land and to structures that are on them, it is a safety issue that comes with fighting fires. Approximately, 2,500 people, including 96 firefighters, have died because of these fires. Again, as we are seeing wildfires become larger and more catastrophic, the danger that it presents from a health-safety perspective but also the devastation and impact to the land becomes that much greater.

In our State in Alaska, our geography and really our lack of core infrastructure oftentimes makes it harder to respond, sometimes really not possible at all. But you have got wildfires

that can start hundreds of miles from a road system. It is difficult to deal with. But then you have house fires in one village off where road travel—there is no connection between the two villages and an inability to help address a local fire, as we have seen, unfortunately, on far too many occasions.

Just last month, the Kennicott McCarthy Volunteer Fire Department received $77,950. It doesn't sound like a lot in terms of dollars that we talk about here on this floor, but it was $77,000-plus to support recruitment and retention of firefighters. They were able to utilize FEMA's SAFER Grant Program. Again, this is a program that is going to sunset this year. But let me put the Kennicott McCarthy Volunteer Fire Department into context. This fire department is over 300 miles from Anchorage, the large city there. That is about a 7-hour drive in good weather. And I would challenge people—most times getting into McCarthy, it doesn't make any difference what the weather is, the road is tough enough that it is going to take you well more than 7 hours. There are about 42 people who live in the McCarthy-Kennicott area year-round, but in the summertime, you have got a growth in population when tourists come into the area and when folks who have cabins and properties like to spend the summers out there. So it can grow to over 1,000, 1,200 people in the summer. It serves as the gateway to the Wrangell-St. Elias National Park. So it is an important tourist destination for us.

This little town hosted over 65,000 visitors last year. So it kind of causes you to ask the question: How can a town of 42 year-round residents support this influx of outside traffic without the assistance of the Federal Government here? That is exactly what these SAFER grants have allowed them to do. So believe me. That $77,000 is going to go a long way for that volunteer fire department in Kennicott-McCarthy.

I mentioned that we face unique challenges in Alaska, but I would wager to say that every Member of this Chamber or one of your family members or your friends or your neighbors—every one of us has benefited from the emergency services that are provided by our local fire departments. So, as they have helped us, it is our turn to be helping them.

I am hopeful that we will be able to move through this process. It was good to have a vote on an amendment this afternoon. We will have the opportunity for more tomorrow and, hopefully, be able to wrap this bill up soon, this week.

But I do hope that this measure will garner the same level of bipartisan support as its predecessors. Back in 2017, we passed a fire grant reauthorization by unanimous consent. I think that that reflects how every State recognizes the benefit from this act, and I think that this year's effort should, really, be no different.

The Fire Grants and Safety Act has garnered widespread support. We have got organizations and groups, like the International Association of Fire Chiefs, the National Volunteer Fire Council, the Congressional Fire Services Institute, the National Fallen Firefighters Foundation, the International Society of Fire Service Instructors, as well as the International Association of Fire Fighters. So we have great, great support from these very important organizations.

One of my friends and a real leader in Alaska is the president of the Alaska Professional Fire Fighters Association, Dominic Lozano. He has shared his endorsement of this measure.

He explains and says:

> Over the last few years, Alaska has faced record fire seasons across the state, making our firefighters, rescuers, and emergency medical workers as vital as ever. And whether the fires take place in urban or rural Alaska, our rugged terrain and harsh climate can make emergency response far more difficult. This bill will assist Alaska Fire Departments with hiring new firefighters to attain proper staffing levels as well as provide valuable equipment to agencies across the state.

I really appreciate Dominic's support for this measure.

I will tell you that I think we know that our firefighters have an extraordinarily difficult job, a dangerous job, a job that tasks them every day. I had an opportunity to participate in a VIP day, where we all donned the turnout suits and had the hats and had the opportunity to see how the ''jaws of life'' actually work.

We had the opportunity to go into a training facility that was built out to be a burning apartment building and to haul the hose from the truck, up the stairs, and into a burning room to put out the fire. I can tell you that those who went in to literally take the heat got a very, very, very small, small glimpse of what our firefighters go through every day.

I thank all of our firefighters. I thank our Alaska firefighters and all of those around the country for the tremendous and selfless work that they do in putting themselves in harm's way to protect our lives, our lands, and our communities. I am certainly committed to making sure that they have the resources to get home safely every single day.

I appreciate the leadership from Senator PETERS, Senator COLLINS, and Senator CARPER that they have put into this Fire Grants and Safety Act. Again, I am glad to cosponsor it with them and am glad to be able to give some short comments in support.

Our firefighters deserve this bill, and our communities need this bill. That should be enough for all of us to support it.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:20 p.m., adjourned until Wednesday, April 19, 2023, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 18, 2023:

DEPARTMENT OF DEFENSE

RADHA IYENGAR PLUMB, OF NEW YORK, TO BE A DEPUTY UNDER SECRETARY OF DEFENSE.

DEPARTMENT OF JUSTICE

AMY LEFKOWITZ SOLOMON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

EXTENSIONS OF REMARKS

HONORING NATIONAL INFERTILITY AWARENESS WEEK

HON. ANDY KIM

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. KIM of New Jersey. Mr. Speaker, I rise today to commemorate National Infertility Awareness Week. Commemorated annually since 1989, this week serves as a salute to the patients, doctors, researchers, parents, children, families, and all of those who love, support and have been touched by infertility. It also serves to recognize the extraordinary progress we have made over the last four decades toward destigmatizing infertility and bringing awareness to the many barriers people face when trying to start and build their families.

Approximately one-in-five Americans are impacted by infertility. It affects both men and women of all races, religious backgrounds, and economic status, and has an impact spanning millions of Americans across the country. Through research and considerable medical advancements, fertility treatments have vastly improved since the first successful IVF pregnancy and live birth in 1978. Organizations across the country have devoted their mission to achieving continued research and advancement, and I commend them for their dedication to helping families.

I'm grateful to have met with women from my district in South and Central New Jersey through the help of organizations like RESOLVE, the National Infertility Association, which advocates for millions of people who need medical assistance to have a family. We discussed the pain and isolation that too frequently goes hand-in-hand with infertility and the importance of lowering the barriers to infertility care including cost and coverage. That's why I'm also proud to represent one of just 16 states that has laws requiring health insurance companies to provide coverage for infertility treatment.

But we cannot rely on state legislatures alone. I'm proud to have cosponsored pieces of legislation like the Access to Infertility Treatment and Care Act and the Expanding Access to Fertility Care for Servicemembers and Dependents Act to address this issue on a national scale. In the absence of comprehensive and reliable fertility preservation and family building healthcare coverage, the option of having children may not otherwise be available for millions of Americans without the financial assistance and support of organizations like RESOLVE, the Alliance for Fertility Preservation, the Military Family Building Coalition, and many others.

For more than 30 years, millions of Americans have been able to receive care that resulted in safe and successful treatment for moms and babies. While medical advancements have been a substantial step forward for family planning and building, we also understand that significant medical, financial, and health equity barriers still exist for people that want to start a family.

During National Infertility Awareness Week, I hope we can recommit ourselves to removing the barriers that currently exist for people experiencing infertility challenges. I am honored to recognize the millions of infertility advocates throughout the country, who champion the rights of everyone to build a family.

HONORING SANDRA SOTO

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Ms. LOFGREN. Mr. Speaker, I rise to recognize and thank, upon her retirement, Sandra Soto who served for 22 years as Chief of Staff in my San Jose District Office.

During these years our country faced many challenges. From Y2K, 9/11, the Great Recession, January 6th, droughts, floods, earthquakes . . . you name it, Sandra provided steady, practical leadership for my staff and in service to my constituents.

Sandra provided important mentorship for many young staffers who, with her important guidance, went on to important professional careers both inside and outside of government.

Her dedication was particularly admirable when it came to the needs of children, seniors and veterans and members of our community who lacked opportunity.

Sandra Soto is both wise and kind. If there was an elderly vet who just needed to be heard, she was always ready with a fresh cup of coffee and a sympathetic ear.

She is a fierce advocate for those who have been mistreated, overlooked, or let down. As federal agencies in Region IX can attest, Sandra—and, under her leadership our District Office staff—got results when a bureaucratic snafu damaged a constituent.

Because of these qualities Sandra is beloved by my District Office staff, by my constituents and by the staff of other Bay Area elected officials. Since her retirement I have heard from many how they admire Sandra and miss her.

I admire Sandra as well. She was not only a valued employee, but also a friend to all . . . including me.

I wish Sandra and her wonderful family well during her well-deserved retirement. I look forward to continuing to see her around the community we both call home.

CONGRATULATING TULANE UNIVERSITY'S FOOTBALL TEAM AMERICAN ATHLETIC CONFERENCE AND COTTON BOWL CHAMPIONS

HON. STEVE SCALISE

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. SCALISE. Mr. Speaker, I rise today to congratulate the Tulane University football team for winning the American Athletic Conference championship, and for then winning the 2023 Cotton Bowl Classic! The Tulane football team, under the leadership of Coach Willie Fritz, just completed the greatest turnaround in NCAA football history with a commanding 12–2 record after finishing 2–10 in their 2021–2022 season. This magical turnaround season was crystallized on Monday, January 2, 2023, when No. 14 ranked Tulane faced off against the No. 8 University of Southern California in the Cotton Bowl and won a thrilling instant-classic by a score of 46–45, with sixteen of Tulane's points scored in the final four minutes.

Tulane finished the season ranked No. 9 in all of college football, which is their highest national ranking since 1998. Tulane's march to victory included: defeating three top 25 teams in the nation; defeating the three teams leaving the American Athletic Conference for the Big 12; and defeating Kansas State who went on to be the Big 12 champion. Prior to winning the Cotton Bowl, Tulane defeated the No. 22 University of Central Florida in a rematch for the AAC championship to capture the university's first-ever AAC title.

Tulane's electric championship season also included individual honors. Tyjae Spears, a native of Ponchatoula, LA, was named AAC Offensive Player of the Year, and Coach Willie Fritz won the AAC Coach of the Year award, the Bobby Dodd Coach of the Year award, and was a finalist for both the Bear Bryant and George Munger Coach of the Year awards. This is the fourth time in the last five years that Coach Fritz has led his team to a bowl game, and I commend him for his continued leadership of these talented young men. Roll Wave.

