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House of Representatives

The House met at 10 a.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, ever faithful and mindful of all our deeds, the people of this country are truly grateful for the daily work of our Nation's Federal, State and local government employees. Their dedication and sacrifice are commemorated this week as we mark the 25th anniversary of Public Service Recognition Week.

Bless, protect and answer the prayers of all these public servants who provide service in every city and county across America. So often we take them for granted for keeping our streets and water supply clean and safe, delivering our mail, and other administrative and labor-intensive work for the benefit of our lives and the lives of our children.

As we lift them and their families in our prayers today, we prayerfully beg You to encourage others to commit themselves wholeheartedly to public service. Make our country strong by this work of the people, for the people, and by the people.

Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

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

Mr. POE of Texas 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 PRO TEMPORE

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

HOUSING CRISIS

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

Mr. SIRES. Madam Speaker, the current housing crisis has had devastating consequences for homeowners in communities throughout New Jersey and the country. Our Nation is faced with the highest foreclosure rate in 25 years. Millions of families may lose their homes to foreclosure this year because too many lenders approved loans that homeowners could not afford to pay.

By passing H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, we have an opportunity to curb abusive and predatory lending. Specifically, the bill outlaws many of the destructive industry practices that marked the subprime lending boom in the first place. It also establishes a simple standard for all home loans, ensuring that borrowers can repay loans they are sold. Finally, it protects tenants who rent homes that go into foreclosure.

This legislation marks a critical step in the rebuilding process of our economy while providing the American consumers with the protection they deserve. For these reasons, I urge my colleagues to support this bill.

HUMAN RIGHTS ABUSES IN NORTH KOREA

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

Mr. PITTS. Madam Speaker, last week, the Congressional Human Rights Commission met with defectors from North Korea and we heard firsthand how the people of North Korea continue to suffer terribly at the hands of the cruel dictatorship there.

It is vital that the international community and the United States take more specific, deliberate action aimed at helping the suffering people of North Korea. There are numerous reports of the suffering going on inside North Korea; prison camps, severe torture, slave labor, forced abortions, and almost certain death for those who have tried to escape and have been forced to return.

The U.S. Congress passed the North Korea Human Rights Act to provide a stronger foundation for the U.S. to help the North Korean people. Unfortunately, that act has not been implemented to the fullest extent possible.

The North Korean people need to hear the message that they are not alone, that they are not forgotten, and that there are many in the United States and around the world who deeply care about their plight and are working to help them.

We look forward to the day when we can visit a free North Korea and see the people living with human rights and dignity.

CONSUMERS UNION POLL

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

Mr. MURPHY of Connecticut. Madam Speaker, a recent Consumers Union Poll states that 71 percent of Americans support health care reform that provides health care to all Americans. They also told us why. Sixty-four percent of those polled had concerns that they weren't able to afford a doctor in the last year. Sixty percent of them were afraid they were going to go into bankruptcy because of unforeseen medical expenses. And they also had a good

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idea as to the path forward because out of 66 percent of those polled, two-thirds supported the ability to choose a public insurance option, the ability to choose whether they want to stay on their private plan or whether they want to go on to a potentially better quality, more affordable public plan.

They have told us they don't want politicians making the choice for them, that they themselves want to choose whether they are better off in the private or public market.

CLEAN ENERGY WITHOUT TAX HIKES

(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. Madam Speaker, I am grateful to be part of a bipartisan group in Congress that is putting forward new and innovative solutions to our energy needs.

The American Conservation and Clean Energy Independence Act introduced this week is spearheaded by Congressmen TIM MURPHY and NEIL ABERCROMBIE. It is legislation that would promote the energy sector to start creating jobs immediately. It does not raise taxes on American families.

This strategy promotes the development of cleaner energy and more efficiency. It encourages conservation. It utilizes the vast proven natural resources we have here in America to not only help address our current energy needs but help fund the development of the next generation of energy resources.

High gas prices and home heating costs threaten the budgets of American families. With this comprehensive strategy, we address those high costs and our environmental concerns while creating jobs.

In conclusion, God bless our troops, and we will never forget September the 11th in the global war on terrorism.

CONDITIONS ON AID TO AFGHANISTAN AND PAKISTAN

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

Mr. MORAN of Virginia. Madam Speaker, the Chairman of the House Appropriations Committee has come under some harsh criticism for suggesting the money we make available to Afghanistan and Pakistan be conditioned. Chairman OBEY is right. When you consider the fact that we have put $33 billion into Afghanistan and $12 billion into Pakistan without conditions, you have to ask ''What has it gotten us?''

We seem to be losing the war in Afghanistan because the leadership of the enemy has a haven in Pakistan. Of all the money we have given to the military in Pakistan, they have 450,000 trained, equipped troops on the southern border with our ally India and one brigade on the north where we need them. Former members of the ISI affiliated with the Pak army located just south of Lahore, Pakistan trained and executed a massacre of 152 people in Mumbai, India.

They just released an extremist cleric that is arguing for sharia law across the land. They have just allowed the Swat Valley to be taken over by the Taliban. Of course we need our money conditioned. If they want American taxpayers' money, they need to start serving America's interests.

□ 1015

THE HIGH SEAS NEEDS THE SECOND AMENDMENT

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

Mr. POE of Texas. Madam Speaker, recently three boats of the Somali pirates gave chase on the high seas toward a lone ship of prey, ready once again to capture an unarmed vessel and the crew, and hold them hostage until the ransom is paid.

As the smiling armed outlaws sped toward the game and readied the attack, the target appeared to flee as it headed away into the horizon of the sun.

But to the dismay of the bold bandits, they were trapped. The supposed merchant ship dispatched two boats that headed directly for the malcontents of robbery. Aboard were French commandos. The alleged merchant ship was a ship of the French Navy. Shots were fired over the criminals, and in minutes the 11 pirates of misfortune were captured and stowed away in the darkness of the French brig.

Madam Speaker, it defies reason that merchant ships are not armed. The international maritime community should arm their ships against the pirates of prey. The French and American Navies cannot save them every day. Let the philosophy of the Second Amendment, ''right to bear arms'', apply on the high seas.

And that's just the way it is.

THE CAPITOL POWER PLANT

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

Mr. BLUMENAUER. Madam Speaker, I know the Republican leadership has opposed, even mocked, the Speaker's determination that the House lead by example by greening the Capitol. Helping each office reduce its carbon footprint, eliminate waste, and save money is exactly what Americans want from their leaders.

But last night's attack on the floor of the House by my Republican colleagues on the conversion of the Capitol Power Plant from coal to natural gas was bizarre. That Capitol Power Plant is the number one source of pollution in the District of Columbia. We've reduced the carbon pollution 50 percent, 95 percent of the sulfur oxide, at least 50 percent of the carbon monoxide, reducing a serious problem for the respiratory health of the District of Columbia's children.

I hope that people in their zeal to score political points don't get unhinged. This is important business. We're moving in the right direction, and we ought to be able to understand these basic facts.

CAP-AND-TAX

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

Mrs. BLACKBURN. Madam Speaker, we are learning that the Environmental Protection Agency is poised to declare any body or company or plant that emits more than 25,000 tons of carbon dioxide as a major emitter. A body of 435 adults all endlessly emitting hot air certainly will meet that annual threshold.

It appears that the EPA and Congress are literally in a race to see who can get there first. Are we going to tax the air we breathe, or are we going to regulate the air we breathe? If CO_2 and other greenhouse gases are so dangerous to our environment, the American people truly must be puzzled by the actions of the body this week.

While the details of a cap-and-tax system are negotiated behind closed doors, Congress has debated such staggeringly important work as supporting the goals of Public Service Recognition Week and National Train Day. If our environment were truly in serious peril that could only be effectively addressed by a cap-and-tax system, one would think we would be burning our carbon credits debating that bill, not the suspensions we have passed.

JUMP-STARTING THE CLEAN ENERGY SECTOR THROUGH ENERGY-EFFICIENT BUILDINGS

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

Mr. CARNAHAN. Madam Speaker, after years of neglect, President Obama and the new Congress are taking on the Nation's energy crisis. This Congress is now making the tough decisions necessary to move the country in a new direction, create green jobs and build a clean energy economy.

Conserving energy by turning around our economy will require the help and participation of every American. The good news is that everyone can save money and help grow a clean energy economy. We can use less and save more by using energy-efficient weatherization technologies and appliances in our buildings. Consumers can save hundreds off their energy bills by using

cost-saving, energy-efficient technology.

In my home State of Missouri, over $128 million in recovery funds have been made available to help low-income families weatherize their homes, improving the environment around us and their pocketbooks during these challenging times. And on top of that, investments made into building more energy-efficient homes and public buildings create jobs right here at home that cannot be outsourced.

THANKING THE TROOPS WHO SERVE IN GUANTANAMO BAY

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

Mr. CHAFFETZ. Madam Speaker, this past Friday I had the opportunity and the honor to visit Guantanamo Bay to see the great work that our men and women are doing to protect and serve this country.

The discussions surrounding the detainees in Guantanamo Bay I understand is a contentious one, but let us first and foremost thank those men and women who serve a very important purpose. They are doing it with great honor.

As I visited with the admiral of the Navy who is in charge of taking care of this facility, he said that their mission is to make sure that the facility is safe, humane, legal, and transparent. I find that they're meeting that mission.

I would encourage the President and I would encourage this body to support the notion that says we should not close that facility, nor should we bring those detainees to the United States of America. We should pursue the tribunal process. The process is set up to work. And I for one will support that.

May God bless the troops that are serving us in Guantanamo Bay, and may God bless the United States of America.

THE PUBLIC HEALTH EMERGENCY RESPONSE ACT

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

Mrs. CAPPS. Madam Speaker, we have a lot to be proud of in the way our Nation has responded to the H1N1 outbreak on a large scale, but we have also exposed some large gaps in our response capabilities.

The CDC's top recommendation to individuals experiencing flu-like symptoms is call your health provider. But 47 million Americans don't have regular access to a primary health care provider. And if our only recourse is to have these folks crowding the emergency departments, then we have a lot more to do to improve our response.

This week I was proud to reintroduce with Senator DURBIN the Public Health Emergency Response Act, legislation which will ensure health coverage for individuals during a public health emergency.

Until we achieve universal coverage, we must at least ensure that Americans have access to care during a public health emergency and that health professionals who treat them are compensated.

DEMOCRAT NATIONAL HEALTH PLAN WON'T WORK

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

Mr. FLEMING. Madam Speaker, as a physician, I am the first to say we need affordable health care access for all.

A new national health plan has been created by my colleagues on the other side of the aisle. They claim this plan will compete alongside private insurance to ensure that patients are getting the best deal.

This sounds great on the surface. However, this idea makes as much sense as Microsoft setting the rules for all technology companies, then competing with them.

Make no mistake about it: the net result of a national or public plan option will be the death of the private insurance in this country. This crazy government versus private strategy is a first step toward a government-run health care for everyone, creating two levels of care, rationing of resources, and exploding government budgets.

Americans don't want Washington telling them what benefits they need and how much health care they deserve. But they do need access to affordable, high-quality health care that only private insurance competing honestly for business can provide, whether it is paid for by our government for the poor or paid for by the working citizens.

THE MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

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

Mr. WELCH. Madam Speaker, the House this week will take the critical first step towards ending reckless and predatory lending practices and mortgage fraud in particular.

Since our economy fell off the cliff last fall, Vermonters and all Americans have been reeling from the mess created by those who engage in reckless lending and reckless borrowing.

The Mortgage Reform and Anti-Predatory Lending Act of 2009 will help ensure that the practices that helped foster this casino economy will end. The bill will restore responsibility to lending, holding creditors responsible for the loans they originate, requiring borrowers to have a reasonable ability to repay the loans, ban the practice of rewarding brokers and loan officers for steering homeowners towards mortgages they can't afford.

We won't be able to end years of irresponsible lending and borrowing overnight; not with one bill. But this legislation is the critical first step towards restoring responsibility and common sense to our financial system.

THE FAMILY-BASED METH TREATMENT ACCESS ACT

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

Mr. REHBERG. Madam Speaker, I hope some day I can come to the floor of the House of Representatives to report that meth abuse is no longer a problem in rural America. I would like to say some day that our families and communities are no longer subject to the total devastation caused by methamphetamine addiction.

But we're not there yet. So today I urge my colleagues to join me in the fight against meth abuse. I have introduced the Family-Based Meth Treatment Access Act, a bill which would fund programs aimed at helping families recover together from the Nation's most dangerous drug.

Studies show that family-based treatment increases effectiveness of long-term recovery, employment, and educational enrollment, while decreasing crime. The Family-Based Treatment Access Act helps take back what meth has stolen from our families.

Please join me by cosponsoring the Family-Based Meth Treatment Access Act.

R&D TAX CREDIT BILL

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

Mr. BOCCIERI. Madam Speaker, the American people have asked this Congress for solutions to act quickly in a bipartisan fashion and to get our economy moving again.

As a freshman Member, I'm happy to report that I have teamed up with a Republican colleague from Buffalo, New York, CHRIS LEE, to get our economy moving again. We know how many manufacturing jobs have been lost in the Midwest. So our bill would help empower the vision and innovation that has made this country so great by providing incentives for companies in America to do research and developments right here and give them a bonus if they are going to conduct those research and developments right here in America.

We have an opportunity to move this economy forward. We need to become not the movers of wealth but the producers of wealth. If we produce things here in America, we can make America continue on its path towards greatness.

ENFORCE IMMIGRATION LAWS TO PREVENT CRIMES

(Mr. SMITH of Texas asked and was given permission to address the House

for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Madam Speaker, the director of ''A Christmas Story,'' Bob Clark, was killed by an illegal immigrant drunk driver in Los Angeles. An illegal gang member shot three students in Newark, New Jersey, execution style. He was free on bail and was facing charges of aggravated assault and sexual abuse of a child at the time of the murders. Another illegal immigrant was arrested after DNA matched him to a series of rapes of teenage girls in Chandler, Arizona.

Sadly, I could go on and on, remembering thousands of victims of crimes committed by illegal immigrants. They are a reminder that we need to enforce all of our immigration laws to prevent these crimes from happening.

This means enforcing our work site laws against employers and illegal workers, supporting local law enforcement agencies who want to arrest illegal immigrants, and passing a long-term reauthorization of E-Verify, the Federal Government's program that helps employers hire legal workers.

ATTORNEY GENERAL ERIC HOLDER

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

Mr. WOLF. Madam Speaker, Attorney General Eric Holder is about ready to make a decision to release violent terrorists who have trained in al Qaeda training camps who are now down in Guantanamo Bay into our neighborhoods—into our neighborhoods. Members of the Congress on both sides have asked the Attorney General to allow FBI agents and Department of Homeland Security personnel to come up and brief Members, and he will not allow it.

How does this Congress provide the oversight when they're about ready to release groups like ETIM? Go on the video and see what this group ETIM is. They're about ready to release individuals into our neighborhoods, and Eric Holder is prohibiting career people from coming to the Hill.

In some respects, Madam Speaker, this is a cover-up by the Attorney General of the United States.

□ 1030

HONORING THE 100TH ANNIVERSARY OF THE ETOWAH CHAPTER OF THE DAR

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

Mr. GINGREY of Georgia. Madam Speaker, I rise to recognize the 100th anniversary of the Etowah Chapter of the Daughters of the American Revolution in Bartow County's 11th Congressional District. The Etowah Chapter of DAR was formally organized April 20, 1909, in Cartersville, Georgia, as 24 enthusiastic and patriotic women were declared the charter members.

Over the past 100 years, the Etowah Chapter has been instrumental in promoting education and pride in the history of our county. In fact, during its first year, the Chapter placed a framed copy of the Declaration of Independence in each of the 50 schools in Bartow County and has since been instrumental in securing monuments for the graves of 13 local Revolutionary War soldiers, heroes.

Each year the Etowah Chapter sponsors an American History Essay Contest. It awards Good Citizen medals to the local students, and it supports DAR schools, such as Berry College in Rome, Georgia.

Furthermore, the members of the Etowah Chapter are proud of their heritage and patriotic service to Cartersville and Bartow County. I ask that all my colleagues join me in recognizing the positive impact that the Etowah Chapter of the Daughters of the American Revolution have made upon their community.

PROVIDING FOR CONSIDERATION OF H.R. 1728, MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Ms. PINGREE of Maine. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 400 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 400

Resolved, That at any time after the 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. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. 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 Financial Services. After general debate, the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore. The gentlewoman from Maine is recognized for 1 hour.

Ms. PINGREE of Maine. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. SESSIONS). All time yielded during consideration of the rule is for debate only.

I yield myself such time as I may consume.

GENERAL LEAVE

Ms. PINGREE of Maine. Madam Speaker, I ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 400.

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

There was no objection.

Ms. PINGREE of Maine. Madam Speaker, House Resolution 400 provides for initial consideration of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. The rule provides for 1 hour of general debate to be controlled by the Chair and ranking member of the Committee on Financial Services. After the general debate, there will be no further consideration of the bill except pursuant to the subsequent rule.

Homeownership has always been a key part of the American Dream. Unfortunately, for hundreds of thousands of Americans, that dream has been shattered by predatory lenders that entice them to accept loans they could not afford.

Now, across this country, hard-working families are unable to pay loans they can't afford, and they are losing their homes to foreclosure in unprecedented numbers. On top of this, many would argue that the extreme problems in the mortgage industry have been one of the most serious causes of our current, economic problems.

This week we have the opportunity to rein in these lending practices. H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009 is a major step forward in curbing abusive and predatory lending. This Congress has already passed legislation aimed at invigorating the housing market, by helping new homebuyers purchase homes and dispensing of many of the toxic assets that have had our economy in a stranglehold.

The bill we take up today is the second and equally important step of building a stronger foundation. The regulations that are proposed will put a new face on the mortgage system that has become rife with fraud.

H.R. 1728 would outlaw many of the worst industry practices, while also preventing borrowers from deliberately misrepresenting their income to qualify for a loan. The message is simple: Lenders can't give loans to people who can't afford them and borrowers have to tell the truth about their finances when applying for a loan. If you can't play by the rules, you will be held accountable.

This bill draws upon everything that was once fundamentally sound about our banking system. It takes us back to a time when community bankers knew their consumers, to when they understood clearly what they could afford and to when they worked with them to offer loans that worked best for their families.

This is a far cry from some of the practices developed during the real estate boom, when mortgages became far more risky and terms like ''no-doc

lending'' and ''liars loans'' became part of our language.

Madam Speaker, this bill sets minimum standards for mortgages requiring that consumers must have a reasonable ability to pay the loan back, and that mortgage refinancing must provide a net tangible benefit to the consumer.

All mortgage originators will be licensed and registered. Securitizers and other participants in the secondary mortgage market, for the first time, under Federal law, will be liable for supporting irresponsible lending.

The bill also prohibits financial incentives that encourage mortgage originators to steer consumers to higher cost and more abusive mortgages. In other words, lenders can't sell consumers loans that aren't good for them.

Over the last decade, many subprime loans were made to borrowers who, due to their weak credit histories, were high credit risks. This bill will make sure that, instead of rewarding originators for pumping out high volumes of costly mortgage loans, there will be incentives for lenders to give borrowers the best possible price and stick with the borrower over the course of the loan.

And any creditor that violates the standard set forth in this bill will be liable to the consumer. They will be required to either rescind the loan and pay for all the legal fees or work with them in a timely fashion to modify or refinance the loan at no additional cost to the borrower.

Somewhere along the line, our mortgage system has lost its way at a great cost to our economy. The affordable, 30-year fixed rate mortgage that allowed generations to experience the American Dream of homeownership has been tragically replaced with a subprime loan, teaser rates, and unaffordable payments.

Commonsense principles, like having the ability to pay, were abandoned in favor of schemes that involved collateralized debt obligation and credit default swaps. And as this financial house of cards collapsed, it is now the American taxpayers that are left holding the bag.

Madam Speaker, I hope we have learned our lesson. It is time to bring responsibility and accountability back to mortgage lending and to make sure we don't face another crisis like this. This bill is essential if we are to stabilize the housing market, to end these abusive practices, and to get our economy back on track.

I commend my colleagues, Mr. MILLER, Mr. WATT, and Chairman FRANK for their determination to this critical issue and their hard work in bringing it to the floor today.

I reserve the balance of my time.

Mr. SESSIONS. I thank the gentlewoman.

As I rise today, before I begin my formal statements, I would like to acknowledge that the gentleman, Mr. FRANK, the chairman of the committee, has come to the floor, and I want to personally thank the gentleman for engaging with me and perhaps other members of the Republican Party on working on this bill. I want to personally thank the chairman for that engagement and believe that it will result in the opportunity for Republicans to have a better say on the bill that will be before the House today, and I want to personally thank the gentleman.

Madam Speaker, I do rise today, however, in opposition to H.R. 1728, which is the majority's misled attempt to bring stability back into the mortgage market. As the American people will soon see, many provisions of the bill are a destructive force to both the lending industry and, in turn, the American homebuyer.

First, the new Federal Reserve regulations already exist and are about to be implemented in October of this year, which means that this work on predatory lending has already taken place.

Second, this bill establishes a new group of qualified mortgages, which limits consumer choice of mortgages and unduly burdens the mortgage industry.

Third, it establishes new credit risk retention rules, which dramatically limit the successful functioning of the secondary market, especially small, nonbank lenders.

And, fourth, it authorizes a $140 million slush fund for legal defense funds.

Last July, the Federal Reserve issued new regulations under the Home Ownership and Equity Protection Act which implemented many provisions of the predatory lending legislation of Congress last year. As part of this implementation, new Federal rules have been developed which address predatory practices and products, bringing an end to a variety of issues which have haunted the subprime market, such as poor underwriting standards. These rules already are set to take effect in October of this year.

My colleagues from both sides of the aisle understand that these new regulations will soon be in effect, and certainly cleaning up the lending industry is important. Even Chairman FRANK has previous knowledge, and I quote, that ''the Federal Reserve has adopted regulations so that the predatory and deceptive lending practices that led to the subprime crisis will be prohibited,'' already done.

But rather than allowing the Fed's carefully constructed regulations to take effect, this new majority has decided to draft their own mortgage reform bill with their own unique twist. Unfortunately, this twist includes new and untested mandates and duties, that even if they can be implemented, they may end up punishing the very consumers that this majority party is trying to protect.

My question is simple: Why is Congress meddling with regulations that will soon yield significant and expected benefits in combating mortgage fraud, eliminating the bad actors of the industry, and providing greater protection to the consumer?