HONORING CHIEF RICHARD THOMAS

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor Woodland Fire Department Battalion Chief Richard Thomas in honor of his retirement and service to our community.

Chief Thomas was born in Vallejo, California and grew up in Crockett, California. At the age

of 16, he joined the Crockett Fire Department as a volunteer and later went on to obtain an Associate of Arts degree in Fire Science from Columbia Junior College. While in college, Chief Thomas worked and lived at the firehouse as a member of the sleeper program. He eventually joined CalFire as a sleeper serving at the Twain Harte and Sonoma stations.

In 1986, Chief Thomas joined the Woodland Fire Department as a Firefighter after ranking first on their fire service test. His dedication to fire service and Woodland persisted while commuting from Crockett for his first year of service. Seventeen years after joining the Woodland Fire Department, Chief Thomas was promoted to the rank of fire captain in August of 2003. While serving in the Woodland Fire Department, he was acknowledged by the City of Woodland with a Proclamation for rescuing a victim from a house fire in zero visibility conditions.

Chief Thomas was promoted to battalion chief in December of 2012. He has been involved in many aspects of the Woodland Fire Department, including the Fire Department Honor Guard, Arson Investigation Team, and he is President of the Woodland Firefighters Association. Additionally, he built the department's first-grade program, an educational program dedicated to teaching kids about fire service. This program is still in use today throughout all schools in Woodland.

When not on duty, Chief Thomas loves spending time with his fire family and his nonfire family. He has also been a baseball coach for the last twelve years and enjoys volunteering.

Mr. Speaker, Chief Richard Thomas is deeply appreciated for his decades of selfless service and commitment to the Woodland Fire Department and our community. His efforts have made our district a safer and more enjoyable place to live. Therefore, it is fitting and proper that we honor him here today.

RECOGNIZING THE 30TH ANNIVERSARY OF THE FAMILY MEDICAL LEAVE ACT

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. DAVIS of Illinois. Mr. Speaker, this spring, we mark the 30th anniversary of the Family and Medical Leave Act, known as FMLA. This groundbreaking law allows millions of workers to take unpaid leave from their jobs when necessary, without the fear of losing their jobs or being forced to choose retaining a job over the needs of themselves or their families.

Prior to the passage of the FMLA, there were no uniform laws or guaranteed leave for workers. None. In 1993, with bipartisan support, Congress passed, and President Bill Clinton signed into law, the Family and Medical Leave Act.

FMLA has remained crucial for workers all over the United States for three decades. It has provided workers across the country with 12 weeks of leave to care for a new child, an ill family member, or their own health. During this time, one's job is guaranteed. Unfortunately, FMLA leave is entirely unpaid, only about 56 percent of workers are eligible for the program due to strict eligibility requirements regarding tenure and worksite size, it restricts the definition of family to exclude millions of caregivers, and the stark reality is that many workers cannot go without income.

As we celebrate 30 years of FMLA, Congress should recognize that paid family and medical leave is long overdue. The pandemic made crystal clear that the current patchwork system fails to cover many workers, especially low-paid workers, and harms our economy by removing millions of workers from the labor force and hundreds of millions of dollars in earnings. Limiting leave to those who can afford time off without pay harms workers of color and lower-wage workers, in particular. For example, Black workers are 86 percent more likely to be unable to take leave when they need to care for others or themselves. Indeed, 68 percent of Black women are the sole breadwinners in their households, making any loss of pay due to illness or caregiving a tremendous hardship. Families should not face the unethical choice of earning a paycheck or caring for their loved ones or themselves.

As the lead Democrat of the Ways and Means Committee Subcommittee on Worker and Family Support, which has jurisdiction over paid leave, I am proud that House Democrats passed out of the House the first-ever, universal, comprehensive paid family and medical leave program. Had the Republicans in the Senate not blocked its final passage, this program would have provided all U.S. workers with up to 4 weeks of paid leave to address a serious personal or family health issue, or to care for a newborn or newly-adopted or fostered child.

Universal paid leave is not a gamble; we have decades of research from state and international implementation that comprehensive protections help businesses retain qualified workers and government support helps level the playing field for small businesses while supporting workers and strengthening the economy. Fourteen states and the District of Columbia have passed laws to provide or require paid leave: Arizona; California, New Jersey; Rhode Island, New York; District of Columbia; Washington; Massachusetts; Connecticut; Oregon; Colorado; New Hampshire; Maryland; Virginia; and Delaware.

Research by the Rutgers University Center for Women and Work found that implementing universal paid family and medical leave would result in higher post-birth wages for women who take paid leave than for those that do not. Given that women are more likely to serve as primary caregiver and, therefore, are more likely to need leave, a federal paid leave program would strengthen the economic security of women. Additionally, research by Zero-to-Three found that the well-being of children would improve dramatically given the availability of parents to care for children and help obtain needed healthcare. Finally, the improved economic well-being of families would boost the economy and business revenue. In fact, paid leave policies creating gender equity would boost GDP by $2.4 trillion by 2030, and policy allowing caregiving for older adults $1.7 trillion by 2030.

I am proud to recognize my home state of Illinois is one of three states (i.e., Illinois, Maine, Nevada) that has enacted mandatory earned time off, a policy that is a substantial leap forward to universal paid family and medical leave. The Illinois Paid Leave for All Workers Act will begin in 2024. It allows workers to accrue one hour of paid leave for every 40 hours workers, with a limit of 40 hours per year. Importantly, workers can use this leave for any reason, not just health care. I also am proud to recognize that ordinances in Cook County and Chicago proved that these policies benefit both workers and employers. This flexible time off for shorter life events coupled with paid family and medical leave for longer periods could substantially support workers, allowing them to remain in the workforce and advance their careers over time while still meeting the needs of themselves and their families.

We must take action to ensure equity for women, workers of color, and low-income workers through comprehensive, universal, paid family and medical leave legislation. Although my Republican colleagues have repeatedly blocked Democratic efforts to enact paid family and medical leave, I promise to continue to champion comprehensive paid family and medical leave legislation to give workers the protections they deserve that will strengthen families, communities, and our country. As we recognize the 30th anniversary of the Family Medical Leave Act, we must commit ourselves to moving toward a future in which all workers enjoy the right to paid leave.

HONORING TRANSYLVANIA UNIVERSITY WOMEN'S BASKETBALL TEAM

HON. ANDY BARR

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. BARR. Mr. Speaker, I rise today to honor the accomplishments of a special group of women from Transylvania University. Transylvania is located in Lexington, Kentucky and holds a special place in Kentucky history as the first institution of higher learning west of the Alleghenies.

Today Transylvania is honored for another place in history. The women's basketball team, under the direction of head coach Dr. Juli Fulks, won the NCAA Division III Women's National Championship. This is the first NCAA Championship in school history. The women completed a perfect 33–0 season and defeated Christopher Newport University 57–52 for the championship: Madison Kellione, from Harrison County, Kentucky, was named Most Outstanding Player of the NCAA Division III Tournament.

Members of the team include Amara Flores, Gracie Haywood, Madison Kellione, Keaton Hall, Sierra Kemelgor, Aubree Littlejohn, Sadie Wurth, McLain Murphy, Samantha Cornelison, Sydney Wright, Kennedi Stacy, Laken Ball, Kennedy Harris, Dasia Thornton, Micayla Hurdle, and Emile Teall. The coaching staff includes Juli Fulks, Hannah Varel, Loren Bewley, Tim Whitesel, and Lea Wise Prewitt.

This team and its perfect season, culminating in a championship, brings pride not only to the Transylvania campus, but to the city of Lexington and indeed the Commonwealth of Kentucky. I congratulate Coach Fulks, all the staff members, and especially the players on winning the NCAA Championship and having such a memorable season. I am proud to honor them before the United States Congress.

HONORING THE 70TH ANNIVERSARY OF INDUCTOTHERM

HON. ANDY KIM

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. KIM of New Jersey. Mr. Speaker, I rise today to honor an integral company within New Jersey's Third District, Inductotherm, and the legacy of their founder, Henry Rowan, as part of their 70th anniversary celebration taking place this year.

In his life Henry was guided by a deep sense of determination and an entrepreneurial spirit. He began his first business at age nine, raising chickens and selling eggs. Even at that young age he was passionate about his work. He carried this same passion for hard work throughout his career including serving as a trained bomber pilot in the Army Air Corps during World War II before returning home and founding Inductotherm, wanting the opportunity to apply his own new ideas to induction furnace design. He was also dedicated to using the profits of Inductotherm to give back to others, most notably to southern New Jersey's own Rowan University, and the very communities in which Inductotherm's network operates.

Since their original founding in 1958, the Inductotherm Group has expanded, ensuring their customers can obtain a broad range of products and services to meet the needs of every industry, and in over 20 countries around the world. While Inductotherm began simply, with its first order being built in Henry Rowan's garage, the company has become a staple of New Jersey's Third District over the past 70 years as well as a global leader in thermal processing technologies.

We are proud to celebrate the legacy of Henry Rowan and the accomplishments of Inductotherm throughout their 70-year history. I look forward to all they will continue to accomplish and wish them many more years of notable milestones and success.

RECOGNIZING THE SPIRITUAL LIFE OF MOST REVEREND FERNAND JOSEPH CHERI, III, OFM, AUXILIARY BISHOP OF NEW ORLEANS

HON. TROY A. CARTER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. CARTER of Louisiana. Mr. Speaker, I rise today to recognize New Orleans' beloved native son, a true spiritual leader, mentor, and confidant. It is with great sadness that the Archdiocese of New Orleans announced the passing of the Most Reverend Fernand Joseph Cheri, III, OFM, Auxiliary Bishop of New Orleans, who died on March 21, 2023. He was 71 years of age. He was the son of Fernand J. Jr., and Gladys Marguerite Epps Cheri.

In a recent message, Archbishop Aymond shared the news with clergy, the community of New Orleans, and the religious of the archdiocese writing, "It is with a sad heart that I inform you that Bishop Fernand Cheri died. He has been called home to the Lord. We mourn his death and thank God for his life and ministry. May he rest in the arms of the risen Christ."