While this legislation attempts to correct past excesses in the mortgage market by establishing new standards for mortgage origination, and imposing greater legal liability on the secondary market, this bill, in fact, injects legal uncertainty into the lending process, thereby raising the cost and reducing the availability of mortgage credit to consumers. Allowing a slush fund for people to sue is a prime example of what we are talking about. I would like to say this is an unintended consequence. I think it's an intended consequence.

One of the primary provisions which contribute to the higher cost and reduced availability of loans is the misconstrued establishment of a new class of loans called qualified mortgages. Any loans deemed as qualified mortgages are, in theory, protected under the bill's limited safe harbor and are exempt from the new lending risk retention requirements.

All other nonqualified mortgages are excluded from this safe harbor and siphoned into the category of subprime mortgages. In turn, any lender can be sued for selling nonqualified mortgages.

The kicker, however, is that H.R. 1728 makes all real safe harbor mortgages rebuttable, meaning that borrowers can sue any creditor for any mortgage.

Under the terms of this bill, no mortgages are protected by safe harbor laws and all lenders can be sued. That is going to have a direct and devastating consequence on the marketplace.

When the bill was introduced in Congress, the last Congress, the bill appropriately filtered most mortgages into three types of loans. For the sake of explanation, let's call them green, yellow and red mortgages.

Green light mortgages are good, traditional, protected mortgages. Yellow light mortgages are potentially hazardous mortgages. In this case, the consumer has the right to sue for loss in the case of predatory lending, while the lender maintains the right to a fair defense.

□ 1045

Lastly, red mortgages are simply mortgages presumed bad and the law allows the consumer to sue for any loss.

Unfortunately, according to this year's version of the bill, the law will only allow for green and red light mortgages, and, most importantly, neither of them will have a real safe harbor because borrowers can sue any creditor for any mortgage. Regardless of how safe and affordable and how well an alternative mortgage may have served the borrower, lenders will begin making fewer and more expensive loans out of fear of being sued.

At the end of the day, what is the purpose of this mortgage reform? A

government-mandated mortgage structure enforced by the very taxes paid by the American homeowner, or providing for consumer choice of loans which best suits the needs of responsible homebuyers with the assurance of meaningful customer protection? I think we can see what we are going to get.

Madam Speaker, I have a concern also with the new ''credit risk retention'' requirements. This provision will force any loan originator to hold 5 percent of any mortgage that does not fit the bill's narrow safe harbor, what is known as the ''qualified mortgage.'' The ''credit risk retention,'' as it is referred to, requirement is a far-reaching requirement that leaves my colleagues and me confused as to how certain groups, such as smaller lenders, will even survive.

The fact stands that many smaller nonbank lenders do not have the same reliable sources of funding as depository institutions. These lenders would be unable to compete, let alone to operate, at a competitive level. They simply cannot compete. Additionally, this provision will necessitate that larger lenders increase their capital. This is the wrong approach during a time when the government is concerned that lenders are insufficiently capitalized; moreover, during a time in which the government is making the taxpayer pay for these insufficiencies. David Kittle, chairman of the Mortgage Bankers Association, testified in front of the Financial Services Committee on April 23 of this year. And here is what he said, ''at a time when policymakers are focusing so much of their efforts on injecting capital into the financial services sector, this provision would force an inefficient use of capital across all types of institutions and threaten to further impair their ability to lend at all.'' This will simply narrow choices, lessen credit and increase costs for borrowers and taxpayers, as well as increasing lawsuits.

While a critical element of mortgage reform should be giving incentives for greater accountability to lenders without damaging the mortgage market, H.R. 1728 imposes huge liability on all groups involved in issuing a loan while circumventing any investor liability. Unfortunately, the bill magnifies the already substantial legal risks faced by participants in the mortgage market, dramatically reducing any incentives for lenders to partake in the mortgage market.

And as if new litigation were not enough, this bill authorizes $140 million for legal assistance grant funds to legal organizations to provide taxpayer-funded legal defenses for homeowners in default or facing eviction. Simply put, this bill sets up lenders for failure by burdening them with undue liabilities and funding trial lawyers. This bill lacks the key taxpayer and lender protections, opening the door to taxpayer-financed frivolous civil lawsuits which will ultimately ruin the mortgage industry. I'm sure it will empower a bigger Federal Government, however.

Additionally, this bill subjects the taxpayer to involuntarily funding groups like ACORN, who will be eligible for receiving grants from this legislation. My colleague from Minnesota was able to add a provision which sufficiently blocks any organization that has been indicted from receiving any funds—for example, ACORN. Unfortunately, the majority is actively making efforts to reopen groups like ACORN to taxpayer funds with no regard for past indiscretions.

Restructuring the mortgage industry is essential in returning safety and security to the housing industry. We don't debate that. Unfortunately, the majority party is choosing to streamline an overzealous mortgage bill without allowing the Federal Reserve regulations to first go into effect, not to mention the destructive nature of this bill on the lending industry and what the impact of this bill will have on every single American who is striving for the dream of homeownership, namely, making it more expensive and less available to those people who need it the most.

H.R. 1728 is a jackpot for trial lawyers, kryptonite for the mortgage industry, and ultimately crushes dreams of homeownership for many Americans. Therefore, Madam Speaker, I oppose the rule and the underlying legislation, and I hope my colleagues do the same.

I reserve the balance of my time.

Ms. PINGREE of Maine. Madam Speaker, I yield 3 minutes to the gentleman from Massachusetts, the Chair of the Committee on Financial Services, Mr. FRANK.

Mr. FRANK of Massachusetts. Madam Speaker, I am grateful for this very clear delineation of the Republican philosophy, ''do nothing about subprime mortgages.'' Now, the gentleman from Texas did say, well, the Federal Reserve is doing it. Understand that in 1994, a Democratic Congress gave the power to the Federal Reserve to promulgate those regulations. Alan Greenspan refused to use them. From 1995 on, he refused to use them.

At some point in the late 1990s and the early part of this century, it became clear to many of us, led by my colleagues from North Carolina, Mr. MILLER and Mr. WATT, that we had problems in the subprime area. And people tried to get Mr. Greenspan to do it, and he wouldn't do it. So we then said, ''okay, we had better act legislatively in the absence of the Federal Reserve doing it.'' We were blocked from doing it by the Republican leadership of the House.

The gentleman from North Carolina (Mr. WATT), the gentleman from North Carolina (Mr. MILLER) and I tried to get some legislation. Some Republican Members were ready to cooperate with us. But the decision came from the Republican leadership ''no.'' So from 1994, when Congress voted authority to the Federal Reserve, until 2007, after the Democrats had come back into the majority, nothing was done to block subprime mortgage abuses. Nothing. And not a single piece of legislation came forward when the Republicans were in control.

Now, I would add, by the way, that in 2007 we did a bill, we had some bipartisan cooperation, not a majority of Republicans, the bill passed the House but failed in the Senate. It didn't come up. Now we are doing it again. At no point have we seen a Republican alternative. The gentleman from Texas had some criticisms. We have never seen a Republican proposal to deal with subprime mortgages. Now they might say, ''well, we are in the minority, what is the point?'' But they were in the majority, Madam Speaker, from 1995 to 2006.

The gentleman from Texas (Mr. HENSARLING) submitted an amendment to the bill which talks about how subprime mortgages skyrocketed in percentage from 2002 to 2006 under the Bush administration and under Republican control of Congress. Members on the Democratic side said, ''let's do something it about it.'' The Republican answer was ''no.'' So we have here the clearest demonstration of the Republican approach of ''do nothing.'' But then the gentleman said, ''oh, no, the Federal Reserve has done it.'' Well, first of all, understand the inconsistency between conservative attacks on the undemocratic nature of the Federal Reserve in some context and the decision to allow Congress to let them legislate instead of the Congress.

The notion, we heard it on credit cards and we heard it today, the notion that the elected officials of this country should not intrude when the Federal Reserve has proposed legislation turns democracy on its head and is wholly inconsistent with other arguments we get. Beyond that, while I appreciate what Mr. Bernanke has done——

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

Ms. PINGREE of Maine. I yield the gentleman 2 additional minutes.

Mr. FRANK of Massachusetts. Mr. Bernanke, to his credit, repudiated the no-regulation, extreme conservative philosophy of Mr. Greenspan and promulgated rules, but only after a Democratic Congress began to act on this. And I think he did a good job and deserves credit.

The problem is that there are things he cannot do. The Federal Reserve cannot change statute. So, yes, this bill goes beyond what the Federal Reserve did. I'm glad the Federal Reserve is doing it. I'm glad that Mr. Bernanke reversed the Greenspan position which had been supported by the Republicans to do nothing. We will debate individual cases of this. As to legal services, yes, we have had examples of individuals being evicted, being foreclosed inappropriately. What this does is to say that they can get some legal help.

This is a defensive measure for people who are going to be losing their homes. And we found that there were some problems there.

As to securitization, we will get into this. But, yes, I do agree we have people who have come to us and said, ''you know what? We don't have any money. Why don't you let us make loans?'' Well, we don't think people should be lending money they don't have and immediately selling the loans. Here is the point, Madam Speaker, we will get into it later. The extension of loans to people who shouldn't have gotten them, partly the fault of the borrowers, partly the fault of the lenders, whatever the reason, that was the single biggest cause of the subprime crisis.

And the record of the Republican Party, from taking office in 1995 until today, is to oppose overwhelmingly any effort to do anything about it, from Mr. Greenspan's refusal to use the authority he was given to the failure of the Republicans to this day to come forward with any constructive legislative alternative. So, yes, there might be room for debate, but as between doing something to prevent this and doing nothing, I believe ''something'' wins.

Mr. SESSIONS. Madam Speaker, I find myself in a position of making sure that this body does understand that lots of debates have taken place. I know the gentleman, Mr. FRANK, has been on the committee for a long time and has argued very vehemently for years that the crisis was not about to happen, that the crisis and the changes that were made to Fannie and Freddie and subprime mortgages and all these things, that there was no crisis that was getting ready to happen. And I would respectfully say to the gentleman, it seems like Mr. Greenspan agreed with that. Something did happen. And it is up to us as thoughtful Members to make sure that we appropriately then take action where necessary. This was done last year. The Federal Reserve understood it, went through a deliberative process, took feedback from the industry and took feedback from consumers. The damage had been done.

We are now talking about predatory lending. We are not talking about what got us in the problem in the first place. We are talking about now that people are in trouble, how do we help save them? How do we help work with them? How do we make sure that the system properly works not just for people who might be in trouble, but people who might be in the future? The Federal Reserve has already done this. We already know that those rules will take place in October.

What I would argue with the gentleman about is going then too far, not doing something. I wouldn't argue with the gentleman. The gentleman is really very thoughtful in much of what he does. But the legislation will narrow choices, lessen credit and increase costs for borrowers and taxpayers. And at some point there has to be some balance. We are in agreement that we ought to move forward, that we ought to do things, that the laws that will take place through the regulation of the Fed are proper, necessary and needed. But we are not for making lawsuits a better part of what we are doing, providing money for people to sue, narrowing choices, lessening credit and increasing costs. And that is our decisionmaking point where we disagree with not only this legislation but perhaps moving this bill in the first place.

I reserve the balance of my time.

□ 1100

Ms. PINGREE of Maine. Madam Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Speaker, the gentleman from Texas is wrong to say we didn't want action. Yes, in the early part of the century we thought there wasn't a crisis. We tried to get Alan Greenspan to use the authority we gave him.

In 2003 I said that Fannie Mae and Freddie Mac were in crisis, as I didn't think they were, as Wachovia wasn't and Merrill Lynch.

In 2004, the Bush administration ordered Fannie Mae and Freddie Mac significantly to increase the subprime mortgages and low-interest mortgage rates. At about that time, and as Mr. HENSARLING's amendment shows, it was around that time that the Bush administration presided over a great increase in subprime mortgages.

Beginning in 2003, we tried to get legislation adopted, and the Republicans said no. The Republicans wouldn't do it. It wasn't until 2007 that there was any action at all. And it is not a coincidence that the Fed was given authority under a Democratic Congress in 1994 and didn't exercise it until a Democratic Congress came back in 2007. Yes, I was in the Congress. I was in the minority, and I was frustrated by the failure of the Republicans to do anything.

The SPEAKER pro tempore. The gentleman's time has expired.

Ms. PINGREE of Maine. I yield an additional minute to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Now under Mr. Oxley, he did try to amend the rules to regulate Fannie Mae and Freddie Mac, and a bill passed the House in 2005. I voted for it in committee, but opposed it on the floor because it restricted organizations like the Catholic Church from participating in affordable housing. But the bill failed after 2005. The bill to regulate Fannie Mae and Freddie Mac, which passed the House, where I served, it died later on in part because, as Mr. Oxley has made clear, the Bush administration and he got into a disagreement.

So the Republicans had authority to pass bills on Fannie Mae and Freddie Mac and subprime lending for 12 years and did nothing. We, in 2007 when we came into the majority, very promptly passed a bill to regulate Fannie Mae and Freddie Mac and to regulate subprime lending over consistent Republican opposition.

Mr. SESSIONS. Madam Speaker, you know, two points: first of all, we are sitting here blaming each other. I hope I am not doing that about the past. We were talking about today's bill, the right way to balance what needs to be done now with the understanding that the Fed has already acted, notwithstanding whether the gentleman, Mr. FRANK, thinks that they should have acted or whether the chairman of the Fed should have done something. The bottom line is that the gentleman was right there with him the whole time. ''There is no problem. There is no systemic risk.'' And that was the constant message that we heard from the gentleman, Mr. FRANK, about the same big issue.

But I would like to take issue with one point, and that is Republicans have done nothing. Well, I would like to say that there was Republican-authored legislation called the SAFE Act. And the SAFE Act which created licensing and registration for the mortgage industry was enacted last year.

The Conference of State Bank Supervisors had called ranking member, oh, yes, he is a Republican, SPENCER BACHUS' bill ''the most significant mortgage reform in years.''

So let's be a little bit clear: Republicans were not here doing nothing. Our friends, the majority party, were offering public comment about what was not going to happen, and the subprime mortgage effort did happen. And now what we are trying to do is work with a set of rules and regulations that have been agreed to by the Fed, well understood, and the industry as well down the line to make sure this October we know what those rules are. And now we are going to have our friends in the majority party to overlay new rules that empower trial lawyers that will narrow choices, lessen credit, and increase costs. There has got to be some balance.

Mr. Speaker, I would argue today that notwithstanding the gentleman from Massachusetts (Mr. FRANK) and the gentleman from Alabama (Mr. BACHUS) and the gentleman from Texas (Mr. HENSARLING), who has been mentioned a couple of times, have been very active for 6 or 8 years on this issue. Doing nothing would not be an accurate description. Saying that Republicans blocked attempts would not be a correct assertion. But saying that there has been work in the aftermath to try and do the right thing that is right on target already exists and we don't need to add to that would be equally true also.

I reserve the balance of my time.

Ms. PINGREE of Maine. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, first I reiterate, yes, I did say

in 2003 I didn't think we had a crisis. As the Bush administration increased the number of subprime loans that it required Fannie Mae and Freddie Mac to take, and as we saw the subprime crisis, I said we did have one and pushed for legislation. But most importantly, the gentleman referred to what is called the SAFE Act. It did not pass as a standing bill. First of all, during the period when the Republicans controlled the House for 12 years, they passed no such legislation. It never even came up in committee. When the Democrats took power, we passed a subprime bill. The provision he is talking about was the section of the subprime bill that was passed over the objection of a majority of the Republicans.

My guess is that the gentleman from Texas probably voted against the bill he has just hailed. We can check the RECORD.

But, yes, there was an amendment offered by the gentleman from Alabama that we worked on. It became a part of the Democratic bill that was passed over the objections of a majority of Republicans, and the gentleman from Alabama was severely criticized by most Republicans for voting for the bill.

The SPEAKER pro tempore (Mr. ROSS). The gentleman's time has expired.

Ms. PINGREE of Maine. I yield the gentleman an additional 30 seconds.

Mr. FRANK of Massachusetts. During the period of Republican rule, nothing happened. When the Democrats took over, we did pass a subprime bill of which the SAFE Act was a part. It was opposed in final passage by a majority of the Republicans. The author, Mr. BACHUS, was criticized by many Republicans for supporting the bill. And I would be interested in knowing whether the gentleman from Texas voted for the bill which he has just hailed.

Mr. SESSIONS. Mr. Speaker, I am very pleased to engage the gentleman, and I appreciate him doing this. But, Mr. Speaker, my point would be the gentleman is trying to get into a political argument especially about how I may or may not have voted. He supposes I would have voted against the bill because it was a reasonable bill. I think that is what he is trying to say. I don't know how I voted on the bill, this section of the bill, at all.

What I would say to you is that you can't have it both ways. You can't say Republicans did nothing and then say, oh, Republicans, a handful of Republicans did something, but the vast majority of Republicans voted against it. That is, Mr. Speaker, trying to take what we are attempting to do here today, making public policy wise choices in the open, and by the way, Republicans are for doing this on the floor to talk about every amendment, to talk about the processes, to talk about the expectations of performance, to talk about what we expect the laws to do; and now he is trying to have it both ways to say, I guess it was a Republican idea, but most Republicans opposed it. It was a Republican idea by the ranking member of Financial Services, SPENCER BACHUS, who is a Republican, and who moved forth in those responsibilities an opportunity for something to become law. And it is obvious the gentleman, Mr. FRANK, at the time was willing to engage in that, and that should make all of us feel good.

But I don't think we should turn around later and diminish that effort just because we want to make political points here today. And I don't mind making political points because here are the political points I would make: today we are going to narrow choices, lessen credit, and increase costs for borrowers and taxpayers. We are going to provide at a time when our country should be trying to lessen spending of money, we are going to provide an extra $140 million for people to go sue in court to overload our courts when resolution should be done by the legislation, but in fact also by the rules that are already provided by the Federal Reserve.

Republicans aren't here just to say no and to come to fight. We are after good public policy. We are after public policy that will work for people and a marketplace so there are lenders in every single community.

This bill that we are here today on will lessen, take away the number of qualified lenders who are available because now the costs are going to go up, fewer consumers will be able to get the loans and will pay more money because now we are going to give from the Federal Government $140 million to go sue somebody.

Legislation should be about finding a balance. I'm not opposed to remedies. I'm not opposed to courts and people litigating for the right reasons. I am simply not interested in now that it is over, trying to find a way to beat up people when resolution, keeping people in their homes, finding a way for that balance to work.

And today we will give full credit to Mr. FRANK. He wants political credit; let's give him full political credit. All the Democrats will get full political credit today for doing essentially two things: number one, reworking what is already laws that are going to begin in October by the Federal Reserve; and, secondly, we will give you credit for these principles, narrowing choices, lessening credit, and increasing costs for borrowers and taxpayers. Making it more difficult at a time when America and Americans need the chance to go get a home loan, we are now going to add more rules and regulations to the mortgage industry.

This is exactly where Republicans do draw the line. We are for well-balanced, well-meaning, thoughtful articulation on this floor to make sure we understand what we are doing. We are not for suing people and not for adding costly rules and regulations. The industry has already told us that is exactly what the intended outcome of this bill will be.

I reserve the balance of my time.

Ms. PINGREE of Maine. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. FRANK), the chairman of the Committee on Financial Services.

Mr. FRANK of Massachusetts. Mr. Speaker, the record is relevant because when you——

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair notes a disturbance in the gallery in contravention of the law and rules of the House.

The Sergeant at Arms will remove those persons responsible for the disturbance and restore order to the gallery.

Mr. FRANK of Massachusetts. Mr. Speaker, as I was saying, the notion that the differences between the parties is irrelevant, I understand why, given the Republican's record, they want to argue this.

The fact is, yes, the gentleman from Alabama had a good idea. He was chairman of the subcommittee during the 12-year period and could have brought it to the floor. But because of the Republican position that no regulation was appropriate, he couldn't do that. The gentleman from Texas said this was a very good idea. I agreed; that's why I supported it.

By the way, the gentleman from Texas voted against the bill, along with two-thirds of the Republicans that embodied it. So we wouldn't have had it if he had carried his way.

But the fact is that for 12 years after the subprime crisis broke, the Republican Party wouldn't allow the gentleman from Alabama, who was then chairman of the subcommittee, to bring his bill up. We did bring the bill up, yes, in a bipartisan way. Unfortunately, the gentleman from Alabama was then criticized by Members of his party on the conservative side and has been forced to withdraw it a little bit.

The SPEAKER pro tempore. The gentleman's time has expired.

Ms. PINGREE of Maine. I yield 15 seconds to the gentleman.

Mr. FRANK of Massachusetts. Differences between the parties are relevant. For 12 years, the Republicans wouldn't allow the gentleman from Alabama to bring his bill to the floor. In our first year, we did and I was glad to work with him, but it was a minority position opposed by the great majority of the Republicans, including the gentleman from Texas.

Mr. SESSIONS. Mr. Speaker, I appreciate this one-sided debate about how bad Republicans are, how we did nothing; but I believe the gentleman has already well answered that question and heard it that Republicans in fact have been proactive during this entire time.

Mr. Speaker, I include for the RECORD a letter dated May 5, 2009, from the Mortgage Bankers Association whose title is ''Investing in Communities.''

MORTGAGE BANKERS ASSOCIATION,
Washington, DC, May 5, 2009.

Hon. NANCY PELOSI,
Speaker of the House, U.S. House of Representatives, Washington, DC.

Hon. JOHN BOEHNER,
Republican Leader, U.S. House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI AND LEADER BOEHNER: On behalf of the 2,400 members of the Mortgage Bankers Association (MBA), we are writing with regard to H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, a bill the House is scheduled to consider later this week.

Congress is facing a once-in-a-generation opportunity to improve the mortgage lending process. If carefully crafted, improved regulation is the best path to restoring investor and consumer confidence in the nation's lending and financial markets and assuring the availability and affordability of sustainable mortgage credit for years to come. At the same time, if regulatory solutions are not well conceived, they risk exacerbating the current credit crisis.

While we applaud the comprehensive nature of H.R. 1728, we believe this legislation misses the opportunity to replace the uneven patchwork of state mortgage lending laws with a truly national standard that protects all consumers, regardless of where they live.

MBA is also concerned with the bill's requirement that lenders retain at least five percent of the credit risk presented, by non-qualified mortgages. While this provision was improved by the Financial Services Committee, it will still make it highly problematic for many lenders to operate, particularly smaller non-depositories that lend on lines of credit. It will also necessitate that larger lenders markedly increase their capital requirements. Both results will narrow choices, lessen credit, and force an inefficient use of capital at the worst possible time for our economy.