Bishop Fernand Cheri was born in New Orleans, Louisiana on January 28, 1952. He attended Epiphany Elementary School, New Orleans, St. John Prep, New Orleans, and St. Joseph Seminary College in St. Benedict. He received a Master of Divinity at Notre Dame Seminary in New Orleans and a Master of Theology from the Institute for Black Catholic Studies at Xavier University, New Orleans. He was ordained to the priesthood on May 20, 1978, at St. Louis Cathedral.

After his ordination, Bishop Cheri served as Associate Pastor of St. Joseph the Worker Church in Marrero, Louisiana, and later in New Orleans serving at St. Francis de Sales, St. Theresa Child of Jesus, and Our Lady of Lourdes Catholic Churches.

In 1996, he made his solemn profession in the Order of Friars Minor in the Province of the Most Sacred Heart of Jesus and became a Franciscan priest to serve disadvantaged communities such as incarcerated individuals and the homeless. Bishop Cheri spent several years dedicated to campus ministry at Quincy University in Quincy, Illinois.

He returned to the Archdiocese of New Orleans after his Episcopal Ordination as Auxiliary Bishop of New Orleans and Titular Bishop of Membressa on March 23, 2015. He served as Auxiliary Bishop since his ordination and recently served the people of St. Peter Claver Parish as Administrator.

Bishop Cheri was also a popular guest speaker and revivalist. He traveled both within the Archdiocese of New Orleans and nationally, preaching and sharing his love of music.

In addition to his pastoral assignments, Bishop Cheri served as a member of the College of Consultors, was a teacher at St. Augustine High School, New Orleans, and campus minister at Xavier University, New Orleans. He also served as the vocation minister for the OFM St. Louis Province, served on the Archbishop James P. Lyke Foundation, Catholic Campus Ministry Association, Episcopal Liaison to the African Congress Board of Trustees, and convener of the U.S. African American Bishops. Bishop Cheri was also very influential and active with the Knights and Ladies of St. Peter Claver and the Institute of Black Catholic Studies at Xavier University.

The world is suffering a loss of a great Auxiliary Bishop that continuously prayed and worked to serve those often forgotten. We know that he will continue to watch over us as we live to fulfill his mission.

HONORING DR. FREDERIC ''FRITZ'' A. REID

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor Dr. Frederic "Fritz" A. Reid in recognition of his career with Ducks Unlimited, Inc. and immense contributions to the protection of wildlife habitats.

Dr. Reid grew up in Edina, Minnesota where he loved hunting ducks with his grandfather. In 1978, he received an A.B. in Biology from Hamilton College in Clinton, New York. He then attended the University of Missouri at Columbia, receiving a Master of Science degree in 1983 and a Ph.D. in 1989, both in Fisheries and Wildlife Ecology.

For decades, Dr. Reid has played a key role in efforts to conserve wetlands and other habitats. He joined Ducks Unlimited in 1990 and as a result of his professionalism, hard work and determination, eventually became their Director of Boreal and Arctic Conservation. He has also helped lead the Central Valley Joint Venture, San Francisco Bay Joint Venture, International Sea Duck Joint Venture and Arctic Goose Joint Venture. Dr. Reid is the recipient of numerous awards for his conservation work including the J. Martin Winton Conservation Award, the Holly Andre Award, and the International Canvasback Award.

Dr. Reid has worked across North America to preserve and protect fragile habitats which are increasingly at risk due to the effects of climate change and other man-made impacts. With Ducks Unlimited, Dr. Reid helped conserve one billion acres of Canada's boreal forest, a major breeding ground for American birds. He has supported countless efforts to research and remedy water management including work with the Central Valley Grassland Water District, Suisun Resource Conservation District and the California Rice Commission. Dr. Reid has also committed himself to the next generation of conservationists, having been a Visiting Assistant Professor in the biology department of Southeast Missouri State University and a Postdoctoral Fellow in wetland ecology at the University of Missouri. Currently, Dr. Reid is an Adjunct Professor of Wildlife, Fisheries and Conservation at the University of California, Davis.

Outside of his work, Dr. Reid enjoys traveling and spending time with his partner Kim Forrest, her son Forrest Hansen and his dog Boreal.

Mr. Speaker, Dr. Reid is most deserving of many accolades and appreciation for his decades of hard work and dedication to conservation efforts. Therefore, it is fitting and proper that we honor my duck hunting buddy Fritz Reid here today.

HONORING THE ACHIEVEMENTS OF MATTHEW ''MAC'' MCCLUNG

HON. H. MORGAN GRIFFITH

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. GRIFFITH. Mr. Speaker, I rise in honor of Matthew "Mac" McClung of Gate City, Virginia, who on February 18, 2023, won the NBA All-Star slam dunk contest. With just over 2,000 residents, Mac's incredible accomplishments have put Gate City on the map.

After graduating from Gate City High School as a three-star recruit in 2018, Mac played college basketball for Georgetown University and Texas Tech University, before declaring for the 2021 NBA draft. I've followed Mac's basketball career since high school, attending a few of his Gate City and Georgetown games.

Mac has worked hard on his craft, playing in the NBA G league since turning pro. He won NBA G League Rookie of the Year for the 2021–22 season. In February, Mac was not only the first NBA G League player to participate in the NBA All-Star slam dunk contest,

but to also win it. I was glad to be able to watch Mac's incredible win live.

After the dunk contest, Mac signed with the Philadelphia 76ers. On April 7, Mac won the NBA G League title with the Delaware Blue Coats. Two days later, he helped the 76ers defeat the Brooklyn Nets in their final regular season game and netted a near-triple double with 20 points, 9 rebounds, and 9 assists.

Mac's hard work and dedication have made all of us in Southwest Virginia proud. His professionalism when talking with members of the media continues to impress me. Even with his new-found fame, Mac continues to be a gentlemen.

I congratulate Mac on his win in February and wish him continued success in basketball. I look forward to following his career. I am confident it will be a long and fruitful one.

PERSONAL EXPLANATION

HON. DAVID SCOTT

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. DAVID SCOTT of Georgia. Mr. Speaker, had my vote for H.R. 1151, the "Upholding Sovereignty of Airspace Act" been cast, it would have been recorded as AYE. Had my vote for H. Res. 240, "Condemning recent actions taken by the Russian military to down a United States Air Force drone" been cast, it would have been recorded as AYE. Had I been present, I would have voted AYE on Roll Call No. 183, and AYE on Roll Call No. 184.

TRIBUTE TO HONOR THE LIFE OF JOHN HART CLINTON, JR.

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Ms. ESHOO. Mr. Speaker, I rise today to honor John Hart Clinton, Jr. who passed away on March 29th at the age of 78. Mr. Clinton was an integral part of the San Mateo County community through his work as Publisher of the San Mateo Times and his service on the San Mateo County Historical Association.

John's life was a testament to his family's legacy of civic engagement and passion for San Mateo County. He studied at the University of Oregon and returned home to help run the San Mateo Times, which his mother's family, the Amphletts founded in 1889. His father, J. Hart Clinton was a partner at Morrison, Foerster, Holloway, Clinton and Clark in San Francisco, and he was appointed to lead the San Mateo Times in 1943.

In the late 1960s, John met his wife Nina, and they had three children: Allison Rak, John Clinton, and Nicole Medina. His family describes him as loving, caring, and kind. Throughout his career, John always came home for dinner, and he loved spending time outdoors with his kids, pitching to his daughter Nicole or fishing with John. He supported his family's passions by learning about their fields of interest and being present at important events. John loved to make his family happy by dressing up in costume for parties and impressing guests with his sleight of hand.

At the San Mateo Times, John developed an effective working relationship with the newspaper's staff who speak of his work ethic and willingness to go to bat for others. Former Managing Editor Michelle Carter credits John as one of the primary reasons she was promoted to lead the newspaper, thanks to his support of her candidacy with his father, J. Hart Clinton.

John took on the role of Publisher in 1987, and he was the steward of the San Mateo Times through in-depth coverage of events such as the Loma Prieta Earthquake, several presidential elections, and the end of the Cold War.

John Clinton loved his community's heritage and served on the board of the San Mateo County Historical Association. He led the transformation of the Old County Courthouse into the new home of the History Museum. Mitch Postel, President and CEO of the Historical Association cites John as integral to the Historical Association's mission, with the following words:

> ''Telling the story of the current Peninsula was only an ability you had if you knew the past. He realized that and he knew that his family had created an institution in San Mateo County that was very important to the local people,'' Postel said. ''He wasn't into the local history thing just because he wanted to be on a board. He was into it because he believed in its importance and knew that his family was a part of that.''

John also volunteered with the nonprofits Caminar and the Peninsula Community Foundation, in addition to co-founding the United American Bank. He will be remembered as a deeply faith-filled man who helped the homeless, the incarcerated, and other underserved residents, always with an eye to how our systems could better help those in need.

Mr. Speaker, I ask the entire House of Representatives to join me in honoring the life of an extraordinary and humble man, John Hall Clinton, Jr. San Mateo County is better and stronger, and our Nation is greater because of John and his superb work.

PERSONAL EXPLANATION

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. NEAL. Mr. Speaker, had I been present, I would have voted YEA on Roll Call No. 183, and YEA on Roll Call No. 184.

HONORING BOB SCHELEN

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor Bob Schelen one year after his passing. Mr. Schelen, a resident of Davis, California, devoted his life to legislative service and Democratic Party organizing on both the local and state level. We in California's 4th District are proud to remember his legacy here today.

To honor Mr. Schelen, we must first recognize how his family's commitment to public service shaped his own. In the 1960s, Mr. Schelen's mother Maggie was a close confidant and associate of former California Speaker Jesse Unruh. Maggie mentored several legislators during that time, including then Assemblymember and later Congressman Vic Fazio. During Speaker Willie Brown's tenure, Maggie was essential in organizing the Speaker's Office of Majority Services (SOMS) which provides programmatic and constituent support to the majority caucus. Both Maggie's children, Bob and her daughter Delilah, spent most of their careers serving in the SOMS, thus following in their mother's footsteps.

Mr. Schelen worked in the SOMS from 1974 to 2022. He served under every Speaker from Leo McCarthy to Anthony Rendon, where he specialized in communications work relating to constituent services and Assemblymember outreach. His devotion to the legislature could only be matched by his devotion to the LA Dodgers.

Mr. Schelen was also an outstanding leader for the local Democratic Party. He was President of the Yolo County Democratic Central Committee for 12 years, from 2009 to 2021. He also served as Yolo County's delegate to the California Democratic Party (CDP) for nearly 40 years and held several CDP leadership positions. He co-chaired the standing CDP committees on Organizational Development and Campaign Services, where he worked to build up local grassroots infrastructure for the party. He was an indispensable resource and mentor to other local Democratic organizations, like the Davis Democratic Club, the Davis College Democrats, and the Sacramento Truman Club.

Mr. Speaker, Bob Schelen was a dedicated public servant and leader in our community. Therefore, it is fitting that we honor his memory here today.

HONORING IRENE HOSKING OF OWOSSO ON HER 105TH BIRTHDAY

HON. ELISSA SLOTKIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Ms. SLOTKIN. Mr. Speaker, today I rise to honor the remarkable life of Irene M. Hosking of Owosso, Michigan, who now celebrates an equally remarkable milestone: her 105th birthday. As a former Army nurse and a fierce advocate for women and veterans, Ms. Hosking has served both her patients and her country with pride.

Irene was born April 20, 1918 to Harry and Hilma M. Cox in Hurley, Wisconsin, the oldest of five siblings. In 1936, as a young graduate of Lincoln High School, Ms. Hosking already knew she wanted to devote her life to helping others, and enrolled in the Milwaukee Passavant Hospital School of Nursing, graduating in 1940. When her brother survived the bombing of Pearl Harbor, Irene again knew exactly what she wanted to do: on May 15, 1942, she joined the United States Army Nurse Corps.

It was then, as World War II raged, that Irene first came to Michigan, as she was assigned to Fort Custer, near Battle Creek. Soon after, she was dispatched to Camp McCoy (now Fort McCoy) in Wisconsin, and later to Fort Sill, Oklahoma; Camp Stoneman, California; and finally across the globe to Australia. There, she joined a legion of Army

nurses tending to troops from the Pacific Theater, becoming one of the first female nurses to ever administer anesthesia to a wounded soldier. In total, Irene served more than two years overseas and earned the rank of First Lieutenant before separating from the service in 1946.

But it was back at Camp McCoy that Irene's life changed forever, when she met a young G.I. named Louis W. A. Hosking from Michigan. They married, and at the war's end made their home in Owosso, where together they would raise one son, one grandson, and two great grandchildren. For many years, Irene served as superintendent of nurses at the Shiawassee County Hospital on Lyons Road, which later moved to Norton Street and was known as the Pleasant View facility.

When Hosking came home and tried to join the VFW in 1946, she was told that women were not allowed. It took nearly four decades, but she persisted and finally became a member in 1984. But Irene was born to lead, and in 1995, the woman who was once forbidden to join became the first female commander at the Shiawassee County Council VFW Post No. 4005. She served as chaplain of the organization until 2022, when it should be noted she was 104 years old.

Irene Hosking represents the best of this Nation: selfless service, fearlessness in the face of obstacles, and a relentless dedication to her calling. With gratitude to the U.S. Army, the Michigan Veterans Affairs Agency, and to all who have shared Irene's story over her long and fruitful life, today I join in tribute and reflect the appreciation and admiration of a grateful Nation.

RECOGNIZING AUTISM AFTER 21 DAY

HON. JAMIE RASKIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. RASKIN. Mr. Speaker, I rise today to highlight national "Autism After 21 Day"—April 21st—as an important milestone during Autism Acceptance Month. As we use this month to recognize the many wonderful contributions of people with autism, it is also fitting for us to take a few moments to acknowledge the challenges that many people with autism face as they transition into adulthood.

Each year in the United States, more than 70,000 children with autism become adults with autism. The transition to adulthood is difficult for many individuals, but it can be especially challenging for autistic young people, who too often face a formidable "services cliff" as they age out of the school system. Support services may drop off, and young adults with autism sometimes struggle to continue their education or find meaningful employment. Some young people in this situation experience a crushing loss of their community and can feel very isolated.

In light of these major challenges, I want to recognize the extraordinary work of my constituents, JaLynn Prince and Dr. Gregory A. Prince, who founded the Madison House Autism Foundation. This remarkable organization is improving the health and wellbeing of autistic adults throughout their lifespans through employment partnerships, housing initiatives, and many other exceptional offerings. The Madison House Autism Foundation is also driving forward the Autism After 21 movement—a growing social movement that champions the expansion of attention, care and support to maximize the wellbeing of people with autism throughout their lifespan.

Mr. Speaker, we must continue working to build a more inclusive and enlightened society that provides opportunities to autistic individuals of every age. I urge my colleagues to join me in recognizing April 21st as national "Autism After 21 Day".

RECOGNIZING THE 35TH ANNIVERSARY OF 2ND CHANCE, INC.

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to recognize 2nd Chance, Inc. on their 35th anniversary. Since its inception in 1988 as a non-profit organization, 2nd Chance, Inc.'s purpose has been to provide supportive advocacy services to victims and survivors of domestic and sexual violence.

The board of directors and staff of 2nd Chance, Inc. provide services to these victims from shelters to support to counseling until protection and assistance is no longer required.

2nd Chance opened its first emergency shelter—the Joy Kathryn Courtney House—in 1990 where up to 23 victims with or without children could be housed. The second shelter—the Legacy House—was opened in 2017 to house older victims and those with limited mobility issues.

These places of refuge and the services provided by 2nd Chance have assisted countless numbers of women and families across Calhoun County and the surrounding area over the past 35 years. Many more individuals have been made aware of the prevalence of domestic and sexual violence and how to assist victims thanks to the services offered by 2nd Chance.

Mr. Speaker, please join me in recognizing the hard work of 2nd Chance, Inc., their 35th anniversary and their lasting impact on our community.

RECOGNIZING THE AIR FORCE RESERVE'S 75TH BIRTHDAY

HON. AUSTIN SCOTT

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. AUSTIN SCOTT of Georgia. Mr. Speaker, I rise today to recognize a very significant date in the history of the national defense of our great Nation. On April 14th, the Air Force Reserve celebrated its 75th birthday. Its diamond anniversary is an occasion to reflect on the Air Force Reserve's proud heritage, recognize its history, and acknowledge its current contributions to national security as we look to the future.

The legacy of the Air Force Reserve dates to the National Defense Act of 1916, when the need for a standby force led to the creation of the Federal Reserve. The Air Force Reserve was officially established on April 14, 1948, when President Truman transferred the Army Air Corps Reserve to the Air Force. Barely two years later, the Air Force Reserve would mobilize for the first time, activating nearly 147,000 Citizen Airmen during the Korean War. Since that date, the Air Force Reserve has provided essential capabilities and manpower in every major U.S. conflict and numerous smaller operations around the globe. Every day, Reserve Citizen Airmen are actively engaged in every Air Force mission set and are serving bravely and proudly to defend and protect American interests worldwide.

Today, the Air Force flies in one formation. There is no distinction between active, guard, and reserve airmen. Our nation relies on the Air Force Reserve to provide strategic depth through surge capacity both at home and abroad. The Air Force Reserve has always been and will continue to be a ready now force that provides combat forces to fly, fight, and win.

I am honored to have the privilege of representing the Air Force Reserve Command Headquarters, located at Robins Air Force Base, Georgia. On behalf of the House Armed Services Committee and the people of Georgia's Eighth Congressional District, I thank the Citizen Airmen of the Air Force Reserve and wish the Air Force Reserve a very happy 75th birthday.

PERSONAL EXPLANATION

HON. DANIEL T. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. KILDEE. Mr. Speaker, I was unable to attend votes due to a medical procedure. Had I been present, I would have voted yea on rollcall No. 183 (H.R. 1151), and yea on rollcall No. 184 (H. Res. 240).

RECOGNIZING THE 30TH ANNIVERSARY OF ELBIT SYSTEMS OF AMERICA

HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Ms. GRANGER. Mr. Speaker, I rise today to recognize the 30th anniversary of one of Fort Worth's very own, Elbit Systems of America.

For 30 years, Elbit Systems of America's technology, products and spirit have served side-by-side with warfighters, first responders, civil aviators, and medical personnel to fulfill the company's core mission: providing innovative solutions that protect and save lives.

With fewer than 10 employees, the company was incorporated in the State of Delaware in 1992. But in 1993, the company started operating in Fort Worth after purchasing a manufacturing plant from another defense contractor. Operations in Fort Worth began with one contract to service the F–16 fighter aircraft with 170 employees, and with a commitment to helping its customers keep America safe.

Today, Elbit Systems of America has grown to nearly 3,500 employees; annual revenues

of almost $1.5 billion; and engineering and manufacturing facilities in seven states.

It is no exaggeration to say that a huge contributor to the success of this business is its President & CEO, Raanan Horowitz. Raanan was one of the company's first employees, and since 2007 has led the company through America's times at war, economic challenges, and the uncertainty of the pandemic.

While nearly doubling the company's revenue under this tenure, he's ensured that Elbit Systems of America operates by the highest standards. In fact, the Ethisphere Institute has honored Elbit Systems of America with its World's Most Ethical Company award five times since 2014, and back-to-back in 2022 and 2023.

Elbit Systems of America's products are found in practically every major weapon system, they produce surveillance systems to help secure America's southern border, and blood diagnostic machines to help protect us from illnesses and diseases.

I'm proud to say that despite all its growth and success, Fort Worth, Texas remains Elbit Systems of America's home and headquarters, where it is actively engaged as a valued member of our community. The company is a national sponsor for The Leukemia & Lymphoma Society, raising awareness and funds for groundbreaking cancer research. Employees across the company also volunteer their personal time to support local food banks, family shelters, children's programs, and animal rescue.

Earlier this year Elbit Systems of America was named one of the Best Companies to Work for in the Great State of Texas, and I am proud to count them a member of Texas' 12th Congressional District.

I congratulate Elbit Systems of America for 30 years of operations, thank them for being such good neighbors and supporters of America's warfighters, law enforcement, and medical professionals, and wish them good luck during their future efforts in the decades to come.

RECOGNIZING DISTRACTED DRIVING AWARENESS MONTH

HON. RAJA KRISHNAMOORTHI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. KRISHNAMOORTHI. Mr. Speaker, I rise today to join numerous organizations and individuals from around the country in observation of Distracted Driving Awareness Month. First introduced as a resolution by the Honorable Betsy Markey and passed by this chamber in March 2010, this commemoration brings critical attention to the devastating and persistent problem of distracted driving on our Nation's roadways.