Finally, MBA believes the bill's definition of ''qualified mortgage'' is far too limited and will result in the unavailability of sound credit options to many borrowers and the denial of credit to far too many others. We urge the House to expand the definition and to provide a bright line safe harbor so that if creditors act properly, they will not be dogged by lawsuits that increase borrower costs.

MBA would like to commend the House for the priority it has given to reforming our mortgage lending process. It is imperative that we continue to work together to stabilize the markets, help keep families in their homes and strengthen regulation of our industry to prevent future relapses.

Sincerely,

JOHN A. COURSON,
President and Chief Executive Officer.

DAVID G. KITTLE, CMB
Chairman.

I would like to read from that letter signed by John Courson, president and chief executive officer, and David G. Kittle, chairman, and these are people who are in the business, and they say this bill will ''narrow choices, lessen credit, and force an inefficient use of capital at the worst possible time for our economy.''

□ 1115

So the argument that I'd make is that evidently the Fed—their rules were not accused of this. They were seen by the industry and by consumer groups as the right thing to do. We're worried about it.

So we'll give the gentleman full credit. The Democrats get full credit for bringing the bill to the floor today. I don't know who's going to vote for it and I don't know who's going to vote against it, but what I will say is let the facts of the case be very evident—narrow choices, lessening credit, and a force of an inefficient use of capital at the worst possible time for our economy.

Republicans are for balance. We are not for and would not support something that would be described by the industry as bad for consumers.

I reserve the balance of my time.

Ms. PINGREE of Maine. I reserve the balance of my time.

Mr. SESSIONS. I want to thank not only the gentlewoman for extending the time, but also the gentleman, Mr. FRANK, for engaging in this issue.

Mr. Speaker, testifying to the Financial Services Subcommittee on behalf of a coalition of consumers, advocacy groups, and labor organizations from across the country, Margaret Saunders of the National Consumer Law Center, called this bill ''convoluted and virtually impossible as a mechanism to solve the current problem.'' Convoluted and virtually impossible as a mechanism to solve the current problem.

We need to go back to the drawing table and remove many of the political provisions which will only cause further damage in the marketplace. It will further damage a fragile mortgage market that is in need of greater certainty, not more uncertainty.

This afternoon in the Rules Committee, my friends on the other side of the aisle will have an opportunity to allow for quality changes to the underlying legislation, opportunities for Members of this body to hear debate and vote on amendments. I encourage an open rule, which will be an open and honest discussion just like we've had here on the floor today, on the discussions that the House will handle tomorrow.

With respect to the 50-plus amendments to the legislation that were submitted to the Rules Committee yesterday morning, we'd like to see them all be made in order. Congress has an opportunity to provide for quality, meaningful returns, and to help the current mortgage lending process, and it is my hope that my Democrat colleague friends will allow for that process.

With that, I oppose this rule and look forward to a better rule tomorrow. As always, I think that a better rule tomorrow, an open rule, will yield not only the intended results, but will help the American people to know what we intend to do with this legislation.

I yield back the balance of my time.

Ms. PINGREE of Maine. First, I once again want to thank Mr. MILLER and Mr. WAMP, my colleagues, for their excellent work on this bill, and to Chairman FRANK for his work as well and for being here on the floor with us today for some very lively and important debate that clearly emphasized the importance of this bill, how long we have waited for this reform, and the damage that has been done by not having this reform for this considerable length of time.

By ensuring borrowers only secure loans that they can afford, this legislation will give Americans the best opportunity to purchase and maintain a home.

This legislation is about accountability. It will reward people who play by the rules and guarantee hard consequences for those individuals and institutions that do not. It's good for borrowers, it's good for lenders, and it is very good for our economy as a whole.

I urge a ''yes'' vote on the previous question, and on the rule.

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

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WATT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1728, and to insert extraneous material thereon.

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

There was no objection.

MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

The SPEAKER pro tempore (Ms. PINGREE of Maine). Pursuant to House Resolution 400 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1728.

□ 1120

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes, with Mr. ROSS in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from North Carolina (Mr. WATT) and the gentleman from Texas (Mr. NEUGEBAUER) each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman. I yield myself 5 minutes.

Mr. Chairman, today could easily be a day toward a celebration for myself,

as an original cosponsor of this bill, and Mr. MILLER of North Carolina, my colleague, who also is an original cosponsor of this bill, perhaps leading to a celebration of final passage.

But I approach this day with two rather major concerns about celebrating. First of all, I approach it asking: What if 6 years ago we had passed the legislation that Mr. MILLER and I proposed to the House of Representatives at that time? Isn't it likely that the major meltdown in our credit system would not have occurred, and there's the prospect that had that not occurred, the major economic crisis in which our country finds itself now, trying to dig our way out, may also have been avoided.

So the decisions that we make have consequences. They have had consequences to our credit markets and they have consequences going forward, and have had consequences to our economy.

So this is not a day for celebration. If we pass the bill and the Senate passes the bill and it gets signed into law, we will always wonder what if we had done this when we originally brought forward the bill and dealt with the issue when it should have been dealt with.

Second, my observation is that this has been a very difficult and delicate bill to balance because we have tried to, on the one hand, not to dry up the credit—the money that is out there to be in the market for lenders to make loans to potential homeowners and to current homeowners to refinance while, at the same time, cutting back on the abuses that took place in the marketplace that led to the credit crisis and the economic meltdown that I just described.

Balancing those two interests has been difficult and, unfortunately, those interests were balanced inappropriately in the past because credit obviously was made too readily available to too many people who could not afford to pay it back, who are now in foreclosure proceedings, now in bankruptcies, and we are seeing the negative consequences of an unrestrained market.

So, obviously, the balance was not drawn appropriately in the past, and now we face the argument from a number of my colleagues that, ''Well, we can just leave this alone and let the market take care of itself and we shouldn't be doing anything.'' We're going to hear those arguments throughout today's general debate and, no doubt, on tomorrow when we start dealing with the amendment process.

That's a laissez-faire attitude that I would remind my colleagues is the same laissez-faire attitude that we faced 6 years ago when we first introduced this bill which, I would suggest to you, if we had acted then, we wouldn't be here.

I reserve the balance of my time.

Mr. NEUGEBAUER. I think we will have a good debate today because it is not about not doing nothing, but it's about a difference of opinion of what the right thing to do is, because that's really, bottom line, what the American people want us to do.

They want to have a good mortgage and they want the right to have a mortgage that works for them. I think that the Republicans will articulate that we want them to have those choices.

It is now my pleasure to yield 3 minutes to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. I thank the gentleman. A day of celebration for this bill? I don't think so. The gentleman from the other side of the aisle indicated that we are going to be advocating laissez-faire and do-nothing reform. I don't think so as well. And if you look back at the track record at committee, our side of the aisle, Republicans offered a number of amendments time and time again to try to improve this bill incrementally.

If I remember correctly, the chairman and yourself voted against every single one of those amendments which would have improved that bill.

Today is a day of uncertainty. It's uncertainty for the American family; the American worker, who can't pay their bills, uncertain whether they're going to pay their mortgage or their rent. They're uncertain whether they're going to have a job next week.

It's a day of uncertainty for small businesses, whether they're going to be able to make payroll. It's uncertainty for the American public as they look at the wanton spending and debt that's coming out of this Capitol of Washington, D.C.

It's a day of uncertainty for investors and Wall Street and business as they look at the rules being changed constantly, almost on a weekly basis, and they don't even know which way to go. And so they don't invest, they don't try to grow the economy, and that's why we're continuing with the recession that we're in right now.

This underlying bill has a number of flaws in it. It has the right intent, and that's why we tried to amend it and make it better. But the flaws are egregious, and that's why I cannot support it.

The idea, for example, that banks should have skin in the game is something that we all agree on. How they're doing in it the bill, unfortunately, is problematic in two areas: First of all, that the rules constantly change even as we go forward in the bill itself; secondly, the point that the language in the bill basically says that the other side of the aisle, the Democrats, don't care that they effectively would be crowding out part of the market that we need to grow.

The small banks who may not be able to retain such a large portion on their balance sheet. They even testified in committee to that effect, that they don't know how this would apply to them and whether or not they might not be able to offer as many loans as they did in the past.

So point two was that we have heard testimony that language like this would make it harder for people to get home loans and refinance. The first point was that it's changing the rules constantly.

In the original draft of the bill, you said that we should set it all out in detail, that we should have 5 percent skin in the game and other criteria that was in there. But, at the last minute, they change it and say, ''No. Maybe under certain circumstances the regulators can change that.''

Well, which is it? Wall Street, the investors want to know which way we're going to go. Is it this parameter or that parameter? That's, again, why our side of the aisle, as the ranking member indicated, we didn't have ''no ideas,'' or ''no solutions''; we had a solution to it.

A number of us said let's strike that language. Let's turn it to the regulators. Let's actually do a little study here and see whether or not if we do these things, as some of us suggest, might actually do more harm than good.

Not only as we suggest, but some of the experts suggested as well. As a matter of fact, the Fed basically said there would be unforeseen consequences if we go through with some of the language that we have in here.

So it's not just this side of the aisle. It's not just us. It's the experts and Fed that say this bill is problematic and can cause real harm to the problem and the economy going forward.

Mr. WATT. Mr. Chairman, I yield 5 minutes to the lead sponsor of this bill, the gentleman from North Carolina (Mr. MILLER).

Mr. MILLER of North Carolina. The financial industry's explanation for our financial crisis is it was a weird, unpredictable combination of forces, this perfect storm of macroeconomic forces that no one could have seen coming. Who could have known that all this would happen is the way that many economists mock that argument.

Mr. Chairman, I don't claim that I saw the whole financial crisis coming. I didn't know that these mortgages and subprime mortgages made in 2004 and 2006 would be as toxic as they have proven to be for the financial industry. But I knew that they were going to be toxic for homeowners, and I thought that was reason enough to do something.

In 2003, I introduced legislation that would have prohibited many of the practices that have led us to where we are. Mr. WATT joined me then. Two years later, we introduced it again as Miller-Watt-Frank.

So, yes, many on this side of the aisle have been worried about trying to do something about the toxic loans for a long time, perhaps not to protect Wall Street—it's pretty remarkable to hear the minority still defending or worrying about the poor, poor pitiful boys on Wall Street—but to protect consumers, to protect homeowners.

We know what caused this crisis. We know what was in the loans in 2004 to 2006. Subprime loans went in 2003 from being 8 percent of all mortgage loans to 28 percent in 2006. Many people should never have gotten any loan. They didn't qualify for any loan.

Actually, a clear majority of the people who got subprime loans, qualified for prime loans. They put their trust in the wrong person, and their trust was betrayed. Ninety percent of those loans had an adjustable rate, with a quick adjustment after just 2 or 3 years. They were 2/28s or 3/27s.

Typically, the teaser rate hovered around prime. It wasn't much of a bargain in the first place and, in many cases, was above prime, and then would go up with an average typical monthly increase in payment of 30 to 50 percent.

Seventy percent had prepayment penalties locking the borrowers in, 70 percent were originated by brokers that the borrowers thought were looking after their interest. There was a grotesque asymmetry of information. That's what economists call it. What it means is the lenders were writing all the fine print. Their lawyers wrote all that they gave the borrowers to sign and then the borrowers were stuck with it.

They were counting on someone who was actually being paid, the broker who was being paid by the lenders, to get them the worst loan possible, while they were telling the borrowers they're trying to find for them the best loan possible.

Now, throughout that period, we heard the same arguments then that we are still hearing after all that has happened. We're still hearing from the minority in opposition to this bill that all those terms that may look predatory were actually justifiably required to make loans available to people who otherwise would not qualify, to make homeownership available.

This is financial innovation. This is the market at its best. We should celebrate. And we know what really happened during that period.

Americans have heard a great deal about the vulgar compensation on Wall Street in the financial industry: the pay and the bonuses and all the perks, the million dollar-plus redecorations of the CEO offices, the corporate jets, and all the rest. Even after all of that, more than 40 percent of corporate profits in America were in the financial industry.

Mr. Chairman, their margins weren't really that tight. They really didn't have to put all those terms in mortgages in order to make them. The terms that appear predatory on their face really were predatory. They were not about making loans available to people who otherwise couldn't get credit. They were about making as much money as they could as quickly as they could make it.

We still hear the same arguments, the same parroted arguments from a discredited industry we have heard for years. We have heard letters from the mortgage bankers held up and read aloud as if they were brought down on stone tablets from Mount Sinai. We have heard the concerns of the Wall Street boys. Like everybody in America still believes what they have to say.

It is very clear that the members of the minority's view of the role of government is that government should hold the American people while industry goes through their pockets.

The mortgages that got us in this mess were shameful. It is shameful that this Congress, that this government ever allowed those mortgages to happen. This bill will begin to put an end to it, to make sure it never happens again. It limits the upfront costs that strip equity from mortgages. It prohibits a prepayment penalty that traps people in bad mortgages so they couldn't get out of them. It forbids compensation to brokers that creates the conflict of interest that many brokers betrayed the trust of borrowers.

The CHAIR. The time of the gentleman has expired.

Mr. WATT. I yield the gentleman an additional 2 minutes.

Mr. MILLER of North Carolina. The arguments on the other side remain the same that they have been: ''Oh, this will narrow choices for consumers,'' like they are really protecting the rights of consumers to pick mortgages like that. Like borrowers came into brokers or mortgage companies and said, ''You know, can you get me an adjustable rate loan that goes up after 2 or 3 years and the monthly payment goes up 30 to 40 percent, with a prepayment penalty so it's harder for me to get out and have to pay something to get out, with an initial rate that's probably only about prime in the first place? And because I'm paying more at a higher interest rate than I qualify for, how about paying some extra money to the broker?''

Mr. Chairman, no one asked for these loans. They were duped into taking these loans.

Ned Gramlich, a member of the Federal Reserve Board's Board of Governors said that, ''For all its work, subprime lending actually made sense and helped people get loans, but the practices were indefensible.'' He asked the rhetorical question, ''Why is it that the most complicated loans, the most complex loan terms, end up in loans to the most unsophisticated borrowers?''

□ 1130

He said the question answers itself: They were duped into taking these mortgages. This bill will keep that from happening again. It should never have happened before. This will keep it from happening again.

I reserve the balance of my time.

Mr. NEUGEBAUER. Mr. Chairman, it is my pleasure now to yield 5 minutes to the gentleman from Texas (Mr. HENSARLING), who has been a strong advocate of making sure that Americans have plenty of opportunities and plenty of choices when they look at their financial products.

Mr. HENSARLING. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this is a very, very serious topic. Unfortunately, it is being addressed with a very, very disappointing bill.

I heard several of my colleagues on the other side of the aisle say this is all about protecting consumers. It is a piece of legislation, Mr. Chairman, which will protect them right out of their homes. I don't think that is the type of protection that the consumers or America are looking for.

What this bill will do, if this Chamber passes this and ultimately if it is signed into law, it means the Federal Government will functionally be taking away homeownership opportunities from the American people. It will cause an increase in interest rates for people as they seek to either buy a home or keep the homes they have. It changes the rules to where once again those who follow the rules will end up having to bail out those who do not.

Now, in the previous debate on the rule I heard the distinguished chairman of the full committee and others give us a history lesson about the cause, and it is important to learn the lessons of history. They were a whole lot less focused upon how this bill will impact the future.

But if we actually look at our history lesson, there is no cause that looms larger—looms larger—in the mortgage crisis meltdown than the abuses of the government-sponsored enterprises, Fannie and Freddie, where government gave them a functional monopoly to go out, make profits that could not be achieved in a competitive market, and told them to finance loans to people who could not afford them.

The demand for the subprime mortgage skyrocketed when Fannie and Freddie, the government-sponsored enterprises, demanded them. Many on the other side of the aisle wanted to roll the dice. Yes, the dice were rolled, and the American people lost.

This is called the Mortgage Reform and Anti-Predatory Lending Act. There can be no mortgage reform, Mr. Chairman, without reforming Fannie and Freddie. And for those who claim that this has already been accomplished, well, now that they have been effectively nationalized, when their market share of new mortgages has gone from 50 percent to almost 90 percent, when the taxpayers are on the hook for hundreds and hundreds and hundreds of billions of dollars, which makes the bailout of AIG look cheap, I don't think this is reform, Mr. Chairman.

With respect to the title of ''anti-predatory lending,'' the bill is almost completely silent on predatory borrowing. How can we take this as a serious piece of legislation, when we know that FinCEN, the Financial Crimes Enforcement Network, has said that over half of the mortgage fraud took place with borrowers, those who lied about

their income, they lied about their wealth, they lied about their occupancy; yet, the bill is almost completely silent. It only says, oh, by the way, if you are caught defrauding your lender, we are not going to allow you to sue him.

Otherwise, there is a complete explosion of liability exposure on the lender side. And we know what happens in lawsuit abuse, Mr. Chairman. It gets poked into the price of every single mortgage. People will pay higher mortgages.

Right now, the plaintiffs' trial attorneys, I have no doubt, are licking their chops over this legislation. We have such nebulous terms as ''net tangible benefit,'' ''reasonable ability to repay.'' Well, what is the net tangible benefit? If somebody wants to refinance their home and update their kitchen, is that a net tangible benefit? Maybe it is. How about if they want to refinance their home to put in a swimming pool? Is that not a net tangible benefit?

If there is somebody on the other side of the aisle who would answer those questions, I would be happy to yield time.

Well, seeing none, I think that buttresses my point, Mr. Chairman, that nobody knows how to define these terms.

So, ultimately what we are going to have are fewer mortgages being made. This is Uncle Sam telling you, with a couple of exceptions, if you can't qualify for a 30-year fixed mortgage, then we are going to deny you the homeownership opportunity in America, because we are smarter than you. We know better than you. We have to protect you from yourself.

If we want true protection, we need effective disclosure. Mortgage fraud needs to be treated equally on the borrower's side and the lender's side. And at a time of a national credit crisis, we need to be finding ways to help the American families with more credit for their needs, not less.

This bill needs to be rejected.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, I hope folks are watching and listening. We had a debate on credit cards. You heard the debate last week. Now you know who is on the side of the consumer and who is dealing in gibberish.

Secondly, we have a debate today on the Anti-Predatory Lending Act. There is no doubt about this. To insinuate that the primary problem is with those who borrow the money is outlandish and cannot be backed up with any data whatsoever. So I rise in strong support of H.R. 1728, which would curb the abusive and predatory lending that led directly to the subprime mortgage crisis and the recession we now face.

I want to thank Chairman FRANK for his hard work on this legislation. In my county of Passaic, New Jersey, one out of every 21 homes is in foreclosure.

□ 1145

In my hometown of Paterson, New Jersey, 2,700 mortgages are currently in default; that is one out of seven. And to hear the other side—or many on the other side, that is—is outlandish. You cannot support what you're talking about. My district office receives dozens of calls every day from my constituents who cannot pay their skyrocketing mortgages and fear imminent eviction.

For years, as the housing bubble grew, unscrupulous brokers, in a quest for higher commissions and higher profits, preyed on the American Dream of homeowners by signing borrowers, many of them unqualified, up for risky, adjustable rate, subprime mortgages. That is what we are talking about today. That is what we are going to correct.

Subprime, high-interest and high-fee mortgage lending grew from 8 percent of the total mortgage lending in 2003 to 28 percent in 2006. Additionally, of the subprime mortgages originating in just 2004 to 2006——

The CHAIR. The gentleman's time has expired.

Mr. WATT. I yield the gentleman an additional 30 seconds.

Mr. PASCRELL.—in those 2 years, Mr. Chairman, 90 percent came with an exploding adjustable interest rate. How do you blame that on the borrowers? Seventy percent came with a prepayment penalty. How can you blame that on the borrowers? Seventy-five percent included no escrow for taxes and insurance, and over 40 percent were approved without fully documented income. They didn't ask it. They didn't even ask it. They are responsible to lenders.

By 2007, according to the Joint Economic Committee, these subprime mortgages were being foreclosed at the rate of 10 times more than fixed rate mortgages.

I hope we support this legislation, Mr. Chairman.

Mr. NEUGEBAUER. Mr. Chairman, it is my honor now to yield 3 minutes to the gentleman from Minnesota (Mr. PAULSEN).

Mr. PAULSEN. I thank the gentleman for yielding.

Mr. Chairman, this bill today has the word ''reform'' in it, the Mortgage ''Reform'' Act; but unfortunately, the reform that it is proposing would only further hurt the housing market and leave aspiring homebuyers with less choice, ultimately keeping them out of a new home. In short, this bill will do more harm than good.

Rather than helping revive the economy, this bill will tie the hands of mortgage lenders and will do nothing to jump-start a flailing housing market. How can we expect more people to purchase more homes when we make it harder for them to get the mortgages that they need?

Mr. Chairman, at a recent committee hearing on this bill I asked that very question to the director of consumer affairs at the Federal Reserve and also of the commissioner of banks for the Commonwealth of Massachusetts. Both of these expert testifiers said verbatim, they said unequivocally, that this legislation would in fact reduce the number of mortgages that are available to consumers.

It is time for Congress to do a much better job of considering any unintended consequences of the legislation that it passes. That is why I offered an amendment to this bill that would require the Comptroller General to study the effect that this legislation will certainly have on the financial institutions that provide mortgages.

But the reality is, this legislation here today, it still has too many problems. And the bill will now open up even safe mortgages to litigation by trial lawyers and activist groups. And now hardworking people that want to own a new home are going to have to pay the price in the form of higher mortgage interest rates. So this bill not only gives more opportunities for trial lawyers, it in fact is going to use taxpayer money to subsidize those lawsuits, about $140 million of taxpayer money subsidizing lawsuits.

Finally, this bill is called the Mortgage Reform bill, yet it contains no reform of Freddie Mac or Fannie Mae, which have left the taxpayers on the hook for billions and billions and billions of dollars because of bad mortgage underwriting practices.

We should oppose this legislation. We should get it right. We should do nothing that is going to hurt the availability of mortgages, especially to first-time homebuyers. And hopefully we will move in a direction that is going to help not increase costs, but also make credit more available. So I would urge opposition to the bill.

Mr. WATT. Mr. Chairman, I reserve the balance of my time in an effort to equalize the time.

Mr. NEUGEBAUER. Mr. Chairman, I yield myself 3 minutes.

The example I would use here today, imagine taking your car to the repair shop and saying, you know, my car is not running very well, it is running rough. And immediately the service attendant reaches over, pulls up your hood, and starts taking the engine out. And you stop and you say, wait a minute, what are you doing? And they say we are going to put a new engine in, you said your engine wasn't running correctly. That is before we did any diagnostic work to maybe determine whether it needed new spark plugs, or maybe it needed a new valve, or something like that.

And, really, we have started down a road here. We have had one of the most robust housing finance systems in the world. It has been the envy of the world. It has allowed record levels of homeownership for American families. Yes, it is running a little rough right now and we will need to get to the bottom of that, we need to diagnose what those problems are. The Federal Reserve is going down that road; they

have promulgated some new rules. We have said that now people who are going to originate mortgages are going to have to be registered.

But the problem here is that my friends are going down the road here without really determining all the places in the engine that could be causing the engine not to run correctly, they want to put a new engine in there—an untested engine.

Quite honestly, I spent a number of years in the housing business. I built houses, I made mortgage loans, I have borrowed money, I have originated mortgages. And one of the things I know is that not every mortgage fits every situation. A lot of people were able to enjoy the American Dream because they were able to get a mortgage tailored to their financial needs. What this bill does is says, you know what, the government is going to tell you what kind of mortgage you get. And if you don't take the government mortgage, it might not allow you to get the house that you want. It is like, not only is the government going to put a new engine in your car, but, by the way, the government says, scoot over, now we are going to drive.

We have seen, in the last few months, a major government intervention into financial markets, into automobile companies, into insurance companies. Last week, we saw that the Federal Government is going to tell you what kind of credit card you get to have now. And now my colleagues on the other side want to tell you what kind of mortgage you get, which is going to tell you what kind of house you get. That is not the American Dream; that's the Government Dream. Quite honestly, my colleagues are dreaming if they think this is not going to increase the cost of mortgages for families all across the country.

And you know what happens when you increase the cost of the mortgage? It reduces the affordability for those American families. That means many of them have to buy smaller houses, or, in some cases, many people are priced out of the housing market because they can't get the mortgage that meets their needs.

Let's let the American people have a choice to do that. Let's stop and look and give the regulatory measures that have already been proposed by the Federal Reserve time to work. And let's make sure that we are fixing the things that are broken before we throw out the whole engine and leave Americans without the ability to be able to have affordable mortgages and afford the American Dream.

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

Mr. WATT. Mr. Chairman, I yield 3 minutes to the Chair of the Capital Markets Subcommittee of Financial Services, the subcommittee that has responsibility for making sure that there is money available, the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Chairman, I rise in support of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. This bill aims to significantly reform mortgage lending and better protect borrowers. I have worked on these issues for some time.

On that point, listening to the little debate before me, I am just absolutely amazed. Apparently, my friends on the other side of the aisle think we are rushing to judgment here and acting precipitously on a bill that is not quite ready to be completed or concluded. I would like to call their attention to the record.

I held hearings in the Poconos, in my congressional district, on predatory lending more than 5 years ago. We came back and prepared legislation—I may say bipartisan legislation—in predatory lending 4 years ago. It didn't succeed in passing, but in 2007, we put together and introduced another piece of legislation, a predatory lending bill, that encompasses many of the issues that are encompassed in this bill. That failed to get any action in the Senate, but did pass the House.

I don't know how long we want to wait, in all honesty, on packaging and passing a new mortgage reform and antipredatory lending bill. Yes, we will stop too many loans that are bad from being made. Yes, we will discourage forms of loans that have caused us trouble in our system and have almost brought down our system. This is the beginning of many things that are necessary for this Congress to do to straighten out the economic woes of this country.

The predatory lending problems that we have encountered in my State of Pennsylvania convinced me that we need to update the Federal law, and they convince me of that fact today. I, therefore, previously introduced legislation and have participated. And today, I would like to focus my comments on that part of the bill that is taken from a bill that I prepared over the last 7 years, and that is primarily the appraisal package of this bill.

For the first time, we have established real standards. For the first time, we have geared up and provided payoff statements, we have provided information to the purchaser and to the entire market—and most of all to the lender—that we are not going to have favorite appraisers, we are not going to have preselected appraisers, we are going to have honest, independent appraisers. That is what this bill calls for.

I think that if you take the bill in its entirety—and none of us, including myself, agree with every element or every part of the bill, some of it is quite onerous, quite frankly, but the fact of the matter is what we have done here today for the first time is create a bill that those of us that do not want predatory lending in this country, who want to have fair and honest mortgaging in this country, and want to attend to the economic problems of this country should adopt and pass this bill.

Mr. NEUGEBAUER. Mr. Chairman, it is my pleasure now to yield 5 minutes to the ranking member of the full committee, the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, and Members of the body, this discussion is a discussion that has been going on for 5 or 6 years. In fact, it predates that.

In 1999, this body discussed the fact that Freddie and Fannie were being pushed into making loans without a down payment. And the New York Times, in an article in September, 1999, actually quoted Peter Wallison as saying that you are not requiring a down payment, and now the Clinton administration is pushing Freddie and Fannie to lower the credit standards. And he makes the statement in there that, if they fail, the government will have to step in and bail them out the way it stepped up and bailed out the thrift industry. In 2005, I made another statement that some people considered wild-eyed, and I said that if we don't reform the subprime lending market, we are going to have a similar situation that we faced with subprime lending.

Mr. KANJORSKI, listening to him reminded me that he and I pretty much, I thought, put together a bill—or he said bipartisan legislation, what he was talking about is, we were drafting it, and Chairman FRANK was working on it. And I actually made the statement in 2005, and I will read my statement: ''Uniform standards in the marketplace are essential if the primary and secondary markets are to continue to serve as a vital source of liquidity to make mortgages available to homebuyers with less than perfect credit. I am committed to finding ways to end predatory lending while also preserving and promoting access for all homeowners to affordable credit.'' That was in May of 2005.

Chairman FRANK said—and I think said accurately—earlier on the floor that he and I came awfully close to a consensus in 2005 for a bill. I don't, quite frankly, know what happened. I am reading a Charlotte Observer statement, and I know Mr. MILLER was concerned about putting some things in the bill that even some Democrat legislators objected to and I felt would limit access to credit. It is striking that I look at this House bill, 1728, and I will say this, Mr. MILLER and Mr. WATT, this is essentially what you were advocating back in 2005. But at that time, I thought there was a bipartisan feeling—that I actually submitted in draft form—that didn't contain some of these things. Because I really sincerely believe that you will eliminate many worthy borrowers with this legislation because it is almost a one-size-fits-all.

□ 1200

There's going to be a lot of loans that could be made and people could buy a home, and that's a delicate balance. That's a balance we obviously violated throughout the 1990s by putting people in homes that shouldn't be there. And

Mr. MILLER, I think, and Mr. WATT have argued that if they have to pay a certain price, it just won't work, and many of my Republican colleagues agree to that. And as I said, I submitted draft legislation for consideration, but we couldn't get there.

If you will recall, the other body said they were not going to take a provision on securitization. They weren't going to take it. And here we are today, 4 years later, and we all agree that there needs to be skin in the game, but this legislation before us is not the legislation that Mr. KANJORSKI has talked about that I was ready to move in 2005 or 2006, that Mr. FRANK talked about, and it was essentially the legislation of Mr. WATT. I believe it was wrong then; I believe it's wrong now.

The Acting CHAIR (Mr. PASTOR of Arizona). The time of the gentleman has expired.

Mr. NEUGEBAUER. I yield the gentleman an additional minute.

Mr. BACHUS. Let me tell you what I believe, and I believe Mr. WATT and Mr. MILLER are sincere. According to the Charlotte Observer, we were close to an agreement. I have no idea what happened.

But let's talk about today. Let's talk about today, and let's assume and I assume, and I think I'm right, that we have all been very concerned about this. The legislation today, I think all the testimony in the hearings has been that poor origination standards plagued the mortgage industry and we need origination reform. We did something last year. We started proposing in 2005 registration of all brokers.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. NEUGEBAUER. I yield the gentleman an additional 2 minutes.

Mr. BACHUS. To register all mortgage originators, and that has been a tremendous success. We have got a lot of people committing fraud in starting those loans, and I think we are putting an end to that through legislation.

We need to work on something else, and I think we all agree. I have an amendment that I'm going to the Rules Committee to propose, and I think there are some Democratic amendments. There are now people coming in and promising people they'll work out these foreclosures, and they are defrauding people who are actually going through a foreclosure, which is outrageous; and this bill needs a strong provision on that.

But here's what it doesn't do: Chairman FRANK and I supported in the last Congress H.R. 3915. Look at that bill and look at this bill. That included licensing and registration of originators as the first title. That's what I had proposed. The Senator from California proposed a similar thing and introduced it in the Senate. I introduced it in the House. That's now passed. It was approved by a large bipartisan majority.

But H.R. 1728, the bill before us, it strikes a far different balance, and I believe it's one that will undermine the mortgage market at the worst possible time. We are just starting to see preliminary signs of a possible housing recovery. Look at the numbers. Loans are being made. But H.R. 1728, the bill before us, it lacks clarity needed to provide, I think, meaningful protection to consumers. That was the testimony in the hearings from a coalition of consumer advocacy groups and labor groups. It manages to punish both responsible industry participants and worthy borrowers at the same time.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. NEUGEBAUER. I yield the gentleman an additional minute.

Mr. BACHUS. I am going to go fairly quickly, Mr. Chairman.

Rather than focusing on basic underwriting standards we were doing in 2005 and 2006 and in Chairman FRANK's bill last year, we are not doing that anymore. Now, part of that is the Federal Reserve has adopted comprehensive antipredatory lending regulations. Mr. GARRETT mentioned that. And those are going forward, and it's almost like this bill doesn't realize what has happened over the last year or two. It will expose the mortgage financial industry to substantial litigation risk. There was plenty of testimony on that. The cost of these inevitable lawsuits are going to be passed on to consumers.

I actually proposed in my draft an individual right of action if people violated the standards that we were close to agreeing to. Many lenders have said they'll stop offering certain mortgage products that people are taking now. They're successful in paying them back.

The Acting CHAIR. The time of the gentleman has again expired.

Mr. NEUGEBAUER. I yield the gentleman an additional 1 minute.

Mr. BACHUS. Consumer advocates, Federal regulators, Members on both sides of the aisle expressed reservation on the bill before us. Margot Saunders, and I'm going to quote here again, National Consumer Law Center, we worked with her, the gentleman from North Carolina and I, on trying to fashion a bill. She was for the bill last year. She says that this bill is ''convoluted and virtually impossible as a mechanism to solve the current problem.'' Now, she was testifying on behalf of a coalition of consumer advocacy groups.

The administration is working out a plan right now to resolve troubled mortgages, and we shouldn't make it more difficult for worthy borrowers to get home loans while they're doing that. A ''yes'' vote will do exactly that. It will raise the cost of mortgage credit, limit the availability to millions of Americans. It won't give the certainty that our mortgage market needs. It's poorly crafted and ill defined.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. I thank the gentleman for yielding to me.

Mr. Chairman, I rise today in strong support of the Mortgage Reform and Anti-Predatory Lending Act.

According to a recent report, foreclosures in Chicago doubled from 2006 to 2008 and continue today. It was Chicago's 50th Ward, a solidly middle class community where I grew up, that saw the highest increases in foreclosures, 360 percent in just 2 years.

When most people walk into a mortgage closing, they bring with them the hopes and dreams of their futures and those of their children and the full intention of being responsible homeowners. But actions by unscrupulous and downright predatory lenders put many Americans into loans that they couldn't afford, and the consequences are clear.

This bill offers protections for homebuyers that are long overdue. I'm one of many to have worked for years on this issue, including our late and beloved Stephanie Tubbs Jones. We wrote legislation that would stop predatory lending in the mortgage industry, including requiring certification of brokers and enactment of basic consumer protections. And this critical bill builds on those efforts to create standards for lenders and mortgagers.

I'm also pleased that this measure includes Mr. ELLISON's bill to provide additional protection for tenants of foreclosed property. The foreclosure crisis for renters has been mostly a hidden consequence, but in States like Illinois, New York, Nevada, foreclosures on rental properties have represented nearly half of all foreclosures, uprooting families and wreaking havoc on communities.

I want to thank Chairman FRANK and Mr. WATT and Mr. MILLER, and I urge all my colleagues to support swift passage of this measure.

Mr. NEUGEBAUER. Mr. Chairman, I reserve the balance of my time.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois, a member of the committee, (Ms. BEAN).

Ms. BEAN. I thank the gentleman for yielding.

Mr. Chairman, I rise today to urge my colleagues to support H.R. 1728.

As an original cosponsor, I want to commend Chairman FRANK for his leadership and also thank Mr. WATT for working with Congressman CASTLE and me to refine the qualified mortgage safe harbor to ensure that traditionally safe, stable loans are included.

Today's bill follows up on the important work this House did early last Congress. Unfortunately, despite the strong bipartisan support of that bill, the Senate failed to act. I am hopeful that this year's bill will more swiftly move through the Senate and to the President's desk for signing into law.

H.R. 1728 brings mortgage lending back to reality. It will ensure that mortgages are fully underwritten, income is properly documented, and borrowers have the ability to make their payments.

The subprime mortgage crisis that we continue to deal with today wouldn't have happened if we had not relaxed bedrock principles of sound lending and underwriting. The bill requires lenders to keep some skin in the game for the loans they originate by requiring them to retain 5 percent of the loan value when they seek to securitize a mortgage in the secondary market. This concept of risk retention was endorsed by the New Dem Coalition as part of our Reg Reform Principles in February of this year, and we're pleased to see it included in the bill.

I'm also pleased that it maintains a provision I wrote last Congress regarding the disclosure of negative amortization loans. Negative amortization occurs when unpaid interest gets added to the principal balance of a loan. Some borrowers enter into products with negative amortization not realizing that they're adding to the cost of their mortgage each month instead of paying principal down. The underlying bill requires lenders to disclose to borrowers if their loans allow the practice and requires credit counseling from a HUD-certified credit counseling agency for first-time borrowers considering such a loan.

All of our constituents want better consumer protections and simpler disclosure of mortgage terms. They want homeownership to mean qualified borrowers make their payments, build equity, and keep their homes.

I urge my colleagues to support it.

Mr. NEUGEBAUER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I don't think that there's any disagreement in this House, and certainly not on our side, that predatory lending is bad, and we have taken steps to do that. The Fed has taken steps to do that. We want to make sure that people have the right choice of mortgage to be able to take a mortgage out that allows them to own a home.

The problem with this bill is that it really starts to mess up the conduit of how mortgages are made. And a little bit of history on that is a mortgage is made in your local bank or a mortgage banking company. It is then sold into the secondary market. Investors buy those mortgages so that those banks and mortgage companies can originate more loans, and that's how we have built this great housing market in this country.

What this bill does is it begins to put liability and uncertainty at a time there's already a tremendous amount of uncertainty in the secondary market. In fact, the secondary market in this country right now is shut down because of uncertainty, and now we want to dump a whole bunch or more of contingent liability and uncertainty on the secondary market to the point where I'm not sure whether we'll ever be able to start that engine.

So what I think what our colleagues are trying to do is to say somehow that Republicans are not against the predatory lending. Of course we're against predatory lending, and steps have been taken. But what we are for is making sure that there is a mortgage market left when this all blows over. Yes, the market has had a hiccup and people are now trying to ascertain what the new rules are going to be. They've seen the government take over banks and get involved in all kinds of businesses. So there is a lot of uncertainty out there. And the question is, was a lot of this a lack of oversight or was it a lack of a bunch of regulations? I would submit in many cases this was a case where there was not appropriate oversight.

The Acting CHAIR. The time of the gentleman has expired.

Mr. NEUGEBAUER. I yield myself an additional minute.

□ 1215

And so now worse, because before we really check and see whether the oversight was being done appropriately, we are going to dump a bunch of regulation on the marketplace, the very fragile marketplace, financial marketplace right now, which was the source of funds for mortgages that allowed many people to have homes.

Now, some of these loans, quote, that were subprime, were not all predatory. And I think one of the things that we have done, we have lumped two things in there. Some of those subprime loans were not to normal underwriting standards but they were tailored so that that person could buy a home. You know what, Mr. Chairman, a number of those people still are in those homes and making those payments.

And now we are going to take this category of a broad blanket, of throwing the big blanket over the whole mortgage market and saying, you know, it was predatory. But that's not the case.

We ought to take thoughtful consideration about what we are doing to this secondary market because we are going to dry up mortgage funds for American families.

I reserve the balance of my time.

Mr. WATT. Mr. Chairman, would you advise how much time remains on each side.

The Acting CHAIR. The gentleman from North Carolina has 9 minutes, and the gentleman from Texas has 3 minutes.

Mr. WATT. Mr. Chairman, I yield 2 minutes to a valued member of the Committee on Financial Services who has been involved in the process throughout, Mr. AL GREEN of Texas.

Mr. AL GREEN of Texas. I thank the chairpersons for the stellar job that they have done. I especially thank you, Mr. FRANK, for the fine work that you have done in leading us.

Mr. Chairman, this is not just a good deal, it really is a great piece of legislation. Because after the exotic products that were placed in the marketplace—3/27s, 3 years of fixed rates, 27 years of variable rates, 2/28s, prepayment penalties that coincided with teaser rates—after these exotic products, this bill is necessary. This bill addresses these exotic products. It makes sure that lenders are making loans to people who can afford the loans, they can afford to pay the loans back. A relationship between borrower and lender was fractured.

This bill seeks to restore that relationship, but it does something else that is exceedingly important, and it was mentioned very briefly. It addresses the concerns of people who are paying their rent. Their rent is paid and they find themselves being evicted because the property they are living in is being foreclosed on.

The foreclosure was no fault of the tenant, yet the tenant now has to move away from the school that the child attends. They have to move from the job where they work, the community that they reside in, simply because the owner was foreclosed on, and the tenant did not have anything to do with the foreclosure.

This bill addresses it. It gives either a fair amount of notice or it allows the tenant to continue with the lease that has been in place. This is a good piece of legislation.

I am going to ask that all of my colleagues please support it. Mr. WATT, I thank you for the fine job you have done. Chairwoman WATERS, I thank you for the fine job that you have done. I beg that that legislation pass.

Mr. NEUGEBAUER. I reserve the balance of my time.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentlelady from California, chairwoman of the Housing Subcommittee of Financial Services, Ms. WATERS.

Ms. WATERS. Mr. Chairman, I rise today in strong support of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009. I would like to thank Financial Services Committee Chairman BARNEY FRANK for his commitment to bringing this legislation to the House floor.

I would also like to recognize the leadership of Representative MEL WATT and Representative BRAD MILLER, who wrote this bill and who have been working towards reform of predatory lending practices since the last Congress.

I am especially appreciative for them working on concerns that I had about prepayment penalties and the way that they have resolved them, targeting the subprime market and phasing out those even in the prime market.

I am also appreciative for the work that they have done scaling back on any State preemption that was in the bill.

My California attorney general now supports the bill, and we are very appreciative for that.

This bill before us today will ensure that the subprime meltdown, which is causing 6,600 foreclosures each day, reducing the property values of 73 million homeowners, strangling the credit

markets and crippling our largest financial institutions, will not happen again.

First, H.R. 1728 would ban the abusive compensation structures, such as yield-spread premiums, that create conflicts of interest or award originators that steer borrowers into loans that are not in their best interest. This protection is needed because many struggling homeowners, especially minority or low-income homeowners, were intentionally steered into high-cost mortgages by unscrupulous lenders and mortgage brokers.

Second, H.R. 1728 would require loan originators to hold at least 5 percent of the credit risk of each loan that is later sold or securitized by requiring lenders to have ''skin in the game.''

H.R. 1728 is a good bill. I would ask my colleagues to support this legislation.

Mr. NEUGEBAUER. It is my pleasure to yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Mr. Chairman, I would like to thank Chairman FRANK and my colleagues from both sides of the aisle for working with me on this bill to improve it.

Too many Americans are losing their homes. Some fell victim to unscrupulous practices and fraudsters. Some got into a loan they couldn't afford, and others are subject to traditional reasons for foreclosure. But this bill attempts to get at some of the root causes of these nontraditional reasons homeowners get into trouble, but by no means is it a finished product.

For example, regulators testified that they don't know how the risk retention or ''skin in the game'' provision would work, so I think this provision needs to be better understood before becoming law. Also needing work is a provision that classifies new kinds of mortgages as subprime and unnecessarily replicates the Federal Reserve's new regulations set to take effect in October.

And yet a third provision of this bill perhaps too narrowly defines which mortgages qualify for a safe harbor, which could result in an uptick in unfounded lawsuits and fewer options for creditworthy borrowers. It's important that we ''do no harm'' and carefully craft provisions that won't hamper our efforts to jump-start and restore our confidence to the housing market.

At the same time, this bill does have some good provisions. Identical to a housing bill I have, title 4 expands HUD's coordination and capacity to offer grants to States and local agencies, which are at the forefront of helping homeowners.

Section 106, which I authored with Congressman HINOJOSA and Congressman NEUGEBAUER, temporarily suspends HUD's new RESPA regulations and requires HUD to coordinate with the Fed to update mortgage disclosure regulations. Last August, HUD ignored a letter signed by 244 Members of this body requesting that the two agencies work together, so section 106 will require it.

One of the major actors undermining the housing market is appraisal fraud. Titles 5 and 6, which I worked on with Congressman KANJORSKI, will improve the integrity.

Mr. WATT. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, my colleague from North Carolina identified a whole list of things that had gone awry in the lending community that formed the basis for this bill, and we have tried to address them by requiring lenders to assess the borrower's ability to repay the loan by requiring borrowers to at least make sure that the lender is getting some kind of tangible benefit out of a loan that they make to them, by requiring lenders to verify the income of people that they are making loans to, and by setting up standards for appraisers to do responsible appraising and by creating broker responsibilities.

Nobody can argue with those things and nobody should argue with those things. And if you support them, you should be supporting this bill.

I reserve the balance of my time.

Mr. NEUGEBAUER. I would ask the gentleman, does he have any additional speakers?

Mr. WATT. We have a closing speaker. So if the gentleman is ready to close, he can go ahead, and we have one more speaker.

Mr. NEUGEBAUER. Thank you.

Mr. Chairman, Republicans are for good disclosure, open disclosure, easy-to-read disclosure. We are for responsible lending. We are also for making sure that the American people have low-cost mortgage choices.