The latest data show that more than 3,000 people a year, an average of nearly 9 each day, are killed in distracted driving crashes. According to the National Safety Council—a leading safety nonprofit organization that is based in my district—only 62 percent of drivers reported to be ''very willing'' to obey state laws preventing cell phone use. Over the last 10 years, the prevalence of drivers using hand-held electronic devices while driving has increased 127 percent, climbing from 1.5 percent in 2012 to 3.4 percent in 2021. It is alarmingly clear that too many drivers fail to understand the dangers of distracted driving.

Preliminary 2022 estimates from the National Safety Council indicate the deadly consequences of distracted driving are not fading. In 2022, over 46,000 people lost their lives in preventable traffic crashes. These estimates reveal that, compared to pre-pandemic numbers from 2019, the rate of deaths per miles driven in 2022 increased nearly 22 percent. These disturbing statistics are a reminder of how dangerous our roadways can be.

I want to emphasize that these deaths are indeed preventable—and also, that these numbers are widely believed to be undercounted, as many states do not include the option on crash reports to document distracted driving. It is therefore imperative we continue to raise awareness in this chamber and in our communities.

As we mark another Distracted Driving Awareness Month, I strongly encourage all motorists to firmly commit to driving safely and attentively, and to avoid using cell phones and in-vehicle technology that take attention away from the roads ahead.

HONORING GILBERT THOMAS SOWERS

HON. ANDY BARR

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 18, 2023

Mr. BARR. Mr. Speaker, I rise today to honor the life of a special man, Mr. Gilbert Thomas Sowers. Mr. Sowers, a resident of Richmond, Kentucky, is a patriotic American who served our country in the United States Army. He celebrated his 90th birthday on December 15, 2022.

Mr. Sowers was the son of William and Lily Durbin Sowers. He volunteered for military service in April of 1952 at the age of 18. He was sent to Pennsylvania for basic training and was later transferred to Germany. Mr. Sowers volunteered to go to Korea with the Second Infantry Division, where he was in charge of gathering intelligence. Following his first tour to Korea, he returned to Kentucky and married his wife, Betty.

Mr. Sowers went to work at the Madison Frozen Food Locker but, after 2 weeks there, he entered the National Guard at the rank of Sergeant First Class. He was sent to Korea for a second time in the late 1950s and to Germany in the 1960s with his family. In 1964, Mr. Sowers and his family moved back to the States, where he became a drill sergeant and then a mess hall sergeant. He is known still today as a great cook. Mr. Sower's next order took him to Vietnam as a Field Kitchen Supervisor. Not only did he cook; Mr. Sowers was involved in combat as well. He earned a Bronze Star for his heroic actions in helping to evacuate wounded soldiers after an enemy mortar attack in June of 1968. Following his tour in Vietnam, he served one more tour in Germany then retired from the service in 1975 after 24 years, 6 months, and 23 days of service to the United States.

Mr. Sowers serves as a Baptist preacher and the Chaplain of the local Vietnam Veterans of America, Chapter 1066 in Richmond. He has also participated in missing man ceremonies. He represents all his fellow veterans with honor and dignity.

Mr. Sowers is a true patriot. He served our country proudly and I am humbled to honor the service of Mr. Gilbert Thomas Sowers before the United States Congress.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S1149–S1218

Measures Introduced: Seventeen bills and five resolutions were introduced, as follows: S. 1172–1188, and S. Res. 159–163. **Pages S1210–11**

Measures Reported:

Special Report entitled "Report on the Activities of the Committee on Banking, Housing, and Urban Affairs of the United States Senate During the 117th Congress". (S. Rept. No. 118–10)

S. 385, to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations. (S. Rept. No. 118–9) **Page S1210**

Measures Passed:

Congratulating University of Connecticut men's basketball team: Senate agreed to S. Res. 160, commending and congratulating the University of Connecticut men's basketball team for winning the 2023 National Collegiate Athletic Association Men's Basketball Championship. **Page S1161**

National Park Week: Senate agreed to S. Res. 161, designating the week of April 22 through April 30, 2023, as "National Park Week". **Page S1161**

National Osteopathic Medicine Week: Senate agreed to S. Res. 162, designating the week of April 17 through April 23, 2023, as "National Osteopathic Medicine Week". **Page S1161**

Measures Considered:

Fire Grants and Safety Act—Agreement: Senate resumed consideration of S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs, taking action on the following amendments proposed thereto: **Pages S1154–61**

Pending:

Schumer Amendment No. 58, to add an effective date. **Page S1154**

Rejected:

By 49 yeas to 50 nays (Vote No. 87), Lee Amendment No. 80, to make categorical exclusion available for use on certain land by States and Indian Tribes through a project delivery program. (A unanimous-consent agreement was reached providing that the amendment, having failed to achieve 60 affirmative votes, was not agreed to.) **Pages S1157–59**

During consideration of this measure today, Senate also took the following action:

The motion to invoke cloture on the bill was withdrawn. **Page S1154**

A unanimous-consent-time agreement was reached providing that the only amendments in order to the bill be the following: Scott (FL) Amendment No. 81, Hagerty Modified Amendment No. 72, Van Hollen Amendment No. 85, Sullivan Amendment No. 83, and Paul Amendment No. 79; that if offered, Senate vote on or in relation to the amendments listed at a time to be determined by the Majority Leader, following consultation with the Republican Leader; that following disposition of the above amendments, Schumer Amendment No. 58 (listed above) be withdrawn, and Senate vote on passage of the bill, as amended, if amended; that 60-affirmative votes be required for adoption of these amendments and on passage of the bill, with the exception of Sullivan Amendment No. 83 and Paul Amendment No. 79; and that there be 2 minutes for debate equally divided between the two Leaders, or their designees, prior to each vote, all without intervening action or debate. **Page S1154**

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 10 a.m., on Wednesday, April 19, 2023; that at 11:30 a.m., Senate vote on or in relation to Paul Amendment No. 79, and Hagerty Modified Amendment No. 72, as provided under the previous order; that following disposition of Hagerty Modified Amendment No. 72; Senator Tuberville, or his designee, be recognized to make a motion to proceed to consideration of S.J. Res 10, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to "Reproductive Health Services"; that the time until 4:15

p.m., be equally divided between the two Leaders or their designees, and with the final 15 minutes equally divided in the same form; and that Senate recess from 3 p.m., to 4 p.m., to allow for the all-Senators briefing, with the time counting equally to both sides. **Page S1217**

Message from the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a report of the continuation of the national emergency that was originally declared in Proclamation 10371 of April 21, 2022, with respect to the Russian Federation and the emergency authority relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports; which was referred to the Committee on Commerce, Science, and Transportation. (PM–8) **Page S1207**

Nominations Confirmed: Senate confirmed the following nominations:

By 68 yeas to 30 nays (Vote No. EX. 84), Radha Iyengar Plumb, of New York, to be a Deputy Under Secretary of Defense. **Pages S1149–53**

By 59 yeas to 40 nays (Vote No. EX. 86), Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General. **Pages S1153–54**

During consideration of this nomination today, Senate also took the following action:

By 58 yeas to 40 nays (Vote No. EX. 85), Senate agreed to the motion to close further debate on the nomination. **Page S1153**

Messages from the House: **Page S1207**

Measures Referred: **Page S1207**

Executive Communications: **Pages S1207–10**

Additional Cosponsors: **Pages S1211–12**

Statements on Introduced Bills/Resolutions: **Pages S1212–15**

Additional Statements: **Pages S1205–07**

Amendments Submitted: **Pages S1215–16**

Authorities for Committees to Meet: **Pages S1216–17**

Privileges of the Floor: **Page S1217**

Record Votes: Four record votes were taken today. (Total—87) **Pages S1153–54, S1159**

Adjournment: Senate convened at 10 a.m. and adjourned at 6:20 p.m., until 10 a.m. on Wednesday, April 19, 2023. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S1217.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS: AIR FORCE AND SPACE FORCE

Committee on Appropriations: Subcommittee on Defense concluded a hearing to examine proposed budget estimates and justification for fiscal year 2024 for the Air Force and Space Force, after receiving testimony from Frank Kendall, Secretary, and General Charles Q. Brown, Jr., Chief of Staff, both of the Air Force, and General B. Chance Saltzman, Chief of Space Operations, Space Force, all of the Department of Defense.

APPROPRIATIONS: NASA AND NSF

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies concluded a hearing to examine proposed budget estimates and justification for fiscal year 2024 for the National Aeronautics and Space Administration and the National Science Foundation, after receiving testimony from former Senator Bill Nelson, Administrator, National Aeronautics and Space Administration; and Sethuraman Panchanathan, Director, National Science Foundation.

DEFENSE AUTHORIZATION REQUEST AND FUTURE YEARS DEFENSE PROGRAM

Committee on Armed Services: Committee concluded open and closed hearings to examine the posture of the Department of the Navy in review of the Defense Authorization Request for fiscal year 2024 and the Future Years Defense Program, after receiving testimony from Carlos Del Toro, Secretary of the Navy, Admiral Michael M. Gilday, USN, Chief of Naval Operations, and General David H. Berger, USMC, Commandant of the Marine Corps, all of the Department of Defense.

DEFENSE AUTHORIZATION REQUEST AND FUTURE YEARS DEFENSE PROGRAM

Committee on Armed Services: Subcommittee on Airland concluded a hearing to examine army modernization in review of the Defense Authorization Request for fiscal year 2024 and Future Years Defense Program, after receiving testimony from Douglas R. Bush, Assistant Secretary of the Army for Acquisition, Logistics and Technology, General James E. Rainey, USA, Commanding General, United States Army Futures Command, Major General Michelle A. Schmidt, USA, Director, Force Development, G–8, United States Army, all of the Department of Defense.

DEFENSE AUTHORIZATION REQUEST AND FUTURE YEARS DEFENSE PROGRAM

Committee on Armed Services: Subcommittee on Strategic Forces concluded a hearing to examine the Department of Energy's atomic energy defense activities and Department of Defense nuclear weapons programs in review of the Defense Authorization Request for fiscal year 2024 and Future Years Defense Program, after receiving testimony from Jill M. Hruby, Administrator, Admiral James F. Caldwell Jr., USN, Deputy Administrator for Naval Reactors, and Marvin L. Adams, Deputy Administrator for Defense Programs, all of the National Nuclear Security Administration, and William White, Senior Advisor for Environmental Management, all of the Department of Energy; and General Thomas A. Bussiere, USAF, Commander, Air Force Global Strike Command, and Vice Admiral Johnny R. Wolfe, Jr., USN, Director, Navy Strategic Systems Programs, both of the Department of Defense.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the nominations of Jared Bernstein, of Virginia, to be Chairman of the Council of Economic Advisers, Ron Borzekowski, of Maryland, to be Director, Office of Financial Research, Department of the Treasury, and Solomon Jeffrey Greene, of the District of Columbia, and David Uejio, of California, both to be an Assistant Secretary of Housing and Urban Development, after the nominees testified and answered questions in their own behalf.

TAX DODGING BY THE WEALTHY

Committee on the Budget: Committee concluded a hearing to examine tax dodging by the wealthy and big corporations, after receiving testimony from Kimberly A. Clausing, University of California, Los Angeles; Danny Yagan, University of California, Berkeley; and William McBride, Tax Foundation, Washington, D.C.

USFS BUDGET

Committee on Energy and Natural Resources: Committee concluded a hearing to examine the President's proposed budget request for fiscal year 2024 for the Forest Service, after receiving testimony from Randy Moore, Chief, and Mark Lichtenstein, Director of Strategic Planning, Budget and Accountability, both of the Forest Service, Department of Agriculture.

CLEANER VEHICLES

Committee on Environment and Public Works: Subcommittee on Clean Air, Climate, and Nuclear Safety concluded a hearing to examine cleaner vehicles, focusing on consumers and public health, after receiving testimony from Christopher Harto, Consumer Reports, and Kathy Harris, Natural Resources Defense Council, both of Washington, D.C.; and Andrew Boyle, Boyle Transportation, New York, New York, on behalf of the American Trucking Associations.

UKRAINE

Committee on Foreign Relations: Committee received a closed briefing on Ukraine from Dereck Hogan, Principal Deputy Assistant Secretary, Bureau of European and Eurasian Affairs, Jessica Lewis, Assistant Secretary, Bureau of Political-Military Affairs, and Regina Faranda, Deputy Assistant Secretary, Bureau of Intelligence and Research, all of the Department of State; and Laura Cooper, Deputy Assistant Secretary of Defense for Russia, Ukraine, and Eurasia.

DHS BUDGET

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine the President's proposed budget request for fiscal year 2024 for the Department of Homeland Security, focusing on resources and authorities requested to protect and secure the homeland, after receiving testimony from Alejandro N. Mayorkas, Secretary of Homeland Security.

NOMINATIONS

Committee on the Judiciary: Committee concluded a hearing to examine the nominations of Jeremy C. Daniel, to be United States District Judge for the Northern District of Illinois, Brendan Abell Hurson, to be United States District Judge for the District of Maryland, who was introduced by Senators Cardin and Van Hollen, and Darrel James Papillion, to be United States District Judge for the Eastern District of Louisiana, who was introduced by Senators Cassidy and Kennedy, after the nominees testified and answered questions in their own behalf.

FOREIGN COMPETITIVE THREATS

Committee on the Judiciary: Subcommittee on Intellectual Property concluded a hearing to examine foreign competitive threats to American innovation and economic leadership, after receiving testimony from Mark A. Cohen, University of California Berkeley Law School, Berkeley; Patrick Kilbride, U.S. Chamber of Commerce, and Matt Turpin, Palantir Technologies, both of Washington, D.C.; and Suzanne Harrison, Percipience LLC, San Francisco, California.

INTELLIGENCE

Select Committee on Intelligence: Committee received a closed briefing on certain intelligence matters from members of the intelligence community.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 36 public bills, H.R. 2663–2698; 1 private bill, H.R. 2699; and 7 resolutions, H.J. Res. 55–58; and H. Res. 303–305 were introduced. **Pages H1844–46**

Additional Cosponsors: **Page H1848**

Reports Filed: There were no reports filed today.

Speaker: Read a letter from the Speaker wherein he appointed Representative Carey to act as Speaker pro tempore for today. **Page H1763**

Recess: The House recessed at 10:56 a.m. and reconvened at 12 p.m. **Page H1769**

Protection of Women and Girls in Sports Act of 2023 and Disapproving the action of the District of Columbia Council in approving the Comprehensive Policing and Justice Reform Amendment Act of 2022—Rule for Consideration: The House agreed to H. Res. 298, providing for consideration of the bill (H.R. 734) to amend the Education Amendments of 1972 to provide that for purposes of determining compliance with title IX of such Act in athletics, sex shall be recognized based solely on a person's reproductive biology and genetics at birth, and providing for consideration of the joint resolution (H.J. Res. 42) disapproving the action of the District of Columbia Council in approving the Comprehensive Policing and Justice Reform Amendment Act of 2022, by a recorded vote of 217 ayes to 202 noes, Roll No. 186, after the previous question was ordered by a yea-and-nay vote of 218 yeas to 203 nays, Roll No. 185. **Pages H1772–82**

Recess: The House recessed at 2:55 p.m. and reconvened at 5 p.m. **Page H1788**

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to "Revised Definition of 'Waters of the United States'" Presidential Veto: The House voted to sustain the President's veto of H.J. Res. 27, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to "Revised Definition of 'Waters of the United States'", by a yea-and-nay vote of 227 yeas to 196 nays, Roll No. 187 (two-thirds of those present not voting to override).

Pages H1782–88, H1788–89

Subsequently, the veto message (H. Doc. 118–26) and the joint resolution were referred to the Committee on Transportation and Infrastructure.

Page H1789

Joint Economic Committee—Appointment: The Chair announced the Speaker's appointment of the following Members on the part of the House to the Joint Economic Committee: Representatives Schweikert, Arrington, Estes, Ferguson, Smucker, Malliotakis, Beyer, Trone, Moore (WI) and Porter.

Page H1790

Presidential Message: Read a message from the President wherein he notified Congress that the national emergency declared in Proclamation 10371 relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports is to continue in effect beyond April 21, 2023—referred to the Committee on Foreign Affairs and ordered to be printed (H. Doc. 118–28).

Page H1788

Quorum Calls—Votes: Two yea-and-nay votes and one recorded vote developed during the proceedings of today and appear on pages H1780–81, H1781–82, and H1788–89.

Adjournment: The House met at 10 a.m. and adjourned at 7:31 p.m.

Committee Meetings

A REVIEW OF USDA ANIMAL DISEASE PREVENTION AND RESPONSE EFFORTS

Committee on Agriculture: Subcommittee on Livestock, Dairy, and Poultry held a hearing entitled "A Review of USDA Animal Disease Prevention and Response Efforts". Testimony was heard from Jenny Lester Moffitt, Undersecretary for Marketing and Regulatory Programs, Department of Agriculture.

APPROPRIATIONS—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies held a budget hearing on the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Testimony was heard from Steven Dettelbach, Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

APPROPRIATIONS—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY

Committee on Appropriations: Subcommittee on Homeland Security held a budget hearing on the U.S. Immigration and Customs Enforcement Agency. Testimony was heard from Tae Johnson, Acting Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

APPROPRIATIONS—DEPARTMENT OF EDUCATION

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a budget hearing on the Department of Education. Testimony was heard from Miguel Cardona, Secretary, Department of Education; and Larry Kean, Budget Director, Department of Education.

APPROPRIATIONS—U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Committee on Appropriations: Subcommittee on State, Foreign Operations, and Related Programs held a budget hearing on the U.S. Agency for International Development. Testimony was heard from Samantha Power, Administrator, U.S. Agency for International Development.

APPROPRIATIONS—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Committee on Appropriations: Subcommittee on Transportation, Housing and Urban Development, and Related Agencies held a budget hearing on the Department of Housing and Urban Development. Testimony was heard from Marcia Fudge, Secretary, Department of Housing and Urban Development.

APPROPRIATIONS—DEPARTMENT OF COMMERCE

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies held a budget hearing on the Department of Commerce. Testimony was heard from Gina M. Raimondo, Secretary, Department of Commerce.

APPROPRIATIONS—FEDERAL EMERGENCY MANAGEMENT AGENCY

Committee on Appropriations: Subcommittee on Homeland Security held a budget hearing on the Federal Emergency Management Agency. Testimony was heard from Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security.

APPROPRIATIONS—NAVY AND MARINE CORPS MILITARY CONSTRUCTION AND FAMILY HOUSING

Committee on Appropriations: Subcommittee on Military Construction, Veterans Affairs, and Related Agencies held a budget hearing on the Navy and Marine Corps Military Construction and Family Housing. Testimony was heard from Meredith Berger, Assistant Secretary of the Navy, Energy, Installations, and Environment; Vice Admiral Ricky Williamson, Deputy Chief of Naval Operations, Fleet Readiness and Logistics, N4, Office of the Chief of Naval Operations; and Lieutenant General Edward D. Banta, Deputy Commandant, Installations and Logistics, U.S. Marine Corps.

U.S. MILITARY POSTURE AND NATIONAL SECURITY CHALLENGES IN THE INDO—PACIFIC REGION

Committee on Armed Services: Full Committee held a hearing entitled ''U.S. Military Posture and National Security Challenges in the Indo-Pacific Region''. Testimony was heard from Admiral John C. Aquilino, Commander, U.S. Indo-Pacific Command; General Paul J. LaCamera, Commander, United Nations Command/Combined Forces Command/U.S. Forces Korea; and Jedidiah P. Royal, Principal Deputy Assistant Secretary of Defense for Indo-Pacific Security Affairs, Department of Defense.

FY24 BUDGET REQUEST FOR MISSILE DEFENSE AND MISSILE DEFEAT PROGRAMS

Committee on Armed Services: Subcommittee on Strategic Forces held a hearing entitled ''FY24 Budget Request for Missile Defense and Missile Defeat Programs''. Testimony was heard from the following Department of Defense officials: Deputy Assistant Secretary John D. Hill, Deputy Assistant Secretary of Defense for Space and Missile Defense; Vice Admiral Jon Hill, Director, Missile Defense Agency; Lieutenant General Daniel Karbler, U.S. Army Space and Missile Defense Command; and Major General David Miller, Director of Operations, U.S. Space Command.