What we are not for is a legislation that limits those choices, that chokes a very fragile credit market and increases the cost of credit for American families all across this country.

One of the things that is most important to American families today is, you know, the cash flow piece of it. And what we are going to do now is put so many restrictions on this market that people are going to build into that a cost for mortgages, and so mortgage rates are going to go up, choices are going to go down.

And with this legislation, I am afraid we may never see a secondary market that was as good and as fruitful for mortgage lending as the previous one we had. That's the reason I am going to encourage my colleagues to vote ''no'' on this legislation. We can do better than that. We do not have to shut down the mortgage market, but we can make for responsible lending.

Mr. WATT. Mr. Chairman, I recognize the chairman of the full Financial Services Committee for a closing statement and yield him the balance of our time.

Mr. FRANK of Massachusetts. Mr. Chairman, I would say this: I note my Republican friends tell me they are opposed to predatory lending. At no point, however, have they taken any initiative in bringing any legislation to the floor to deal with it or to urge that it be done in a regulatory way.

For 12 years they were in control, not a single bill came forward. My friend from Alabama did have a sincere interest here, and he had a good proposal. It wasn't until the Democrats were in the majority and we brought a bill to the floor that he was able to offer his bill, which we embraced. And even then, while he voted for the final bill, two-thirds of his colleagues voted ''no.''

Now, some have said this is going to do terrible damage to the mortgage market. I think Members would agree that no organization is more interested in having that well functioning than the National Association of Realtors.

Mr. Chairman, I submit for the RECORD a letter from the National Association of Realtors dated May 5, 2009.

NATIONAL ASSOCIATION OF REALTORS,
Washington, DC, May 5, 2009.

House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the 1.2 million members of the National Association of REALTORS® (NAR), their affiliates, and property owners, I strongly urge Congress to vote ''yes'' on H.R. 1728, the ''Mortgage Reform and Anti-Predatory Lending Act of 2009''.

REALTORS® are acutely aware that there is a need for mortgage reform, and NAR believes that H.R. 1728 strikes an appropriate balance between safeguarding the consumer and making sure consumers have access to mortgages at a reasonable cost. NAR is a strong advocate of protections for consumers in the mortgage transaction, and REALTORS® support the general principle that all mortgage originators should act in good faith and with fair dealings in a transaction, as well as treat all parties honestly.

REALTORS® have a strong stake in preventing abusive lending because it erodes confidence in the Nation's housing system, and citizens of communities, including real estate professionals, are harmed whenever abusive lending strips equity from homeowners. As consumer abuse in mortgage lending increased, REALTORS® sought to protect consumers and the housing market by establishing a set of ''Responsible Lending Principles'' that form the basis for our advocacy with Congress. Since their creation in 2005, REALTORS® have shared these principles with Congress during discussions of current and past anti-predatory lending legislation. NAR is extremely pleased that H.R. 1728 embodies the REALTORS ''Responsible Lending Principles''.

Therefore, NAR strongly supports H.R. 1728, and asks that you indicate to consumers and the housing market your support for them by voting ''yes'' for this legislation. I thank you for the opportunity to voice our support for H.R. 1728. And as always, NAR remains at the call of Congress, and our industry partners, to help in the recovery of the housing market and the overall economy.

Sincerely,
CHARLES MCMILLAN, CIPS, GRI,
2009 President,
National Association of REALTORS®.

The National Association of Realtors strongly urges people to vote for this. The National Association of Realtors—knowledgeable and committed to homeownership—strongly supports this.

My friend from Alabama alluded to some consumer groups, labor groups that had some problems. They have since largely been alleviated. I must say, if we would alleviate them further, he would hate the bill more. But the fact is that the groups he alluded to are, on the whole, pleased with the bill now.

But, finally, I want to address the question of Fannie Mae and Freddie Mac. My colleagues have said, well, how can you do this without Fannie Mae and Freddie Mac legislation? Again, during the 12 years of the Republican rule, no bill passed for Fannie Mae and Freddie Mac and became law. In our 2 years, one did.

Yes, I think further action is needed there. Where is their bill, Mr. Chairman? No Republican has offered, in the 2 years that I am aware of, as an amendment to this—or in any way—that bill. So they say you can't do predatory until you do Fannie Mae and Freddie Mac. They offered no such amendment. So it simply becomes as an excuse not to do things.

Now let's talk about Fannie Mae and Freddie Mac and who is responsible for what. There have been some quotes. Let me quote from here.

''In 2004,'' Bush administration, Republicans in Congress, ''the Department of Housing and Urban Development revised these goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be 'special affordable' loans made to borrowers with incomes less than 60 percent of an area's median income.''

In 2004, the Bush administration mandates this. This is under Republican control.

Then, let me go to line 20 on page 183. ''After this authorization to purchase subprime securities,'' which had come from the Clinton administration in 1995, ''subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006,'' during the Bush administration.

Yes, there was a great explosion in subprime mortgages brought by Fannie Mae and Freddie Mac and, in general, under the Bush administration. Earlier in that decade, I said I didn't think Fannie Mae and Freddie Mac were in crisis.

By 2004, I agreed that they were pushed, in part, by the Bush administration. And in 2004, I criticized the decision that is mentioned here on lines 6 through 14 to increase what Fannie Mae and Freddie Mac did.

Let me say, Mr. Chairman, if people think I am quoting selectively, I want to pay tribute sincerely, because it works out good for me in this case, to the illogical integrity of the gentleman from Texas.

Because I am quoting from the amendment put in this bill by the gentleman from Texas, I urge people to read page 183 of the bill. It is language that was offered by the gentleman from Texas, Mr. HENSARLING—not Mr. GREEN, not Mr. HINOJOSA, Mr. HENSARLING—and we accepted it.

It clearly documents that the explosion in subprime loans came under Republican control. The increase in Fannie Mae and Freddie Mac subprime loans came then.

Yes, I was wrong to say earlier in the decade there wasn't a problem, because I didn't anticipate the extent to which the Republicans were going to push Fannie Mae and Freddie Mac into the hole. I then did join with Mr. Oxley in trying to get legislation through.

In 2005, I voted for a bill in committee that Mr. Oxley had.

□ 1230

My colleague, Mr. HENSARLING, voted against it in committee. Then we flipped on the floor because we had a disagreement about housing. And I got my way on housing in the committee, he got his way on housing in the floor, and we flipped. But the fact is that the bill then failed in 2005. Not until 2007, when we had the majority, was any legislation dealt with, in an effective way, on Fannie Mae and Freddie Mac and was any bill even considered on subprime lending.

Ms. JACKSON-LEE of Texas. Mr. Chair, I rise today in strong support of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. Additionally, I would like to extend my gratitude to my distinguished colleague, Representative BRAD MILLER from North Carolina for introducing this important legislation. This act is designed to prevent a recurrence of the problems in the subprime market that are responsible for harming many American homebuyers. If passed, this legislation will promote financially friendly terms throughout banking establishments and mortgage lenders which will help all American citizens in the current economic crisis. I urge my colleagues to support this important bill.

H.R. 1728 will prohibit steering incentives in connection with origination of mortgage loans; this act will also direct the federal banking agencies to prohibit or condition terms, acts, or practices relations to residential mortgages loans that are abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, or not in the interest of the borrower. These stipulations will ensure the people are not lured into mortgage loans for the wrong reasons or when they cannot afford the loan. We must establish a system of accountability in our country, and H.R. 1728 will enable a strong structure that will provide financial responsibility for both lenders and borrowers.

H.R. 1728 also includes a number of other rules and regulations to help the mortgage industry. Some of these stipulations include:

Permitting a consumer to assert a right to mortgage loan rescission as a defense to foreclosure

Prohibits specific practices such as (1) certain repayment penalties, (2) single premium credit insurance, (3) mandatory arbitration, and (4) mortgages with negative amortization.

Sets forth tenant protections in the case of foreclosure

Requires a six-month notice before a hybrid adjustable rate mortgage is reset

Establishes pre-loan mortgagor counseling as a prerequisite to a high-cost mortgages

Prescribes mandatory disclosures in monthly statements for residential mortgage loans

All these stipulations are set forth to protect the consumer from being uninformed and unknowledgeable and the process, procedures, and legal rules pertaining to their mortgage.

TEXAS

In 2007, Texas ranked fourth behind California, Florida, and Illinois in pre-foreclosures. Last year, Texas held the top seat for active foreclosures.

We cannot continue to stand by as things get worse. Texas reported 13,829 properties entering some stage of foreclosure in April, a 16% increase from the previous month and the most foreclosure filings reported by any state. The state documented the nation's third highest state combined foreclosure rate one foreclosure filing for every 582 households.

Many homeowners in my district are worried about missing their next house payment or their next home equity mortgage, or their interest rate going up. These families are under stress and in constant fear of losing their homes. While H.R. 1728 is not the last word in mortgage legislation, it is a great beginning.

Phil Fontenot and his wife, Kim Monroe, qualified for a $436,000 dollar mortgage although they ran a small day care center. A mortgage broker approached the Fontenots and offered to get them a loan. They told the broker the most they could afford was $2,500 a month, but with their adjustable mortgage it jumped to $4,200, a price nearly twice their monthly budget. Without a lawyer, the Fontenot's failed to realize the complexity and precedence of their mortgage.

In contrast, Matt and Stephanie Valdez say they knew exactly what they were doing when they bought a small two-bedroom for $355,000. They could afford the initial payments and planned to refinance the mortgage before the interest rate jumped to 11 percent. But they couldn't do it because the value of the house had fallen below what they owed on the mortgage. They say they can afford the higher payments, but see no point in making them.

One first-time home buyer, a Hispanic—minority, 760 credit score, which should make her eligible for the best loan products out there, got a subprime of 2/28, which is a loan that was fixed for two years, adjustable for twenty-eight, and with a balloon payment. 760 credit score should have the best product available. She lives in an apartment, and not even in the house, because she can get an apartment cheaper and still have extra money to help pay the mortgage on the house that she owns. And she's hoping to refinance, to do something before it adjusts in 2008.

These are the atrocities that subprime mortgage crisis has brought upon the American public, and H.R. 1728 is a start towards alleviating these problems.

Americans are taught to work hard and make money and to buy a house, but we are never taught about financial literacy. In these tough economic times, it is imperative that Americans know about financial literacy; it is crucial to our survival. Americans need to be

prepared to make informed financial choices. Indeed, we much learn how to effectively handle money, credit, debt, and risk. We must become better stewards over the things that we are entrusted. By becoming better stewards, Americans will become responsible workers, heads of households, investors, entrepreneurs, business leaders and citizens.

I am reminded of how important this issue is to American society, as I was invited to attend a financial literacy roundtable panel on Monday evening at the New York Stock Exchange. The panel was sponsored by the Hope Literacy Foundation. The panel was moderated by John Hope Bryant. I was surrounded by some of the great financial literacy experts in the nation. At the roundtable, I discussed the importance of financial literacy for college and university students. It is important that students be taught financial literacy. The facts about students and financial literacy are astounding.

Owning a home is the American Dream, but hundreds of thousands of people are on the brink of losing their homes and becoming the next victims of the housing crisis. Recently, I joined the Democratic Congress in passing the American Housing Rescue and Foreclosure Prevention Act of 2008, which will provide mortgage-refinancing assistance that will help keep families from losing their homes and protect neighboring home values.

Through vital legislation such as this, and providing key resources and tools to my constituents, I will continue to fight and save homes and promote fair and informative mortgage policies in Houston as well as across this nation.

The Acting CHAIR (Mr. MCDERMOTT). All time for general debate has expired.

Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PASTOR of Arizona) having assumed the chair, Mr. MCDERMOTT, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes, had come to no resolution thereon.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

RECOGNIZING NATIONAL FOSTER CARE MONTH

Mr. MCDERMOTT. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 391) recognizing May as ''National Foster Care Month'' and acknowledging that the House of Representatives should continue to work to improve the Nation's foster care system.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 391

Whereas on average, the Nation's foster care system provides for more than a half a million children each day who are unable to live safely with their biological parents;

Whereas National Foster Care Month provides an opportunity to recognize the important role that foster care parents, workers, and advocates have in the lives of children in the foster care system throughout the United States;

Whereas the primary goal of the foster care system is to ensure the safety and well-being of children, while working to provide such children with a permanent, safe, and loving home;

Whereas foster parents give children the opportunity to live with families and make lasting attachments instead of living in institutions, where they face a reduced chance for permanency;

Whereas States, localities, and communities should be encouraged to invest available resources on reunification services and post-permanency supports designed to allow more children in the foster care system to safely return to their biological parents, or find permanent placements through adoption or guardianship;

Whereas children of color are more likely to stay in the foster care system for longer periods of time and are less likely to be reunited with their biological families;

Whereas 293,000 children entered the foster care system during fiscal year 2007;

Whereas in fiscal year 2007, there was an average of 131,000 children in the foster care system each day who were waiting to be adopted;

Whereas while a majority of children in the foster care system have the goal of being reunited with their biological parents, more than 23 percent of children who were in the foster care system on the last day of fiscal year 2007 were seeking placement through the adoption process;

Whereas the overall reduction in the number of children in the foster care system in the last decade does not reflect a decline in the level of Federal assistance necessary to assist those living in foster care and the dedicated men and women in the child welfare workforce;

Whereas the number of children ''aging out'' of the foster care system without finding a permanent family increased to an all-time high of nearly 28,000 in fiscal year 2007;

Whereas children ''aging out'' of the foster care system lack the security of a biological or adoptive family to fall back on when struggling to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas the foster care system is intended to be a temporary solution, however, on average, children remain in the system for at least 2 years;

Whereas studies suggest that nearly 60 percent of children in the foster care system experience a chronic medical condition and 25 percent suffer from 3 or more chronic medical conditions;

Whereas while in the foster care system, children experience an average of 3 different placements, moves that often mean disrupting routines, changing schools, and moving away from brothers and sisters, extended family, and familiar surroundings;

Whereas the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351) provided new investments and services to improve the outcomes of children and families in the foster care system; and

Whereas all children deserve a loving and stable family, regardless of age or special needs: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the designation of a ''National Foster Care Month'';

(2) acknowledges the needs of children in the foster care system;

(3) honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and

(4) recognizes the need to continue work to improve outcomes of all children in the foster care system through the title IV program in the Social Security Act and other programs that are designed to help children in the foster care system reunite with their biological parents and, when children are unable to return to their biological parents, to find them a permanent, safe, and loving home.

The Speaker Pro Tempore. Pursuant to the rule, the gentleman from Washington (Mr. MCDERMOTT) and the gentleman from Georgia (Mr. LINDER) each will control 20 minutes. The Chair recognizes the gentleman from Washington.

GENERAL LEAVE

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

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

There was no objection.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I might consume.

The month of May marks National Foster Care Month, which provides Congress with an opportunity to recognize the contributions of the unsung heroes who commit their lives to children in foster care, including foster parents who unselfishly open their homes to our most vulnerable children. On any given day, half a million children seek safety, comfort and assistance through our Nation's foster care system. Roughly 130,000 of those children in foster care are unable to return safely to their parents and are now waiting for an adoptive home.

Sadly, in 2007, a record 28,000 of those children ''aged out'' of the foster care system at the age of 18 without finding a permanent home to call their own.

As the de facto parents or the real-life parents of the Nation's foster children, we, the Congress, have a responsibility to ensure that they have the same opportunity to succeed that our children and our grandchildren have.

Congress recently passed landmark bipartisan legislation which represented the most significant reform in the child welfare system in more than a decade. The Fostering Connections to Success and Increasing Adoptions Act

included numerous provisions that were designed to significantly improve the outcomes of all children and their families who are in the foster care system.

As a result of this bipartisan legislation, grandparents and other relatives who became the legal guardian of a child for whom they cared for as a foster parent now receive greater assistance in caring for these children. The legislation also provides additional support to older foster children, up to the age of 21, who are engaged in school, work or other productive activities. The new law also requires much greater oversight of the health care system and education needs of each of these children in the foster care system.

Mr. Speaker, while last year's bipartisan child welfare legislation provided greater resources and services aimed at improving the outcomes of children and families in the foster care system, additional investments and reform are still needed. The job is not done.

I ask my colleagues to join me in celebrating National Foster Care Month by recommitting themselves to continuing our bipartisan work to further improve the foster care system.

Finally, I want to recognize the children in the system that are waiting to be reunified with their families or waiting for an adoptive home. Many of these children have endured great pain and suffering at a very young age, but are able to overcome their grief and turmoil, and go on to succeed beyond anyone's expectation. I applaud these young children for the bravery and determination that they have shown. Behind each number is the face of a foster child who has the same hopes and aspirations as our very own children. We need to make these hopes and aspirations a reality.

I urge my colleagues to support this resolution, and I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, this Sunday, millions of American families will honor mom on Mother's Day. Next month, our Nation will celebrate Father's Day. So it is appropriate to also note the contribution of so many adults who step in as foster parents to care for children when biological moms and dads cannot do so.

This resolution recognizes those enormous contributions by foster parents. Every day they step in to care for hundreds of thousands of children across America who cannot safely remain with their own parents. For that, as this resolution expresses, our Nation says ''thank you.''

The children aided by foster care range in age from birth to 21 and come from a wide range of homes. In the congressional district I represent, they include the infant born to a drug-addicted mom, three boys taken in on Christmas Eve after their single mother died of pneumonia, and a little girl who lived in abandoned cars while her father was on drugs. Those are some stories relayed by Suzanne Geske, the executive director of the Foster Children's Foundation based in Duluth, Georgia. The Foster Children's Foundation reflects the efforts of organizations nationwide that coordinate thousands of volunteers, all to better support foster kids and foster parents.

As Ms. Geske says of kids in foster care, ''These children all experience the fear of their unknown futures. Thanks to the love and support they receive from foster parents, mentors and organizations that provide many services to them, there is hope. May is a time when we recognize these individuals and raise awareness so others can get involved to save our children. These children live in our own communities and need our help. Please encourage everyone you know to find out how they can reach out to make a difference in the lives of our children.''

Sound advice.

This town often focuses on policy questions about where billions of dollars will be spent and where the money will come from. We have these discussions in foster care, too, including developing major reforms last year. We hope those reforms work as intended and improve the lives of children and families.

But children care little about policy discussions. What matters to them is if mom is there to see them in the school play or if dad can play catch after work, or if their birthday is remembered and they get their favorite dinner that night. If only that's where the concerns ended for children who suffer from abuse or neglect.

Through this resolution today, we remind all Americans of the role they can play in helping children who have already missed out on much in life and who need assistance. These children surely deserve to make progress in life, like any other child. Through the efforts of tens of thousands of dedicated foster parents, they often do, against great odds. We owe these dedicated individuals our thanks and continued support.

I reserve the balance of my time.

Mr. MCDERMOTT. Mr. Speaker, at this time, I yield 2 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

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

Mr. LANGEVIN. I thank the gentleman for yielding.

Mr. Speaker, I rise today in strong support of House Resolution 391, which recognizes May as National Foster Care Month and calls for continued improvements in our foster care system. My parents welcomed many foster children into our family over the years, and I know firsthand the value, and the challenges, of the foster care system.

All children need love and support. And this is especially true for the more than half a million children currently in our foster care system, and many more who still need help. We also must address the issues affecting older youth as they transition out of foster care. Unfortunately, research shows that current and former foster youth are more likely to have difficulty making the transition to adulthood and are more likely to forgo higher education, be in poor health, become homeless and rely on public support. They deserve better, and we can do better.

Further, let me thank the many compassionate individuals who take in foster children. Foster parenting is an act of true selflessness, requiring significant financial and emotional investment. Sadly, many foster children have been abused or neglected, treatment that leaves indelible scars for years, which foster parents lovingly attempt to heal.

Mr. Speaker, these foster children need our continued support, our care and our love, as do the foster families who take them in. And we need to rededicate ourselves to improving our foster care system.

I want to thank the gentleman for yielding and his hard work on this resolution.

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

Mr. MCDERMOTT. Mr. Speaker, does the gentleman have has any further speakers?

Mr. LINDER. I do not. Mr. Speaker, I yield back the balance of my time.

Mr. MCDERMOTT. Mr. Speaker, I only would like to add that when you meet these youngsters, Lupe, Chris and Nichole, and get to know them, you realize what they have gone through and why we should have a month that helps people think about this, and we realize that these youngsters have tremendous potential.

Many of the youngsters I met yesterday are going to college. They went through the system, many of them with a dozen or more placements, and still were able to put it together and carry on their lives.

We need to have this month to make us aware of the needs of foster kids in this country.

Mr. MEEK of Florida. Mr. Speaker, I am pleased to be a cosponsor on this Resolution that recognizes May as ''National Foster Care Month'' and acknowledges that the House of Representatives should continue to work to improve the Nation's foster care system.

In FY 2007, the number of children in foster care was 496,000, a sharp decline from the number of foster children in 2002. However, over this same period, the number of older children in foster care increased. Children ages 13 through 17 comprised 34.7% of the children in foster care in FY 2006.

Our older youths who spend their teenage years in foster care and those who are likely to age out of foster care face challenges as they transition to adulthood that their counterparts in the general population might not. During their early adult years, these youth are much more likely than their peers

to forego higher education, more likely to be in poor health, and more likely to become homeless.

Taking care of our foster care youths is a very important issue for me. I have just re-introduced legislation that I had filed in the last Congress, which would help former foster youth find housing and guidance as they transition to becoming adults. Instead of celebrating their 18th birthday with family and friends, too many of our foster care youth are marking this milestone by aging out of the foster care system and abruptly losing their support system. Our responsibility to foster care youths should not expire when a young person reaches the age of majority.

Our most recent statistics from the U.S. Department of Health and Human Services show that each year about 26,500 youth age out of the foster care system. These foster care youth are vulnerable to becoming homeless. A national study of 21-year-olds who had aged out of foster care found the percentage of the population who experienced homelessness to be 25%. Of equal concern is the fact that these youths are very often without adult role models, and as such, have no one to guide or otherwise assist them as they transition to adulthood.

My legislation provides an incentive for individuals to mentor and house foster care youths who are no longer able to remain in the foster care system because they have attained the age of 18. We need to help these young adults, many of whom are homeless, jobless, and without any adult role model.

My bill allows a $1,000 nonrefundable tax credit to individual adults who provide housing and mentoring to former foster care youths between the ages of 18 and 21 who have aged out of the foster care system.

We need to do more to provide incentives for families to take all of our foster care children in, whether they be under the age of 18 and still in the system, or over the age of 18 and have aged out of the system.

Mr. DAVIS of Illinois. Mr. Speaker, I join my colleagues in recognizing May as "National Foster Care Month". This occasion provides an opportunity to examine key issues affecting foster children. I am very pleased that Congress recently improved our child welfare laws greatly, extending coverage till the age of 21 and promoting kinship care. The Recovery Act also included additional funds for child welfare to support states in caring for vulnerable children during hard economic times.

As unemployment rates continue to rise, it is critical that we continue to invest in safety net programs that ensure our children are protected and are able to develop into healthy adults. Most children in the child welfare system are from low-income families. As policymakers, we must stand ready to provide the aid needed to help families so that child welfare supports are not needed. We must continue to promote all permanency options so that children do not remain in the foster care system longer than necessary. And, we must ensure to integrate the needs of foster care children in relevant policy areas. For example, there currently are federal protections for homeless youth to ensure that they have stability in their educational environments during elementary and high school. We should expand these protections to cover all foster children.

In the areas of health care reform, job training, and higher education, we must consider the needs of foster care children.

National Foster Care Month is a time for us to remember that it is crucial that we support foster care families and children by making a national investment in our children. Our children are entitled to stable, caring homes; if we deny them what they truly deserve, we can anticipate a colder, more uncertain future for our nation.

Mr. MCDERMOTT. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. MCDERMOTT) that the House suspend the rules and agree to the resolution, H. Res. 391.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

HONORING JACK KEMP

Mr. BRADY of Pennsylvania. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 401) honoring the life and recognizing the far-reaching accomplishments of the Honorable Jack Kemp, Jr.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 401

Whereas the Congress is greatly saddened by the passing of Jack Kemp on Saturday, May 2, 2009;

Whereas Jack Kemp's commitment to public service was an inspiration to millions of Americans;

Whereas Jack Kemp had an unwavering belief in the American dream, saying "There are no limits to our future if we don't put limits on our people";

Whereas prior to his election to Congress, Jack Kemp was a champion on the professional football field, leading the Buffalo Bills to 2 American Football League championships in 1964 and 1965 and earning Most Valuable Player honors in 1965, and was named as one of the top 50 quarterbacks of all time by the Sporting News in 2005;

Whereas Jack Kemp was elected to Congress in 1970 and honorably served the people of western New York as a Congressman for 18 years, during which time he served as Chairman of the House Republican Conference from 1981 through 1987 and was a member of the Republican Study Committee;

Whereas during his time in Congress, Jack Kemp pioneered innovative solutions for the American people, including the Kemp-Roth provisions of President Ronald Reagan's Economic Recovery Tax Act of 1981, which provided tax relief to the American people by reducing marginal income tax rates by 25 percent over 3 years;

Whereas Jack Kemp served for 4 years as Secretary of Housing and Urban Development and was a champion of efforts to encourage entrepreneurship and job creation in urban America;

Whereas Jack Kemp received the nomination of the Republican Party for Vice President in 1996;

Whereas at the conclusion of his service in the United States Government, Jack Kemp never ceased in his efforts to make the American dream a reality for everyone, including his efforts to cofound Empower America, a public policy and advocacy organization, and the Foundation for the Defense of Democracies, a nonpartisan think tank;

Whereas as Chairman of the National Commission on Economic Growth and Tax Reform, Jack Kemp wisely advocated for reform and simplification of the United States tax code that would unleash the American entrepreneurial spirit, increase capital growth, and expand access to capital for all people;

Whereas Jack Kemp believed that "real leadership is not just seeing the realities of what we are temporarily faced with, but seeing the possibilities and potential that can be realized by lifting up people's vision of what they can be"; and

Whereas while Jack Kemp will be remembered as a honorable and cherished public servant, he will more importantly be remembered by his wife as a loving husband, by his children as a wonderful father, and by his grandchildren as a doting grandparent: Now, therefore, be it

Resolved, That the House of Representatives—

(1) expresses its appreciation for the profound dedication and public service of Jack Kemp;

(2) tenders its deep sympathy to his wife, Joanne, to his children, Jeffrey, Jennifer, Judith, and James, and to the entire family, friends, and former staff of Jack Kemp; and

(3) directs the Clerk of the House to transmit a copy of this resolution to the family of Jack Kemp.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. BRADY) and the gentleman from California (Mr. DANIEL E. LUNGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

GENERAL LEAVE

Mr. BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the resolution now under consideration.

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

There was no objection.

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

Mr. Speaker, the resolution before us today is in honor of a former colleague of the House of Representatives who served the House for 18 years, Jack Kemp. Kemp was elected to the House in 1970, serving the western part of New York for nine terms. He later served the public as United States Secretary of Housing and Urban Development.

Although he is best known for his position on tax cuts and supply side economics, he championed a variety of social causes supporting tax incentives for inner city enterprise zones to combat urban blight, speaking out in favor

of affirmative action, expansion of home ownership to inner city poor, supporting D.C. voting rights and fighting to preserve cuts in education aid for magnet schools.

□ 1245

Kemp believed in a country where all people despite their differences were welcome and could succeed. He will be missed. I urge all Members to support this resolution.

I reserve the balance of my time.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is the definition of bittersweet. Bitter because Jack Kemp was one of my best friends; sweet because we are here marking a remarkable person, a remarkable history, and a remarkable contribution to this House of Representatives.

Jack Kemp, yes, served with distinction in this House. But more than that, he gave this House life. As I was saying to another Member who served with him, as did I, when you talk about Jack Kemp, a smile comes to your lips, not because he walked with the swagger or arrogance of a former athlete, but because he walked with the grace of a former athlete who extended that grace to his public service.

Jack Kemp was a remarkable man. Jack used to say that he probably showered with more African-Americans than most Republicans had met. Jack was referring to his service as a member of the AFL, American Football League, and then a member of the AFC, where he gained the respect of his teammates no matter what their color.

As a candidate for Vice President of the United States, Jack became one of the very few people in the history of the United States to run for that office who had been the founder of a union and president of a union. He helped found the AFL Players' Association and worked with John Mackey, who was the president of the NFL Players' Association, to try and make more equal the bargaining position of players versus the owners and the league. Jack took great pride in that.

But more than anything else, Jack Kemp was a family man. His family never came second to him in anything he did. He told me one time that he was trying to inspire his children and he would leave notes on their pillows at night. One of the notes he would write would say ''be a leader.'' I took that as an example for myself, and as my children were growing up, I would say to them as they went to bed ''be a leader'' or sometimes leave them a note that said that. That was something I got from Jack Kemp.

Jack was also a man of the House. If you listened to him in various settings, he would repeat that phrase. I remember it very well when I was privileged to be among those in the crowd in the Cannon caucus room when Jack launched his ultimately unsuccessful but nonetheless inspirational race for President of the United States. As he bid the House good-bye, he said, ''I may be leaving the House, but I will for the rest of my life be a man of the House.'' And I believe he was to the very marrow of his bone, to his last breath.

Jack loved this House. He understood what this House represented. He understood that this place is, yes, an institution for the people of America. But he understood that it was populated by human beings. He understood that politics was not only policy, but it was people. He understood that in order to make a compromise, you had to know the person across the aisle. You had to have some empathy for them and the lives they lived and the families they had. And in a very real sense, Jack elevated this House because he understood the foundations of this House.

Jack, yes, became famous for his enunciation of the principles that underlie supply-side economics, but it was much more than that. If you knew Jack, you knew it wasn't about the theory, as the impact of the theory.

Jack believed fundamentally that in order to help our neighbor, we had to respect our neighbor. In order to try and bring people up from their bootstraps, you had to recognize their basic humanity. He understood that government, yes, stands for the purpose of helping people, but we needed to help people help themselves.

If you look at his ideas, his thoughts, his work on enterprise zones, it was rooted not in political philosophy; it was rooted in his love of his fellow man. He actually believed every single person was in the image of God. He actually believed that, whether you were black or white or Hispanic, whatever you were, you were of equal value in the sight of God, and that was Jack Kemp to the core.

So if you listened to him argue on the floor, he would implicitly and explicitly articulate the vision that every single person was worthy. And that motivated his philosophy and that motivated his debate and that motivated the bills that he supported on the floor.

He was for enterprise zones because he thought that you could unleash the power of the individual. He thought that one way of elevating the downtrodden in our society was to give them opportunity. He believed in opportunity. He thought he was the embodiment of opportunity, and he wanted to extend opportunity to every single person in this society.

Jack was an inspiration to those who knew him. He wasn't perfect; he would tell you that. Sometimes he acted like a quarterback and you would have to tell him that we weren't in a huddle. And thank God for his wife, Joanne, because Joanne could tell him there wasn't a huddle going on, and he would get that half-crooked smile on his face and he would chuckle and listen. And he would incorporate your ideas and he would always be welcoming of them; and sometimes later you would hear him talking and you would hear one of your ideas being expressed by Jack Kemp in that vibrant way.

Mr. Speaker, you might get the idea that I thought a lot of my friend Jack Kemp, because I did. But it was more than just friendship; it was brotherhood. This place is a better place because Jack served here. This place would be a better place if we had more Jack Kemps here. This place is a greater institution because of his service here, and we will be an even greater institution if we don't just memorialize him, but we embody many of the traits that he brought forth to this floor.

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

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield to the gentleman from New York (Mr. RANGEL) for 3 minutes.

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

Mr. RANGEL. I did something I rarely do and that is ask to go before the previous speakers that were here, only because I wanted some continuity in the remarks of my friend from California about my friend, Jack Kemp. I know that other people have other things to say about Jack, but I think my remarks are more consistent with yours, and so I asked my colleagues to forgive me for asking for this courtesy.

When the minority leader asked me to join on a resolution for Jack Kemp, me being for good cause suspicious, I just said yes because I knew that in my worst possible dreams if they wanted to distort something to catch me up in a political thing, that they couldn't do it with Jack Kemp because Jack Kemp defies the political persuasion which our House finds itself in today with how we treat each other, how we lose respect for each other, and how the party vote seems sometimes more important than what we are going to tell our kids what contribution we made to this great body.

I was moved by what you said in terms of things that I don't normally think about, but when you said he really believed it was a religious, it was a spiritual thing, I take a look at and wonder if Jack was with us today, what would he really disagree with us about. Sure, we would have some problems in the tax system. We would have some problems believing that the free market system was going to remove so many of the problems that we face. And I get so sick and tired of people of the other persuasion saying that they are colorblind. Of course, when Bill Archer said it, I found out he really was colorblind.

But as a political statement, I can tell you that the things that I was privileged to work with Jack Kemp on were for people who were the lesser of our brothers and sisters, period. And they come in all different colors. That is what the empowerment zone was all about. It was not looking for Republicans or conservatives or blacks and whites. It was in this country, everyone should have an opportunity to

dream and achieve. And every time he had a chance, he would make it abundantly clear.

What would the Republicans say today if he was running for Vice President and had his initial visit in Harlem U.S.A., in my congressional district? And who was there but me saying: he's a heck of a good guy. I just don't believe he and Dole are going to win.

Jack Kemp had a constituency when he was Secretary of HUD. I don't care what Republicans or Democrats want to say, if you were living in public housing, you knew that the Secretary of HUD was your friend.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. BRADY of Pennsylvania. I yield the gentleman an additional minute.

Mr. RANGEL. I would just like to conclude by saying that he was snatched away so early. When you are 79, you think 73 is early. But I never saw him that he didn't ask about my wife, about my kids. And of course if you ever saw a Christmas card from Jack Kemp and looked at him and Joanne and looked at his father and then read his biography, you would know that he was a quarterback for justice, and no matter what the cause, what your color, what your religion, if in this country you thought there was hope for you to succeed, the guy you should have seen was Jack Kemp.

I hope that all of us would have a little bit of Kemp in us. During these difficult times, it is hard to get along; but if you can remember that maybe one day when you leave you will see people of all persuasions, of all parties saying you are a decent person, Jack Kemp has set an example for all of us.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I would yield the gentleman from Virginia (Mr. WOLF) 30 seconds.

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

Mr. WOLF. Mr. Speaker, I thank the gentleman.

I rise in support of the resolution and offer my condolences to Joanne, their children, and their families. Jack Kemp was a good man, somebody who I admired, followed, and tried to emulate in many, many areas.

I would like to put two statements into the RECORD, one from the Weekly Standard that kind of spells out his life, and a eulogy by Chuck Colson who kind of sums Jack up better than anybody. Well done, our good and faithful servant. God bless Jack Kemp.

Mr. WOLF. Mr. Speaker, I rise today in support of this resolution honoring the life and accomplishments of our former colleague Jack Kemp. Like so many, I was deeply saddened to learn of Jack's passing this past weekend.

I had the privilege and honor of serving in the House with Jack for eight years. He was one of the most genuinely optimistic and engaging persons I have ever known. He saw the best in people and believed with all his heart that every person on this earth deserved to be treated with dignity and respect. His work for human rights influenced me deeply.

To his wife Joanne, his children and grandchildren, I send my heartfelt sympathy. In Jack's memory, I say, "Well done, good and faithful servant."

Mr. Speaker, I ask that a column from the Weekly Standard by Mary Brunette Cannon as well as a BreakPoint commentary by Chuck Colson about Jack's life be inserted in the RECORD.

[From BreakPoint Commentaries, May 6, 2009]

My Friend Jack Kemp

(By Chuck Colson)

A MAN OF VIRTUE

My friend Jack Kemp died this past weekend at 73.

His obituaries list many accomplishments: seven-time all-star quarterback for the Buffalo Bills and the American Football League's most valuable player in 1965. Eight-term congressman from Buffalo, New York, Secretary of Housing and Urban Development, and the 1996 Republican vice-presidential candidate.

As our mutual friend Fred Barnes wrote in the Weekly Standard, it's hard to think of any congressman in recent memory who accomplished more, setting the stage for the Reagan Revolution and economic opportunity for all Americans.

But as remarkable as Jack's accomplishments were, Jack the man was even more so. He personified all of the classic virtues—temperance, prudence, courage, and justice. But today I want to focus on one especially—courage.

Jack was indomitable. "Too small" to play college football, never mind professional ball. He was cut five times before sticking with the Chargers. He became a star despite often playing hurt. He suffered a dozen concussions over his career, two broken ankles, and a crushed hand.

Courage also marked his life after football. While he didn't hesitate to describe himself as a conservative Republican, many conservative Republicans were hesitant to call him one of their own. That's because his sense of justice sometimes put him at odds with his own party.

While much of the party was winning over white Democrats in the South, Jack was embracing civil rights. Whereas many Republicans saw labor unions as the "enemy," Jack, a co-founder and five-time president of the AFL Players' Association, fought hard for the interests of working Americans.

Then, in 1994, when the GOP in his native California appealed to fears about illegal immigration, Jack opposed them. That cost him dearly with the national party. Many split ways with him at that point.

Jack might well have been President—and would have been a great one—were it not for two things: He would never compromise his convictions, nor would he attack his opponents. Sadly, it's hard to resist those things and still get to the White House.

His courage was on display to the very end. During the times I visited him over the last months of his life, I was taken by how he kept his spirit up even as the cancer devastated his body.

Jack was a giant in our midst. He had a heart for the same kind of people Prison Fellowship serves—the poor, the oppressed, and the downtrodden. His wife, Joanne, has been a board member at Prison Fellowship for many years.

He also shared our Christian commitment to human life, telling the New York Times how a personal tragedy made him "more aware of the sanctity of human life, [and] how precious every child is."

This and more is why Jack's death is such a great loss to me personally. Joanne and his four beautiful children—all Christians—are in my prayers. How proud of them Jack was. This family's Christian witness has touched countless lives.

I've been humbled by being asked to give the eulogy at the National Cathedral this Friday. What a privilege to celebrate a life so richly lived in service to his Lord and nation. I thank God for my friend, whom I and a grieving nation will sorely miss.

[From the Weekly Standard, May 4, 2009]

JACK KEMP, MY TEACHER

(By Mary Brunette Cannon)

At the heart of everything Jack Kemp did was his unshakeable belief in the inherent worth and dignity of every human being.

In January 1981, at the dawn of the Reagan Revolution, I left my obscure college in upstate New York to spend a semester as an intern in Washington, D.C. working for the congressman from the neighboring district. At the time, I thought my days as a student would soon be over, but I learned quickly that my education was just beginning, and my teacher would be Jack Kemp.

I spent most of the next 11 years working for Jack, in his congressional office, his presidential campaign, and at the Department of Housing and Urban Development. Each day was an extended seminar in the liberal arts and sciences. Jack's interests were broad and his appetite for knowledge insatiable. Once he discovered something intriguing, his generous spirit compelled him to share it with everyone he met. Most congressmen pass out to their constituents a picture of themselves, or a copy of one of their recent speeches. Visitors to the Kemp office were more likely to leave with a speech by Lech Walesa, or a picture of Winston Churchill. Staffers were sent off to the theater to see Les Miserables, and given books that not only had to be read, but discussed.

Jack is often called a man of ideas, and that is true. His ideas helped spur the economic recovery of the 1980s and pave the way for prosperity and growth. As a self-described "backbencher" in Tip O'Neill's House of Representatives, he was able to work with members of the Democratic party to achieve his goals without sacrificing even the tiniest bit of principle, something today's backbenchers would do well to emulate. Jack's vision was a Republican party with a message that speaks to the universal truths of human freedom and dignity is the roadmap to rebuilding a governing majority.

One of Jack's enduring legacies is the amendment he offered along with Senator Bob Kasten of Wisconsin to deny federal funding to organizations, like the U.N. Fund for Population Control (UNFPA), that supported China's use of coerced abortion as a method of enforcing its one-child per family rule. The Chinese government was taken aback by this initiative when it was first offered in the mid-1980s and sent its ambassador to meet with Jack in his office on Capitol Hill. The diplomat made some formal comments, and Jack listened quietly, a rare response. When he began to respond, he sought to engage the ambassador on a personal level, talking about his own family and background, and asking the ambassador about his. The ambassador seemed stunned by the personal nature of the conversation, but when Jack asked him, "how many children do and your wife have?" he answered quietly that they had three, two more than the number allowed by his regime's population control policy. Jack said, "I know you must love them all very much, and believe they each have something unique to contribute. Could you imagine life without any one of them?"

At the heart of this exchange, and everything Jack did, was his unshakeable belief in

the inherent worth and dignity of every human being. This is what inspired his passion for job creation and economic growth; his support for freedom fighters in every corner of the globe; his insistence on a strong defense as a deterrent to war; his work on behalf of the poor, the immigrant, the unborn, and the dispossessed. I traveled with him from the union halls in his district outside Buffalo, New York, to the small towns of Iowa and New Hampshire; from the most blighted and desperate slums in the United States to Prince Charles' private garden at his home, Highgrove. In every circumstance, his message was the same—each and every human being is a precious resource, to be nurtured and defended and given the freedom he needs to fulfill his destiny as, in Kemp's words, ''a master carpenter or a prima ballerina—or even a pro quarterback.''

Jack's destiny led him to do many extraordinary things, but nothing was more satisfying to him than his life at home with his wife Joanne, his children, and his grandchildren. Joanne once gave me a glimpse into the life they had at home, in what Jack called his ''Shangri-la.'' She said that marriage was an ''adventure,'' and that the most important thing parents can give their children is the knowledge that their mother and father love one another. Of all the lessons I learned from Jack Kemp and his family, that was the most important. And like the countless other students who have been privileged to have Jack Kemp as their teacher, I will miss him.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. I want to thank Chairman BRADY for yielding.

I was not here when Jack Kemp was here. But of course I recall his football career. I recall his legislative career. But I knew him when he was Secretary of HUD. I represent a large area with low-income people and public housing.

Then when I did come here when J.C. Watts and Jim Talent and I introduced the American Community Renewal Act and New Market Initiatives, Jack Kemp was there. One of the most pleasant calls that I have had from anyone was when we were working on the Second Chance Act to provide opportunity for individuals who had been incarcerated to get assistance when they returned home, to try and successfully reintegrate themselves back into normal society, I got a call from Jack Kemp simply saying: I want you to know that I support this legislation. Anything that I can do to help make sure that it gets passed, give us a call.

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And so I agree that Jack Kemp was not only a quarterback on the football field, but he was indeed a quarterback for justice, quarterback for equality, and a quarterback for trying to make sure that each and every individual has the greatest opportunity to live a high quality of life.

I salute you, Jack Kemp.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, at this time I yield 1 minute to the Republican leader, the distinguished gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. I want to thank my colleague for yielding, and I want to thank Mr. RANGEL for cosponsoring this resolution with me. I would like to offer my condolences to Joanne and the family—a great American family—and I think they realize that we mourn with them.

In the 1980s, I was a State legislator, and I became this big fan of Jack Kemp, to the point that, in 1988, I went to Manchester, New Hampshire, one Saturday and knocked on doors when he was running for President.

There's not many people in America that were an all-star quarterback on a pro football team; not many people in America who have the chance to serve nine terms in the Congress.

So when you look at Jack Kemp, he was a big figure, and he did an awful lot for our institution and, frankly, did an awful lot for our country.

But two things that I'd like to point out about Jack Kemp: his belief in entrepreneurial capitalism; in other words, the fact that all Americans ought to have a chance at the American Dream, regardless of their stations in life. Jack was as enthusiastic about this as any person alive. Regardless of where you were in life, what your station in life was, whether you're rich or you're poor, that everyone ought to have a real opportunity. He believed this to the core of who he was, especially when it came to visiting poor neighborhoods. Whether it was enterprise zones, community renewal projects, Jack Kemp understood that if, given a chance, anyone in America could succeed.

The other big point about Jack Kemp that often is not noticed was the fact that he was a great defender of human life. His defense of life went on during his 18 years here in Congress, but long after that as well.

And so I rise today, along with my colleagues, to honor our friend and former colleague, Jack Kemp. He will not be forgotten.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 3 minutes to the gentleman from Colorado (Mr. POLIS).

Mr. POLIS. I want to share with my colleagues part of Mr. Kemp's life that they might not have been fully aware of. Jack Kemp loved Vail, Colorado, which I have the opportunity to represent, and also he loved to give back to Vail. He owned a home in the Cascade neighborhood of Vail for many years and served on the board of directors of the Vail Valley Foundation since 1995.

Kemp pushed towards getting the foundation more involved with educational programs and youth. He was a leading proponent of the foundation's Success by 6 program, which helped hundreds of children in Eagle County under age 6.

Jack Kemp was always an advocate for innovation and entrepreneurship, and he loved to spend time in Vail with his family, including his grandchildren, in both the summer and winter. One year, Kemp recited a speech by Abraham Lincoln at the annual Bravo! Fourth of July concert at Ford Amphitheater. And, most of all, Jack Kemp loved to ski.