AIR FORCE PROJECTION FORCES AVIATION PROGRAMS AND CAPABILITIES RELATED TO THE PRESIDENT'S 2024 BUDGET REQUEST

Committee on Armed Services: Subcommittee on Seapower and Projection Forces held a hearing entitled ''Air Force Projection Forces Aviation Programs and Capabilities Related to the President's 2024 Budget Request''. Testimony was heard from Andrew P. Hunter, Assistant Secretary for Acquisition, Technology and Logistics, Department of the Air Force; and Lieutenant General Richard G. Moore,

Deputy Chief of Staff for Plans and Programs, Department of the Air Force.

SCHOOL CHOICE: EXPANDING EDUCATIONAL FREEDOM FOR ALL

Committee on Education and Workforce: Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing entitled ''School Choice: Expanding Educational Freedom for All''. Testimony was heard from Representatives Davidson, Smith of Nebraska, and Pocan; former Member Luke Messer; and public witnesses.

FISCAL YEAR 2024 FEDERAL TRADE COMMISSION BUDGET

Committee on Energy and Commerce: Subcommittee on Innovation, Data, and Commerce held a hearing entitled ''Fiscal Year 2024 Federal Trade Commission Budget''. Testimony was heard from the following Federal Trade Commission officials: Lina M. Khan, Chair; Alvaro Bedoya, Commissioner; and Rebecca Kelly Slaughter, Commissioner.

INSIGHTS FROM THE HHS INSPECTOR GENERAL ON OVERSIGHT OF UNACCOMPANIED MINORS, GRANT MANAGEMENT, AND CMS

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled ''Insights from the HHS Inspector General on Oversight of Unaccompanied Minors, Grant Management, and CMS''. Testimony was heard from Christi A. Grimm, Inspector General, Office of Inspector General, Department of Health and Human Services.

AMERICAN NUCLEAR ENERGY EXPANSION: POWERING A CLEAN AND SECURE FUTURE

Committee on Energy and Commerce: Subcommittee on Energy, Climate, and Grid Security held a hearing entitled ''American Nuclear Energy Expansion: Powering a Clean and Secure Future''. Testimony was heard from public witnesses.

OVERSIGHT OF THE SECURITIES AND EXCHANGE COMMISSION

Committee on Financial Services: Full Committee held a hearing entitled ''Oversight of the Securities and Exchange Commission''. Testimony was heard from Gary Gensler, Chair, Securities and Exchange Commission.

12 YEARS OF TERROR: ASSAD'S WAR CRIMES AND U.S. POLICY FOR SEEKING ACCOUNTABILITY IN SYRIA

Committee on Foreign Affairs: Subcommittee on the Middle East, North Africa, and Central Asia held a hearing entitled ''12 Years of Terror: Assad's War Crimes and U.S. Policy for Seeking Accountability in Syria''. Testimony was heard from public witnesses.

SURROUNDING THE OCEAN: PRC INFLUENCE IN THE INDIAN OCEAN

Committee on Foreign Affairs: Subcommittee on the Indo-Pacific held a hearing entitled ''Surrounding the Ocean: PRC Influence in the Indian Ocean''. Testimony was heard from public witnesses.

GREAT POWER COMPETITION IN AFRICA: THE CHINESE COMMUNIST PARTY

Committee on Foreign Affairs: Subcommittee on Africa held a hearing entitled ''Great Power Competition in Africa: The Chinese Communist Party''. Testimony was heard from Janean Davis, Deputy Assistant Administrator, Bureau for Africa, U.S. Agency for International Development; Amy Holman, Deputy Assistant Secretary of State, Bureau of African Affairs, Department of State; and Rick Waters, China Coordinator and Deputy Assistant Secretary of State for China and Taiwan, Department of State.

THE HOMELAND SECURITY COST OF THE BIDEN ADMINISTRATION'S CATASTROPHIC WITHDRAWAL FROM AFGHANISTAN

Committee on Homeland Security: Subcommittee on Counterterrorism, Law Enforcement, and Intelligence held a hearing entitled ''The Homeland Security Cost of the Biden Administration's Catastrophic Withdrawal from Afghanistan''. Testimony was heard from public witnesses.

LOOKING AHEAD SERIES: HOUSE SERGEANT AT ARMS STRATEGIC PLAN FOR THE 118TH CONGRESS

Committee on House Administration: Full Committee held a hearing entitled ''Looking Ahead Series: House Sergeant at Arms Strategic Plan for the 118th Congress''. Testimony was heard from William McFarland, Acting Sergeant at Arms, U.S. House of Representatives.

EXAMINING THE IMPLEMENTATION OF THE GREAT AMERICAN OUTDOORS ACT AND THE GROWING NATIONAL PARK SERVICE DEFERRED MAINTENANCE BACKLOG

Committee on Natural Resources: Subcommittee on Federal Lands held a hearing entitled ''Examining the Implementation of the Great American Outdoors Act and the Growing National Park Service Deferred Maintenance Backlog''. Testimony was heard from

Charles Sams III, Director, National Park Service, Department of the Interior.

LEGISLATIVE MEASURES

Committee on Natural Resources: Subcommittee on Water, Wildlife and Fisheries held a hearing on H.J. Res. 29, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to ''Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment''; H.J. Res. 46, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat''; H.J. Res. 49, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to ''Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat''; and H.R. 1213, the ''RESCUE Whales Act of 2023''. Testimony was heard from Representatives Grijalava and Stauber; Gary Frazer, Assistant Director for Ecological Services, U.S. Fish and Wildlife Service, Department of the Interior; Sam Rauch, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration; and public witnesses.

INVESTIGATING THE ORIGINS OF COVID–19, PART 2: CHINA AND THE AVAILABLE INTELLIGENCE

Committee on Oversight and Accountability: Select Subcommittee on the Coronavirus Pandemic held a hearing entitled ''Investigating the Origins of COVID–19, Part 2: China and the Available Intelligence''. Testimony was heard from former Member John Ratcliffe and public witnesses.

OVERSIGHT OF THE OFFICE OF RESETTLEMENT'S UNACCOMPANIED ALIEN CHILDREN PROGRAM

Committee on Oversight and Accountability: Subcommittee on National Security, the Border, and Foreign Affairs held a hearing entitled ''Oversight of the Office of Resettlement's Unaccompanied Alien Children Program''. Testimony was heard from Robin Dunn Marcos, Director, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

SPENDING ON EMPTY: HOW THE BIDEN ADMINISTRATION'S UNPRECEDENTED SPENDING INCREASED RISK OF WASTE, FRAUD, AND ABUSE AT THE DEPARTMENT OF ENERGY

Committee on Oversight and Accountability: Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs held a hearing entitled ''Spending on Empty: How the Biden Administration's Unprecedented Spending Increased Risk of Waste, Fraud, and Abuse at the Department of Energy''. Testimony was heard from Teri L. Donaldson, Inspector General, Department of Energy; and Kathleen Hogan, Principal Deputy Under Secretary for Infrastructure, Department of Energy.

ESTABLISHING AN INDEPENDENT NOAA

Committee on Science, Space, and Technology: Full Committee held a hearing entitled ''Establishing an Independent NOAA''. Testimony was heard from Neil Jacobs, Acting Administrator, National Oceanic and Atmospheric Administration, Department of Commerce; and public witnesses.

PAYING THEIR FAIR SHARE: HOW TAX HIKES CRUSH THE COMPETITIVENESS OF SMALL BUSINESSES

Committee on Small Business: Full Committee held a hearing entitled ''Paying Their Fair Share: How Tax Hikes Crush the Competitiveness of Small Businesses''. Testimony was heard from public witnesses.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE MEMBER DAY

Committee on Transportation and Infrastructure: Full Committee held a hearing entitled ''Committee on Transportation and Infrastructure Member Day''. Testimony was heard from Chairman Thompson of Pennsylvania, and Representatives Langworthy, Higgins of New York, Hageman, Hern, Johnson of Ohio, Meuser, Landsman, Barragán, Escobar, Sablan, Casar, Garcia of Texas, Crockett, Sherrill, Miller of Illinois, Carter of Georgia, Bergman, Roy, Kilmer, Sherman, Davis of North Carolina, Schrier, Costa, Luna, Danny K. Davis of Illinois, Soto, Goldman, Porter, Crow, Perez, and Fitzpatrick.

REVIEW OF FISCAL YEAR 2024 BUDGET REQUEST FOR THE COAST GUARD

Committee on Transportation and Infrastructure: Subcommittee on Coast Guard and Maritime Transportation held a hearing entitled ''Review of Fiscal Year 2024 Budget Request for the Coast Guard''. Testimony was heard from Admiral Linda L. Fagan, Commandant, U.S. Coast Guard; and Master Chief Heath B. Jones, Master Chief Petty Officer of the Coast Guard, U.S. Coast Guard.

MISCELLANEOUS MEASURES

Committee on Veterans' Affairs: Subcommittee on Health held a markup on H.R. 41, the ''VA Same-Day Scheduling Act of 2023''; H.R. 562, the ''Improving Veterans Access to Congressional Services Act of 2023''; H.R. 808, the ''Veterans Patient Advocacy Act''; H.R. 754, the ''Modernizing Veterans' Health Care Eligibility Act''; H.R. 693, the ''Veterans Affairs Medical Center Absence and Notification Timeline Act''; H.R. 1089, the ''VA Medical Center Transparency Act''; H.R. 366, the ''Korean American VALOR Act''; and H.R. 1256, the ''Veterans Health Administration Leadership Transformation Act''. H.R. 754, H.R. 693, H.R. 1089, and H.R. 366 were ordered reported, without amendment. H.R. 562, H.R. 808, H.R. 1256, and H.R. 41 were ordered reported, as amended.