My story about Jack Kemp is, growing up, every year around the holiday season my family would spend a week or two—we, the kids, had off from school—in Vail, and, every year, Jack Kemp would have a session at the local Vail library for free, for anybody who wanted to come, a breakfast session right before skiing. And it took a lot to get out of bed, but, even at that age, I was really interested in what he had to say.

He didn't have to do that. This is when he was a private citizen, living in Vail, skiing. Yet, every year, 7 to 9 in the morning, the last week of the year, he would take a morning and give back and make himself available to people in Vail to talk to him, to listen to them, to learn from him.

I attended those breakfast sessions 5 or 6 years and was inspired by the example that Jack Kemp set, not only of public service but of making himself available and mentoring the next generation.

After his days of political office, Kemp remained active as a political advocate and commentator and served on corporate and nonprofit organization boards. He also authored, coauthored, and edited several books. He was a benefactor of Pepperdine University's Jack F. Kemp School of Political Economy.

Jack Kemp cared deeply about urban poverty issues. He championed enterprise zones, civil rights, and housing reform. Jack Kemp not only lived the American Dream, but he helped empower other people to live that dream as he did.

The loss of Jack Kemp is a loss not only to his family and friends, but to our country and our world. I extend my sincere condolences to his family. We are all thankful for the life that Jack Kemp has lived.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, at this time I yield 1½ minutes to the gentleman from Ohio (Mr. TURNER).

Mr. TURNER. I speak today in favor of H. Resolution 401, honoring the life of the honorable Jack Kemp. Jack Kemp was a friend of mine. His love of urban issues and love of those who government could help to achieve the American Dream was both admirable and something that many of us have attempted to follow.

With his recent passing, we have to remember his work not only here in this body, but as Secretary of Housing and Urban Development.

Jack Kemp is a guy who brought forth many concepts of how to appropriately size government, look to ways to lower tax burdens, and for economic development and moving the country forward. More importantly, he was also a guy who understood that the work of government was important, that it played an active role and held opportunity for people seeking the American Dream.

His work and efforts to advance some of those programs really made a difference in the lives of many and is something today that we can look to as a model.

He believed that tax cuts and economic growth would create benefits for everyone in the community, but also believed in trying to amass capital, bringing them to urban areas, assisting in redevelopment, assisting in enhancing educational programs, and looking to those neighborhoods where there were needs and ways which we can enhance their economic opportunity and the opportunity of those who live there.

Jack Kemp's legacy is a model that we should continue to strive for as we look to ways to take our government into our neighborhoods to assist those who are in need.

Thank you.

Mr. BRADY of Pennsylvania. May I inquire how much time is left on both sides?

The SPEAKER pro tempore. The gentleman from Pennsylvania has 10½ minutes. The gentleman from California has 9 minutes.

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

Mr. DANIEL E. LUNGREN of California. At this time, Mr. Speaker, I yield 2½ minutes to someone who had the privilege of serving with Jack Kemp on his staff, the gentleman from Wisconsin (Mr. RYAN).

(Mr. RYAN of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. RYAN of Wisconsin. Mr. Speaker, I'd like to pay tribute to a great American, my friend and my personal mentor, Jack Kemp.

As a 23-year-old kid, Jack Kemp took a chance on me and had me come and serve as his personal economic policy analyst in a new thing he was starting called Empower America. As his aid and his speechwriter, I learned not only how he articulated his vision, but, more importantly, the philosophical underpinnings of this vision and the universal power of Jack Kemp's vision.

You see, Jack is the reason I ran for Congress. He saw something in me that I didn't even know was in me. He taught me how to approach people with that sort of infectious optimism that I strive for, and he reminds us that there is nothing more than uplifting the idea of America that we champion. I would consider myself blessed to have a mere thimbleful of his abilities and vision.

Jack Kemp had a transforming impact on the economic landscape of America. And, as true as that is, his impact on our Nation's political landscape may be even greater, though not in a partisan or a very narrow political sense. I mean in the way that America understands itself, in the way that we understood the great purpose of our system of self-government.

Jack Kemp was a self-taught man. He read the economic classics, beginning with Adam Smith's Wealth of Nations. He also read and studied the Declaration of Independence. Both, as it happens, were published in 1776, year 1 of our country's independence.

He mastered and spelled out for us the great insight that economic freedom and political freedom are intertwined in integrated parts of the order of human freedom. He reminded us that families, faith, and education, not government, are the true sources of the qualities of character without which there can be neither economic nor political freedom.

Jack wasn't interested in the details and the fine print or even the micromanaging policies that he promoted, nor were his policies merely short-term tinkering. Whether he was advancing his 30 percent across-the-board income tax or his enterprise zones, he was never looking for just ways to add up points to gross domestic product.

What he promoted was America itself, the American idea, which, in the 1970s, had fallen on hard times. The American idea needed an American renaissance, and he was just the man to inspire that rebirth.

Two great leaders that Jack always talked about were Thomas Jefferson and Abraham Lincoln. He was a fine student of those two men.

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

Mr. DANIEL E. LUNGREN of California. I yield the gentleman 20 additional seconds.

Mr. RYAN of Wisconsin. I simply want to close by saying that the life of Jack Kemp is a life where they broke the mold. Ronald Reagan motivated me; Jack Kemp inspired me.

May God bless Jack Kemp and the memory and the works of this fine man, and may He bless his family.

I'd like to pay tribute a great American—my friend and my personal mentor—Jack Kemp. As a 23-year-old kid, Jack took a chance on me, asking me to serve as his staff economic analyst at a new think tank, Empower America. As his aide and speechwriter, I learned not only how he articulated his vision, but more fundamentally the philosophical underpinnings and universal power of this vision.

Jack is the reason I ran for Congress. I was motivated by Ronald Reagan, but inspired by Jack Kemp. He saw something in me that I didn't even know existed. He taught me how to approach people with an infectious optimism, and reminds us all that there is nothing more uplifting than the idea of America. I would consider myself blessed to have a mere thimble full of his abilities and vision.

Jack Kemp had a transforming impact on the economic landscape of America. True as that is, his impact on our nation's political landscape may be greater, though not in a partisan or narrowly political sense. I mean in the way America understands itself and in the way we understand the great purposes of our system of self-government.

Kemp taught himself by reading the economic classics beginning with Adam Smith's Wealth of Nations, but he also read and studied the Declaration of Independence, both as it happens, were, published in 1776, year one of America's independence. Kemp mastered . . . and spelled out for us . . . the great insight that economic freedom and political freedom are intertwined and integrated parts of the order of human freedom. He reminded us that families, faith, and education—not government—are the true sources of the qualities of character without which there can be neither economic nor political freedom.

Jack was not that interested in details and fine print, even of the policies he promoted. Nor were his proposals mere short-term tinkering. Whether he was advancing his 30 percent across the board income tax strategy, or his enterprise zones, or lowering regulatory barriers to growth and homeownership, he was never just looking for ways to add a point or two to the GDP. What Jack promoted was America itself . . . the "American idea" which in the 1970s had fallen on hard times. The "American idea" needed an "American Renaissance" and he was just the man to inspire that rebirth.

The driving passion of Jack's life was to bring every person to full participation in a society of opportunity and freedom, especially the poor and minorities who could not quite reach up to the first rung on that opportunity ladder. You might say that Jack's greatest indignation was reserved for programs and policies, intended or not, that cut away the bottom rungs on the ladder and left the poor in despair of improving their lives.

Jack's way to the boundless opportunities of the future led him through the past, to the American Revolution and the Civil War. The American statesmen who inspired him most were Thomas Jefferson and Abraham Lincoln.

He loved Mr. Jefferson particularly for the immortal words he carved into the Declaration of Independence—that by the Laws of Nature and of Nature's God, all men are created equal in their inalienable rights to life, liberty, and pursuit of happiness. "All men" meant all human beings, Jack used to say, not just males or whites or Anglo-Saxons or people from some specific background. The American idea, in other words, is freedom for all human beings everywhere in the world for all time to come.

The more Kemp studied Lincoln's statecraft, the more he embraced Lincoln's vision. The Great Emancipator's titanic struggle against the abomination of race-based slavery, of course, was tethered to the golden words of Jefferson's Declaration. "All honor to Jefferson," wrote Lincoln, "to the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecast, and capacity to introduce into a merely revolutionary document, an abstract truth, applicable to all men and all times, and so embalm it there, that to-day, and in all coming days, it shall be a rebuke and a stumbling-block to the very harbingers of re-appearing tyranny and oppression."

Lincoln's statecraft was intended to open the doors to citizenship, voting rights, work and ownership opportunities to the enslaved blacks just as much as anyone else. Kemp saw that Lincoln's struggle against black slavery was part and parcel of Lincoln's project to extend the benefits of self-government and free markets to all.

Jack could quote passage after passage from Lincoln's speeches and writings to illustrate that the opposite of slavery—where one

person owns another person—is freedom and equal opportunity—where every human being has the right to own and acquire property. One of the most succinct Lincoln quotes that epitomized Kemp's perspective was from a speech Lincoln gave on his way to the White House:

I don't believe in a law to prevent a man from getting rich [Lincoln said]; it would do more harm than good. So while we do not propose any war upon capital, we do wish to allow the humblest man an equal chance to get rich with everybody else. When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor . . . I want every man to have the chance . . . and I believe a black man is entitled to it—in which he can better his condition, [and look forward with hope].

Kemp and Lincoln had the same principal concern: to open up a path for those at the bottom to rise as high as their abilities and imagination could take them. Jack never lost a night's sleep worrying about taxing the rich too much. He lost sleep over programs that foreclose opportunity by weakening incentives for the poor to become rich.

With due respect, no statesman of the last generation has made the spirit of Lincoln so much his own as Jack Kemp. Rare was the Kemp speech or essay that did not sooner or later recur to Lincoln for insights on democracy, whether in domestic or foreign policy.

In his effort to grow in his understanding of Lincoln, Jack met and corresponded with the best Lincoln scholars in America; occasionally he challenged them. He was pleased by the invitations to join Lincoln historical associations and was professionally recognized for his knowledge and interest. So vital was Lincoln's vision of equality and opportunity that Jack would debate and respond to those who saw Lincoln as a proponent of ever growing federal programs—for example, former New York Governor Mario Cuomo who co-edited a book of Lincoln speeches. Even so, Kemp had a good word for anyone, left or right, who recognized Lincoln's greatness, importance to the meaning of America, and relevance for the economic and political issues of our time. It was altogether fitting and proper that Jack's last syndicated column published in February was titled "Honoring Lincoln," in celebrating the bicentennial of the birth of our greatest President.

It is true that Jack was a fighter for his vision of the American idea, but Lincoln deepened Jack's natural inclination to rise above party to the love of country. Last November, across the political divide, Kemp wrote a touching letter to his 17 grandchildren rejoicing in the transformation of America that allowed an African-American to win the Presidency. But that wasn't all. Jack noted that Barack Obama, like himself, often referred to his Illinois predecessor, Abraham Lincoln. It was quintessential Kemp to praise Obama generously even as he reiterated his personal vision of America:

When President-elect Obama quoted Abraham Lincoln on the night of his election [Kemp wrote], he was acknowledging the transcendent qualities of vision and leadership that are always present, but often overlooked and neglected by pettiness, partisanship and petulance. . . . President-elect Obama's honoring of Lincoln in many of his speeches reminds us of how vital it is to elevate these ideas and ideals to our nation's consciousness and inculcate his principles at a time of such great challenges and even greater opportunities.

Kemp himself contested for the Presidency and like a number of other excellent statesmen in the past who were driven by ideas, he did not reach that goal. But I believe with all my heart that through his ideas and his passion, his unconventional thinking and dedication to the principles of equality, freedom, and opportunity, Kemp made us a better people and our country a nobler place.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DREIER).

Mr. DANIEL E. LUNGREN of California. I yield an additional 2 minutes to that, please.

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

Mr. DREIER. Mr. Speaker, when I was a kid, I grew up a rabid Kansas City Chiefs football fan. At that time, Jack Kemp was quarterback for the Buffalo Bills, and there was raging competition that existed then.

I admired Jack Kemp, and I also was very pleased when our quarterback, Len Dawson, successfully defeated the Buffalo Bills.

Shortly after that, when I saw Jack Kemp come to the Congress, I was on his team all the time. I was inspired by him, just as our friend Mr. RYAN had said, and I was inspired by Ronald Reagan. While Mr. RYAN mentioned Thomas Jefferson, who was an inspiration for Jack Kemp, I can't help but think about the fact that JFK, John F. Kennedy, was another inspiring figure for Jack Kemp.

One of the things that Jack Kemp did was regularly focus on the economic policies that John F. Kennedy implemented. And it's an interesting irony they share the same monogram, JFK.

Jack Kemp said that utilizing that vision that was put forward by John F. Kennedy was what we needed to do. And that's why I have been consistently arguing over the past few months, as we're dealing with the challenge of getting our economy back on track, what we need to do is use bipartisanship, the best of John F. Kennedy and Ronald Reagan. Obviously, Jack Kemp was the great implementer of so much of that policy.

Jack Kemp taught me that if you tax something, you get less of it. If you subsidize something, you get more of it. In America, we tax work, growth, savings, investment, productivity. We subsidize nonwork, welfare, consumption, debt, and leisure. And he was so right. That's why I believe that, in the name of Jack Kemp, we should be implementing pro-growth economic policies.

Just as I was coming upstairs, my California colleague, Mr. LUNGREN, said we need more Jack Kemps. What we need, Mr. Speaker, is more Members who will take the same kind of passion that Jack Kemp showed for people of every walk of life and that same passion for a commitment to pro-growth policies.

Everyone from both political parties likes to talk about pro-growth economic policies, but the empirical evidence that we have of the tax cuts of John F. Kennedy and the tax cuts of Ronald Reagan and the eloquence of Jack Kemp in putting that forward is so important for all of us to remember, especially today.

The American people are hurting, regardless of what their station in life is economically.

□ 1315

That is why I think that today, as we remember Jack Kemp, we should do all that we can to pursue what works, and that is the Kemp-inspired pro-growth economic policies.

My thoughts and prayers go to Joanne Kemp and all of the family members. I have to say that Jack inspired me to run for Congress in the late 1970s, as he did DAN LUNGREN and many others, and we are very proud to continue carrying forth the great tradition of the passion, commitment, spirit and hard work that Jack Kemp taught all of us.

Mr. BRADY of Pennsylvania. Mr. Speaker, I would like to yield 1 minute to the gentleman from Tennessee (Mr. COHEN).

Mr. COHEN. I want to thank Representative BRADY for the minute.

I was a freshman last year, and I got the opportunity to meet Jack Kemp on several occasions. He obviously was of a different party, but there wasn't a nicer person to meet and to welcome me into Congress and spend time with.

Congressman DREIER talked about being a Kansas City Chiefs fan. Well, I was the real deal. I was a Los Angeles Chargers and a San Diego Chargers fan, which is where Jack Kemp started his career, and we talked at length about different players with the Chargers and the Bills, Paul Lowe, Keith Lincoln, Elbert Dubenion, and on and on, and he was as nice a person as there was.

I went to his Web site, which if you do you will see letters he wrote. He wrote a letter in November to his grandchildren, and the letter is beautiful. It talks about segregation when he was with the Chargers playing the Houston Oilers and one of his teammate's father could not sit in the stands where his father did; he had to sit in the end zone. Jack Kemp was totally against segregation. He wanted a just society. He was for civil rights. He didn't see color. And he was a man who should be emulated by both sides of the aisle. We will miss him.

Mr. DANIEL E. LUNGREN of California. At this time, Mr. Speaker, I would like to yield 2½ minutes to the gentleman, Mr. SMITH from New Jersey, who served with Jack Kemp.

Mr. BRADY of Pennsylvania. Mr. Speaker, I would like to also yield 1 minute to the gentleman from New Jersey (Mr. SMITH).

The SPEAKER pro tempore. The gentleman is recognized for 3½ minutes.

Mr. SMITH of New Jersey. Mr. Speaker, the country lost a great and extraordinary American on Saturday. Jack Kemp was a man of deep faith in Christ, husband to the equally remarkable Joanne, father of four, and grandfather of seventeen. And he was, for those of us who knew him so well, above all, a family man. He was also a former star quarterback, HUD Secretary and Congressman, and will be deeply missed by all of us who knew, respected, admired, and loved this special person.

I first met Jack when he campaigned for me in Trenton back in 1978 in my first bid for Congress. A decade later, as HUD Secretary, he actually helped us get the first demonstration project for Trenton's Weed and Seed program, one of only four in the country. Twenty years later, Weed and Seed continues to help disadvantaged youth in Trenton.

By his contagious enthusiasm, balanced energy, personal integrity, dedication to high moral principles and sheer determination, Jack Kemp changed America and, in the process, changed the world.

Jack Kemp believed in the politics of inclusion and worked tirelessly to extend hope and opportunity to all, regardless of age, gender, creed, disability or dependence, including and especially unborn children.

In a 1993 speech, Jack Kemp said, ''Every single year, there's a tragic silence of a million newborn cries that will never be heard. Talents that will never be developed. Potential we will never see. Books never authored. Inventions never made. The right to life is a gift of God, not a gift of the state.'' Jack Kemp was always proudly pro-life.

In the early 1980s, Jack Kemp wrote the Kemp-Kasten anti-coercion law to protect women everywhere, especially in China, from the horrific crime of coerced abortion and involuntary sterilization. He always cared for the weak disenfranchised and the vulnerable.

Jack Kemp's speech on the Martin Luther King holiday in 1983 was among his most remarkable and enduring. He eloquently spoke of Dr. King's courage and legacy and the necessity of healing and reconciliation, and that the King holiday, like the civil rights struggle itself, was a necessary continuation of the American Revolution.

Jack Kemp not only wrote landmark laws but was the quintessential ideas man as well, and his often outside-the-box thinking became the inspiration for innovative reforms, including urban enterprise zones, the Reagan tax cuts, and the realization of homeownership that had been denied to so many. Jack Kemp was truly one of a kind, one of the all-time greats.

Mr. BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent to extend the debate for 10 minutes on each side.

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

There was no objection.

Mr. BRADY of Pennsylvania. Mr. Speaker, I would like to yield 1½ minutes to the gentleman from Alabama (Mr. DAVIS).

Mr. DAVIS of Alabama. Mr. Speaker, the gentleman from California was right when he said we needed more Jack Kemps.

When I was a child growing up in Montgomery, Alabama, as a shy young man who loved politics, I admired Jack Kemp because he was young, vigorous and looked a little like Jack Kennedy. For a shy kid from Alabama, that was enough to win me over.

I got to know him as a Member of this body several years ago when he came to Selma, Alabama, as part of a civil rights pilgrimage. He and I partnered to do a fundraiser together in New York to renovate 16th Street Baptist Church, where four young black girls were murdered by a bombing in 1963. I still remember Jack standing against a window opening up to the New York skyline and talking about how much he regretted not having said enough in the mid 1960s when the civil rights movement was generating its strongest energies.

And, finally, as someone who is a political practitioner, I admired Jack Kemp because he believed in the theory of politics, where all of us competed for the same votes. He wanted his Republican Party to compete for African American votes. He wanted my Democratic Party to compete for people of faith. He wanted one political ground in this country where everyone who wanted to hold power had to come and speak and share their values. Jack Kemp was right. I extend my condolences to Joanne Kemp and his wonderful family.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, could you tell me the balance of time on each side?

The SPEAKER pro tempore. The gentleman from California has 12¼ minutes. The gentleman from Pennsylvania has 15½ minutes.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I want to thank the gentleman for extending the time on this. This is a valuable person, a valuable time, and I thank you.

At this time, I would extend 3 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. I thank the gentleman from California.

I think probably the most extraordinary thing we are hearing here is not only the kind of intellectual inspiration and things you normally hear, but a very deep-felt personal kind of inspiration.

I remember years ago Governor Boehm of Indiana, I asked him when I was a college student with a political group, why he came up and spoke to us. He said, ''Because we can only do so much. It's who we reach and who we inspire that really extends our influence.'' You're hearing all sorts of different stories today.

My own story is that in 1965 when I was 15 years old, I read in Sport Magazine something that suggested to me that he was a conservative. I was trying to form the third High School YAF, Young Americans for Freedom, chapter in America, and I wrote him a letter. This is a kid from small-town Indiana and he was a big star football quarterback. I said, ''Would you be an honorary adviser to my Leo High School YAF chapter?''

Now, my high school, I had 68 kids in my class. And he wrote back and said, ''I would be honored to be an adviser to your Young Americans for Freedom chapter, but I won't be able to attend any meetings.'' I appreciated that. Then he became an inspiration and a close friend to my former boss, Dan Coats. His daughter Judith worked with me in Senator Coats' office, and we visited many urban areas, and there I saw another side.

Many of the things that my friend from California and others have said are true: He wasn't always totally realistic; he was very emotional, sometimes a little naive, was not perfect, but he had a commitment to opportunity and a commitment to economics. But somewhere along the line he also developed a deep personal passion for helping the underdog. He did this when he was a quarterback. He was offended by certain ways minorities were treated at the time. It clearly stuck with him. He battled this coming out of Occidental College and had to fight his way up, and something deep and visceral sided with the underdog, and he stood up in ways that we do not usually see in the Republican Party for minorities. And when Judith his daughter and I would visit different cities, you could see the love that Jack Kemp had for minorities coming back from the minorities. Of all Republicans, they knew Jack Kemp. They loved Jack Kemp. They didn't always understand exactly what he saying and certainly didn't understand the gold standard, but they knew that he cared about them; that if his philosophy didn't reach to everybody, there was a problem with his philosophy. And that inspiration and passion he sent through and rippled through the system in both parties, and I hope that we in his memory continue to do that, continue to defend the underdog, and, in the Republican Party, understand that a rising tide needs to lift all boats, and we need to make sure that we continue to address those minority issues, and that will be part of his legacy to us.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 2 minutes to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

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

Mr. FALEOMAVAEGA. Mr. Speaker, I could not help but be quite moved by the earlier comments made by our colleagues in this Chamber on both sides of the aisle. I was very touched.

I did not know Jack Kemp personally, but I did have the privilege of meeting him at the airport a couple of years ago. I offered him my hand to say hello, and I felt his genuineness truly, truly extending his hand in friendship; and, knowing that, felt a close warmth in knowing that this was a real human being.