COMBATTING A CRISIS: PROVIDING VETERANS ACCESS TO LIVE-SAVING SUBSTANCE ABUSE DISORDER TREATMENT

Committee on Veterans' Affairs: Subcommittee on Health held a hearing entitled ''Combatting a Crisis: Providing Veterans Access to Live-saving Substance Abuse Disorder Treatment''. Testimony was heard from the following Department of Veterans Affairs officials: Tamara Campbell, M.D., Executive Director; Julie Kroviak, M.D., Principal Deputy Assistant Inspector General; Sachin Yende, M.D., Chief Medical Officer; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Veterans' Affairs: Subcommittee on Economic Opportunity held a markup on H.R. 645, the ''Healthy Foundations for Homeless Veterans Act''; H.R. 728, to Direct the Assistant Secretary of Labor for Veterans' Employment and Training to carry out a pilot program on short-term programs for veterans; H.R. 746, the ''Streamlining Aviation for Eligible Veterans Act''; H.R. 1169, the ''VA E–Notification Enhancement Act''; H.R. 1635, the ''Filipino Education Fairness Act''; H.R. 1669, the ''VET–TEC Authorization Act of 2023''; H.R. 1767, the ''Student Veteran Benefit Restoration Act''; H.R. 1786, the ''Get Rewarding Outdoor Work for our Veterans Act''; H.R. 1798, the ''Protect Military Dependents Act''; and H.R. 1799, the ''EMPLOY VETS Act''. H.R. 746, H.R. 1169, H.R. 1635, and H.R. 1786 were ordered reported, without amendment. H.R. 728, H.R. 1767, H.R. 1669, H.R. 1798, H.R. 645, and H.R. 1799 were ordered reported, as amended.

HEARING ON COUNTERING CHINA'S TRADE AND INVESTMENT AGENDA: OPPORTUNITIES FOR AMERICAN LEADERSHIP

Committee on Ways and Means: Subcommittee on Trade held a hearing entitled ''Hearing on Countering China's Trade and Investment Agenda: Opportunities for American Leadership''. Testimony was heard from public witnesses.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR WEDNESDAY, APRIL 19, 2023

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: Subcommittee on Food and Nutrition, Specialty Crops, Organics, and Research, to hold hearings to examine SNAP and other nutrition assistance in the Farm Bill, 12 noon, SR–328A.

Committee on Appropriations: Subcommittee on State, Foreign Operations, and Related Programs, to hold hearings to examine proposed budget estimates and justification for fiscal year 2024 for the United States Agency for International Development, 10 a.m., SD–138.

Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, to hold hearings to examine proposed budget estimates and justification for fiscal year 2024 for military construction and family housing, 10:30 a.m., SD–124.

Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, to hold hearings to examine proposed budget estimates and justification for fiscal year 2024 for the Food and Drug Administration, 2:15 p.m., SD–124.

Committee on Armed Services: Subcommittee on Cybersecurity, to hold hearings to examine artificial intelligence and machine learning applications to enable cybersecurity, 9:30 a.m., SR–222.

Subcommittee on Emerging Threats and Capabilities, to hold closed hearings to examine the mission, activities, oversight, and budget of the All-Domain Anomaly Resolution Office; to be immediately followed by an open session in SR–232A, 9:30 a.m., SVC–217.

Subcommittee on Readiness and Management Support, to hold hearings to examine military construction, energy, installations, environmental, and base closure programs in review of the Defense Authorization Request for fiscal year 2024 and the future years defense program, 1:30 p.m., SR–232A.

Committee on Environment and Public Works: to hold hearings to examine the President's proposed budget request for fiscal year 2024 for the Nuclear Regulatory Commission, 10 a.m., SD–406.

Committee on Finance: to hold hearings to examine the President's proposed budget request for fiscal year 2024 for the Internal Revenue Service and the IRS's 2023 tax filing season, 10 a.m., SD–215.

Committee on Foreign Relations: to hold hearings to examine PEPFAR at 20, focusing on achieving and sustaining epidemic control, 10 a.m., SD–419.

Committee on the Judiciary: to hold hearings to examine holding Russian kleptocrats and human rights violators accountable for their crimes against Ukraine, 10 a.m., SH–216.

Committee on Veterans' Affairs: to hold hearings to examine veterans consumer protection, focusing on preventing financial exploitation of veterans and their benefits, 3:45 p.m., SR–418.

House

Committee on Agriculture, Full Committee, hearing entitled ''For the Purpose of Receiving Testimony from the Honorable Michael Regan, Administrator, U.S. Environmental Protection Agency'', 10 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, budget hearing on the National Science Foundation, 9:30 a.m., H–309 Capitol.

Subcommittee on Homeland Security, budget hearing on the U.S. Coast Guard, 10 a.m., 2008 Rayburn.

Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, budget hearing and oversight hearing on the Centers for Disease Control and Prevention, Administration for Strategic Preparedness and Response, and National Institute of Health, 10 a.m., 2358–C Rayburn.

Subcommittee on Commerce, Justice, Science, and Related Agencies, budget hearing on the National Aeronautics and Space Administration, 1:30 p.m., 2359 Rayburn.

Subcommittee on Homeland Security, budget hearing on the U.S. Customs and Border Protection Agency, 2 p.m., 2008 Rayburn.

Committee on Armed Services, Full Committee, hearing entitled ''Department of the Army Fiscal Year 2024 Budget Request'', 10 a.m., 2118 Rayburn.

Subcommittee on Tactical Air and Land Forces, hearing entitled ''Fiscal Year 2024 Rotary Wing Aviation Budget Request'', 3 p.m., 2118 Rayburn.

Subcommittee on Readiness, hearing entitled ''Fiscal Year 2024 Budget Request for Military Readiness'', 3:30 p.m., 2212 Rayburn.

Committee on Education and Workforce, Subcommittee on Workforce Protections, hearing entitled ''Examining Biden's War on Independent Contractors'', 10:15 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Health, hearing entitled ''Examining Existing Federal Programs to Build a Stronger Health Workforce and Improve Primary Care'', 10 a.m., 2123 Rayburn.

Subcommittee on Communications and Technology, hearing entitled ''Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment'', 10:30 a.m., 2322 Rayburn.

Subcommittee on Oversight and Investigations, hearing entitled ''Who is Selling Your Data: A Critical Examination of the Role of Data Brokers in the Digital Economy'', 2 p.m., 2322 Rayburn.

Committee on Financial Services, Subcommittee on Digital Assets, Financial Technology and Inclusion, hearing entitled ''Understanding Stablecoins' Role in Payments and the Need for Legislation'', 10 a.m., 2128 Rayburn.

Subcommittee on Capital Markets, hearing entitled ''A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans'', 2 p.m., 2128 Rayburn.

Committee on Foreign Affairs, Full Committee, hearing entitled ''Exposing Putin's Crimes: Evidence of Russian War Crimes and Other Atrocities in Ukraine'', 10:30 a.m., HVC–210.

Committee on Homeland Security, Full Committee, hearing entitled ''A Review of the Fiscal Year 2024 Budget Request for the Department of Homeland Security'', 10 a.m., 310 Cannon.

Committee on the Judiciary, Full Committee, markup on legislation on the Border Security Enforcement Act of 2023; and H. J. Res. 44, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives relating to ''Factoring Criteria for Firearms with Attached 'Stabilizing Braces'', 10 a.m., 2141 Rayburn.

Committee on Natural Resources, Full Committee, hearing entitled ''Examining the President's FY 2024 Budget Request for the Department of the Interior'', 10 a.m., 1324 Longworth.

Committee on Oversight and Accountability, Full Committee, hearing entitled ''The Biden Administration's Disastrous Withdrawal from Afghanistan, Part I: Review by the Inspectors General'', 10 a.m., 2154 Rayburn.

Subcommittee on Cybersecurity, Information Technology, and Government Innovation; and Subcommittee on Oversight of the House Committee on House Administration, joint hearing entitled ''Data Breach at the DC Health Exchange'', 2 p.m., 2154 Rayburn.

Committee on Science, Space, and Technology, Full Committee, hearing entitled ''Protecting American Taxpayers: Highlighting Efforts to Protect Against Federal Waste, Fraud, and Mismanagement'', 10 a.m., 2318 Rayburn.

Committee on Small Business, Subcommittee on Oversight, Investigations, and Regulations, hearing entitled ''Office of Inspector General Reports to Congress on Investigations of SBA Programs'', 10 a.m., 2360 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Aviation, hearing entitled ''FAA Reauthorization: Examining the Current and Future Challenges Facing the Aerospace Workforce'', 10 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, hearing on H.R. 592, the ''Department of Veterans Affairs Electronic Health Record Modernization Improvement Act''; H.R. 608, to terminate the Electronic Health Record Modernization Program of the Department of Veterans Affairs; H.R. 1658, the ''Manage VA Act''; H.R. 1659, the ''Department of

Veterans Affairs IT Modernization Improvement Act''; and H.R. 2499, the ''VA Supply Chain Management System Authorization Act'', 9:30 a.m., 390 Cannon.

Subcommittee on Disability Assistance and Memorial Affairs, markup on H.R. 234, the ''Gerald's Law Act''; H.R. 984, the ''Commitment to Veteran Support and Outreach Act''; H.R. 1329, to amend title 38, United States Code, to provide for an increase in the maximum number of judges who may be appointed to the United States Court of Appeals for Veterans Claims; H.R. 1378, the ''Veterans Appeals Backlog Improvement Act''; H.R. 1529, the ''Veterans' Cost-of-Living Adjustment Act''; and H.R. 1530, the ''Veterans Benefits Improvement Act'', 3:30 p.m., 1334 Longworth.

Committee on Ways and Means, Full Committee, markup on H. J. Res 39, disapproving the rule submitted by the Department of Commerce relating to ''Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414'', 9 a.m., 1100 Longworth.

Full Committee, hearing entitled ''Hearing on the U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party'', 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, Subcommittee on Central Intelligence Agency, hearing entitled ''Central Intelligence Agency Budget Hearing'', 2 p.m., HVC–304 Hearing Room. This hearing is closed.

Next Meeting of the SENATE

10 a.m., Wednesday, April 19

Senate Chamber

Program for Wednesday: Senate will continue consideration of S. 870, Fire Grants and Safety Act, and vote on or in relation to Paul Amendment No. 79, and Hagerty Modified Amendment No. 72, at 11:30 a.m.

Following disposition of Hagerty Modified Amendment No. 72, Senator TUBERVILLE, or his designee, will be recognized to make a motion to proceed to consideration of S.J. Res 10, providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services''. Senate will vote on the motion to proceed to consideration of the joint resolution at 4:15 p.m.

(Senate will recess from 3 p.m. until 4 p.m. to allow for an all-Senators briefing.)

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Wednesday, April 19

House Chamber

Program for Wednesday: Consideration of H.R. 734—Protection of Women and Girls in Sports Act of 2023.

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