Mr. Speaker, I know that Jack Kemp was one of the great quarterbacks in the memory of the NFL. I just felt I wanted to share with my colleagues that in this NFL draft alone, we have 9 Polynesians making the NFL draft this year, the greatest number among my people that were drafted by the National Football League to play this great professional game called football in America.

Now, our first love actually, Mr. Speaker, was rugby. But now I tell my young people to play football because it pays more money.

I do want to say that in remembering that Jack Kemp was a quarterback and he became an economist, to the extent that a self-taught person that really understood the basics of economics, and I was very impressed with that. I do want to say that in line with what my colleagues have said, the gentleman from California and my good friend from New York (Mr. RANGEL), I could not help but say, yes, this was truly a man of character, and we ought to follow his example.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, do you see what I say? When you talk about Jack Kemp, you start smiling.

At this time, I would like to yield 1 minute to the gentleman from Florida (Mr. MICA) who also served with Jack.

Mr. MICA. I have known Jack Kemp for more than three decades.

First of all, I want to join the House and my colleagues and every Member of Congress in supporting this resolution to honor both Jack Kemp's life and accomplishments. We all have our stories about Jack Kemp. Anyone who met Jack Kemp cannot be left without the memory of the special sparkle in his eye.

□ 1330

All you had to do was see Jack Kemp and see that special sparkle.

There was also a special warmth in his greeting. When you met Jack Kemp, you met someone special. And he greeted you warmly whether you were just an average person on the street or held the highest office in this land.

We will all remember Jack Kemp for his sharp mind, and always with his new ideas. Jack Kemp was a man of his time and a man ahead of his time.

We have lost, Mr. Speaker, a great American. He cared about people. The quote in this resolution, as Jack Kemp said, and I quote from Jack, ''There are no limits to our future''—

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. DANIEL E. LUNGREN of California. I yield 30 additional seconds to the gentleman from Florida.

Mr. MICA. In conclusion, again, Jack Kemp's own words about people, ''There are no limits to our future if we don't put limits on our people.'' He believed in people. He believed in this country. He will be missed by all of us.

It is fitting, again, that we celebrate and recognize the accomplishments of a great American's life. To Joanne and his family, we send our sympathies and condolences.

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

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. Mr. Speaker, it is my great honor to come to the floor in support of House Resolution 401, honoring the life and recognizing the far-reaching accomplishments of the Honorable Jack Kemp, Jr.

Mr. Speaker, I have a real fancy speech here, and I would like to have it included in the RECORD in its entirety because I am just going to wing it.

Jack Kemp was my hero who became my friend. I had the great privilege of serving as House Republican Conference chairman in the role he held when he left this body to run for President of the United States of America. Some people have accused me from time to time of actually dying my hair to look more like Jack Kemp, and he liked that line.

He was a great man. He stood for all the things that I believe in. In keeping with Congressman ARTUR DAVIS's sentiments expressed, I just thought I might rise and tell you a story about Jack, about who he really was.

He came to Indianapolis for me about a year and a half ago, Mr. Speaker. And I knew that when you bring Jack in for an event, you don't just meet with the local political people, you have got to go into the inner city, you have got to meet with the underserved community. So I took him down to a place called The Lord's Pantry, a soup kitchen in inner-city Indianapolis run by a now-deceased black pastor by the name of Lucius Newson.

And there we were, we walked into this little food pantry, and there was Jack Kemp, former quarterback, former candidate for President, former Secretary of HUD, whips off his jacket, rolls his sleeves up, and he regaled the poorest of the poor with his vision for entrepreneurial capitalism and the American Dream. And they loved him.

And then at the very end of that, Pastor Newson looks at him—this wonderful, inner-city black pastor, and he said, Mr. Kemp, I know you're a wealthy man, so I am not going to let you leave without asking you for money for a women's shelter we are trying to build down the street. I didn't know how Jack would respond to that because I didn't know him as well as people like DAN LUNGREN. Not only did Jack pledge help right there on the spot, got a check out—they have a copy of it now up on the wall—Jack Kemp said to him, not only am I going to give money to that cause, but I am going to grab my friend, MIKE PENCE here, and I am going to grab Tony Dungy and Peyton Manning and Archie Manning, and we are going to come back here next summer and we are going to have a fundraiser and raise all the money you need to build that women's shelter. And doggone it if Jack Kemp didn't call me every 2 weeks for the next 3 months to make sure we set up that banquet. And that black pastor would die a month after that banquet took place, but it raised every penny they needed to build that shelter and Jack Kemp was there and Tony Dungy was there and hundreds of Hoosiers gathered and saw this good and decent man stand with people at the point of a need, which is where his heart was.

He called himself a ''bleeding heart'' conservative, and that is that to which I aspire as well. You know, I told Jack one time I could never imagine a future in America where Jack Kemp wasn't eventually President of the United States. And he looked at me and smiled and said he appreciated it. But you know, Mr. Speaker, I think maybe I was aiming too low. You know, sometimes there are giants among us, names like Benjamin Franklin; Booker T. Washington; in England, William Wilberforce. They are men who never held the highest office in the land, but they shaped their times by moral persuasion and political activism. Jack Kemp was such a man.

Our hearts are broken, but our gratitude is boundless. Our prayers go out to Joanne and his entire family—which really extends to the millions if you knew the man. The depth this Nation owes Jack Kemp can only be repaid by imitation of his example.

I will always be proud to have known this good and great man. And I will always, first and foremost, refer to myself as a ''Jack Kemp Republican.''

Mr. Speaker, I rise in support of H. Res. 401, honoring the life and recognizing the farreaching accomplishments of the Honorable Jack Kemp, Jr. Along with millions of Americans, my family and I were deeply saddened to learn of the passing of Jack Kemp. Jack Kemp was a hero who became my friend and I will miss him dearly.

Jack Kemp was a great man whose character, optimism and compassion will shape his party and his nation for generations.

As a legislator and a thought leader, Jack Kemp shaped a rising generation of leaders in both parties with his ideas about entrepreneurial capitalism, enterprise zones and equality. Those ideals were the driving force behind the economies policies of President Ronald Reagan and the welfare reform of the Republican Congress.

His optimistic belief in American dream—in the power of free markets and entrepreneurial capitalism—was a lodestar to millions of Americans. His devotion to ensuring equality of opportunity for every American regardless

of race, creed or color helped ground the Republican Party in the true ideals of Lincoln. His integrity and personal Christian faith showed his colleagues how to build a career in public service without compromising the people and the values that matter most.

Speaking to the Concerned Women for America in 1993—a time when Republicans were running scared and some spoke of deserting the ''social issues'' platform—Jack Kemp said: ''Every single year, there is a tragic silence of a million newborn cries that will never be heard. Talents that will never be developed. Potential that we will never see. Books never authorized. Inventions never made . . . The right to life is a gift of God, not a gift of the state. Abortion must never rest easy on the conscience of our nation.'' And Jack Kemp stood for the sanctity of life. Jack was a passionate advocate for life and the unborn of all races. His life and work had an enormous impact on U.S. foreign aid policy.

The Kemp-Kasten provision, which was in effect for more than two decades (first enacted in 1984 for the 1985 fiscal year), prohibits U.S. funding of any organization that ''supports or participates in the management of a program of coercive abortion or involuntarily sterilization.'' Under this law, the United States cut off funding for the United Nations Population Fund (UNFPA) starting in 2002 because, in the words of Colin Powell, ''UNFPA's support of, and involvement in, China's population-planning activities allows the Chinese government to implement more effectively its program of coercive abortion. Therefore, it is not permissible to continue funding UNFPA at this time.'' In 2008, the State Department again determined that UNFPA continued to support the Chinese population control program through financial support for the very Chinese agencies that enforce the policy.

Tragically, Kemp-Kasten was gutted in the recently passed Omnibus to allow funding to again flow to the UNFPA which can resume using taxpayer dollars to assist the Chinese government with their coercive population control program.

On occasion, there are giants among us—men like Benjamin Franklin and Booker T. Washinton—who never held the highest elective office in the land but shaped their times by strong moral persuasion and political activism. Jack Kemp was such a man.

Our hearts are broken but our gratitude is boundless. Our prayers go out to his beloved Joanne and his entire family. The debt this nation owes Jack Kemp can only be repaid by imitation of his example.

I will always be proud to have known this good and great man and I will always say that I am, first and foremost, a 'Jack Kemp Republican.'

Mr. BRADY of Pennsylvania. Mr. Speaker, I reserve the balance of my time. I only have one more speaker, if the gentleman would like to close.

Mr. DANIEL E. LUNGREN of California. I would like to close. Thank you very much.

Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, let's make one thing clear, Jack is becoming a greater and greater quarterback the more we speak. He threw a lot of interceptions, and he would be the first to admit it here.

As I said before, he is my friend. He was my great friend. He was my mentor. I used to kid him and say he was one of my childhood heroes, which would kind of drive him crazy, but it was true that I first got to know of Jack Kemp when he was a young quarterback with the then Los Angeles Chargers.

But I really got to know him in this place and thereafter. I got to know his family; Joanne—no better person you could meet; his children, Judith, Jennifer, Jeff—and in the resolution it says James, I know him by Jimmy. When Jimmy joined the Canadian Football League team that was actually located in Sacramento, Jack and Joanne called and said, we don't know anybody else in Sacramento, would you take Jimmy in? So Jimmy stayed with us for a number of weeks while he started his professional football career.

Jack was the ever-vigilant father. He had his ideas. Jimmy said not too long ago, as Jack was in some of his toughest times and was unable to talk, he said, ''We've established a new relationship with dad; he has to listen to us now.''

On the last chance I had to talk with Jack shortly before Christmas, we had a great discussion. And we talked a little bit about Christmas and about where we were going. And Jack said that we were family, but there are so many people that could say that. I say that Jack is one of my best friends, but I met a large group that could say that because once you met Jack, you were his friend forever.

I said before and I will say it again; there may be somebody out there who didn't like Jack Kemp, but there is no one in this world Jack Kemp did not like. That makes all the difference in the world, particularly when you're in this tough business called politics. When you understand someone who loves you because you are another son or daughter of God, you understand what it is like to be a true American. Jack was a true American.

Jack was someone who inspired, who led, at times infuriated, but all the time loved. He is someone who will always remain in the memory of those who knew him. He is someone who believed in those words inscribed above your head, Mr. Speaker, ''In God We Trust.'' He did trust in his God. He trusted in his family. He trusted in his country. We will miss him. I know that God is embracing him now as Jack looks down on the work we do.

God bless you, Jack. And God bless this country.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield the remaining time to the Speaker of the House, NANCY PELOSI.

Ms. PELOSI. I thank the gentleman for yielding.

Mr. Speaker, it is indeed an honor and a personal privilege to join our colleagues on the floor of the House today to pay tribute to the life and celebrate all that we all knew and loved about Jack Kemp.

Our Members have spoken with great eloquence, with great emotion, with great knowledge of the contribution that Jack Kemp made to our country. He was a formidable Member of Congress. I, fortunately, came to Congress just in time to overlap with his leadership and service here, so I saw firsthand the leadership and skill and intellect that he brought to his work.

He was a gentleman. He was civil at all times. He commanded respect on both sides of the aisle by virtue of his character, his personality, and his commitment to what he believed in. And he was an articulate spokesperson for what he believed in and a respectful opponent of other views.

The story of his exploits on the football field are just incredible, and his first game with the Buffalo Bills is just historic and remarkable. In reading about that, it was said that what he lacked in size and weight on the field he made up for in intellect. He was a smart player and was able to pull off great victories right from the start as a Buffalo Bill.

I hear the emotion in Mr. LUNGREN's voice. And when I went over to thank our colleague yesterday for the moment of silence that PETER KING requested and that Mr. RANGEL spoke to, I went over to thank him and Mr. LUNGREN said, ''Don't forget, he's a Californian.'' And I said, ''I know, born in Los Angeles.'' We take great pride in that.

On both the gridiron and in the Halls of Congress, he was the voice for social equity—anybody that knew him knew that—from demanding that the American Football League integrate its All-Star game to insisting that his party remain true to the roots of the party of Lincoln.

We all know his commitment to supply side and his accomplishment of Kemp-Roth—imagine having his name on that. He was a very respected Secretary of HUD, Housing and Urban Development. When he was appointed, people across America knew that they had a friend at the Cabinet table, that they had a friend in the Secretary's office.

He leaves behind a legacy in the football record books, of course, and the history of our Nation. Any one of us who served with him—and I do believe that we all did because his legacy lives on here, and so that we all can have the privilege of calling him colleague—those of us who did have the privilege of serving with him know what a great honor that was.

And so I hope that is a comfort to his family, his wife Joanne, whom he adored—everybody who knew him knew that—his four children, Jeff, Jimmy, Jennifer and Judith—we had some J's going there—and his 17 grandchildren. Seventeen grandchildren. He had enough enthusiasm and love and personality to have raised 17 grandchildren. Not many people can make that claim. I hope it is a comfort to his entire family that so many people deeply, deeply, sincerely mourn their

loss and are praying for him at this sad time.

Mr. RANGEL, at the request of Mr. BOEHNER, will have a bipartisan delegation attending the services on Friday to celebrate the life of Jack Kemp. He was a patriot. He loved America. And in his service and leadership to our country, God truly did bless America.

Mr. BRADY of Pennsylvania. I urge the adoption of the resolution, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. BRADY) that the House suspend the rules and agree to the resolution, H. Res. 401.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1345

AUTHORIZING USE OF EMANCIPATION HALL FOR KING KAMEHAMEHA CELEBRATION

Mr. BRADY of Pennsylvania. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 80) authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

H. CON. RES. 80

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. USE OF EMANCIPATION HALL FOR EVENT TO CELEBRATE BIRTHDAY OF KING KAMEHAMEHA.

(a) AUTHORIZATION.—Emancipation Hall in the Capitol Visitor Center is authorized to be used for an event on June 7, 2009, to celebrate the birthday of King Kamehameha.

(b) PREPARATIONS.—Physical preparations for the conduct of the ceremony described in subsection (a) shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. BRADY) and the gentleman from California (Mr. DANIEL E. LUNGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

GENERAL LEAVE

Mr. BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the concurrent resolution now under consideration.

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

There was no objection.

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

Mr. Speaker, this resolution authorizes the use of Emancipation Hall in the Capitol Visitor Center for the birthday celebration of King Kamehameha.

King Kamehameha is credited with unifying all the islands of Hawaii into the Kingdom of Hawaii in 1810. During his rule, he established trade with other countries, promoted agriculture, and reigned in peace after the unification until his death in 1819.

In honor of his lasting legacy to the people of Hawaii, every year he is remembered in a statewide celebration for his accomplishments as King. The celebration will be on a Sunday so it won't disrupt the use of the CVC or tours of the Capitol.

I urge Members to support this resolution.

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

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to support this resolution, which does authorize the use of the Capitol Visitor Center for the purpose of celebrating the birthday of King Kamehameha.

The ceremony, which will take place in Emancipation Hall in close proximity to his famed statue in the National Statuary Hall Collection, appropriately honors the birth of the legendary warrior. In addition to uniting and protecting the Hawaiian Islands, King Kamehameha established the principal Hawaiian law pertaining to the peaceful treatment of civilians during wartime, which today serves as a universal model for human rights.

I thank Chairman BRADY for taking up this resolution, and I urge my colleagues to join me in support.

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

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 4 minutes to the gentlewoman from Hawaii, the sponsor of the resolution, Ms. MAZIE HIRONO.

Ms. HIRONO. I thank the gentleman for yielding.

Aloha. Mr. Speaker, I rise today in support of H. Con. Res. 80, which would authorize the use of Emancipation Hall in the Capitol Visitor Center for the 40th Annual Kamehameha Day Lei Draping Ceremony. And, of course, I encourage and invite all my colleagues to join us in this ceremony.

I would like to thank Chairman BRADY for his leadership and for allowing this bill to be brought forward in an expeditious manner. I would also like to thank the cosponsors of this bill, my fellow Pacific Island delegation members: Congressman ABERCROMBIE, Congressman FALEOMAVAEGA, Congresswoman BORDALLO, and Congressman SABLAN, for their support.

The Kamehameha Day Lei Draping Ceremony has been hosted by the Hawaii congressional delegation and the Hawaii State Society of Washington, D.C. since 1969. The ceremony has been held on or about June 11 to coincide with the celebration of Kamehameha Day, a State holiday in Hawaii. This year the event in D.C. will be held on Sunday, June 7.

While the Kamehameha Day Lei Draping Ceremony has been held for decades, with the Kamehameha statue being moved to Emancipation Hall, a concurrent resolution must be passed to authorize the use of this space for this year's ceremony.

Why do we celebrate and acknowledge King Kamehameha I? He was the first monarch to unify the Hawaii Islands and was the living embodiment of a leader. Born in 1782, Kamehameha I was daring, visionary, strong, and courageous, not just the kind of courage you find on the field of battle but the courage to forgive others for the greater good of all.

As a young man on the Island of Hawaii, Kamehameha participated in a raid and surprised two local fishermen who then attacked him with a paddle, leaving him for dead. These same fishermen were presented to Kamehameha for judgment for this act 12 years later as Kamehameha was then a young chief. He could have sent them to their deaths with the slightest utterance, but he did not. Instead, he blamed himself for attacking innocent people and, astonishingly, gave the fishermen gifts of land and set them free.

History records this act as the basis for the Law of the Splintered Paddle, a law which provided for the safety of noncombatants in wartime. It is a law that undoubtedly saved many lives during Kamehameha's later unification of all of the Hawaiian Islands. While this may have seemed like a simple gesture of kindness, this act took real courage and vision.

As King of all Hawaii, Kamehameha appointed Governors for each island, made laws for the protection of all his people, planted taro, built houses and irrigation ditches, restored important cultural sites, encouraged industries like farming and fishing, managed the island's natural resources, and entered into trading agreements with other nations. The flag design he ordered for his kingdom later became the Seal of the State of Hawaii. He would rule until 1819.

I would like to close by thanking the staff of the Committee on House Administration, the Office of the Architect of the Capitol, and the Office of the Sergeant At Arms, who have been real partners in making this annual event possible for these many decades.

Mahalo nui loa.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I reserve the balance of my time.

Mr. BRADY of Pennsylvania. Mr. Speaker, I yield 5 minutes to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Mr. BRADY, thank you for yielding.

Mr. Speaker, Representative HIRONO has given an excellent history of Kamehameha and the reasoning behind the

celebration of his birthday as a State holiday in Hawaii. For the benefit of the Members and those who may not be familiar with the question of the statue itself and what it represents in the broader context, for those who may not be familiar with it, I would like to perhaps give a little bit of perspective, a little history on it.

When people come from all over the world, not just the country itself, the Nation itself, to the Capitol, when they tour the Capitol, the most open capitol of any in the world, perhaps in the history of the world, we take pride, do we not, in the fact that this Capitol is open and available and accessible to all people, and we take some degree of pride, and rightfully so, that we are able to exhibit some of the history of this Nation for all to see and that each State has the opportunity to present for consideration of all of us two statues.

One, of course, for us is Father Damien, who has just been named as a saint in the Roman Catholic Church. He came from Belgium to the United States to then, of course, the territory of Hawaii and ministered to those who had Hansen's disease, leprosy, on the Island of Molokai on the peninsula of Kalaupapa. His ministrations to those who had been abandoned, those who literally had been exiled to Kalaupapa resulted in the consideration by the Roman Catholic Church of miracles having been taken place in his name as a result of his dedication.

The other statue representative of what we feel Hawaii is all about, of course, is Kamehameha. He's a legendary figure. The things that Representative HIRONO cited, of course, are part of history. But when we use the word ''legendary'' to describe someone, it genuinely fits Kamehameha the Great.

In his youth as part of this legendary history, he was known as a courageous warrior. He was said to have overturned the Naha Stone in Hilo, Hawaii, which indicated his almost superhuman strength and foreshadowed his inevitable conquest of all of Hawaii. I suppose it is the equivalent or a parallel could be drawn to the seizure of the Excalibur sword from the ground by the legendary King Arthur. This is the stature of Kamehameha. He did, in fact, unify the islands. And when he passed away in 1819, the phrase that was used with his passing is that ''only the stars know his final resting place.'' So the legend became even more of a tale to be told not only throughout the islands but throughout the world.

So when people see that statue, when they observe that statue, they're somewhat shocked. It's monumental. I recall very, very clearly that in the rather obscure corner in Statuary Hall where Kamehameha originally resided here in the Capitol, it was somewhat difficult to find. People were not quite sure why it was there. It was said that because of the great weight of the statue itself it had to go there in order to be supported by the flooring of the Capitol. So in that position, Mr. Speaker, the really triumphant power and grace of the statue was not necessarily fully available to those who came to Statuary Hall. As a result, the Architect of the Capitol said to me, when we were first discussing the question of the visitor center and what is now Emancipation Hall, that he wanted very much to have the statue of Kamehameha in a very prominent position when the new visitor center was opened. He was certain that it would occupy an enormous presence there. It does that today. And we are very, very grateful for the opportunity for all to come and to view it.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I continue to reserve the balance of my time.

Mr. BRADY of Pennsylvania. Mr. Speaker, I would like to yield 5 minutes to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

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

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today in strong support of House Concurrent Resolution 80, authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha the Great.

First, I want to thank the chairman of the House Committee on House Administration, my colleague Mr. BRADY, for managing this important legislation, and I thank also my colleague and dear friend from the other side of the aisle from California for his support of the bill. I also want to commend my colleague, the gentlewoman from Hawaii, Congresswoman HIRONO, for her leadership as the author of this proposed legislation and, of course, my colleague Mr. ABERCROMBIE for his support as well.

Mr. Speaker, the Kamehameha Lei Draping Ceremony in Statuary Hall of the U.S. Capitol has been hosted by the Hawaii congressional delegation and Hawaii State Society of Washington, D.C. since 1969. For almost 40 years now we have conducted this ceremony each year on or about the second week of June to coincide with the celebration of King Kamehameha Day in the State of Hawaii. We do this every year.

Mr. Speaker, the King Kamehameha statue has now been moved to Emancipation Hall of the U.S. Capitol Visitor Center, and in doing so, section 103 of Public Law 110–437, it now requires the enactment of a congressional resolution to authorize this special ceremony to take place to honor King Kamehameha the Great.

Mr. Speaker, as my good friend, the gentleman from Hawaii, had commented, I didn't appreciate where the King Kamehameha statue was placed in Statuary Hall. It was somewhat behind the bus, so to speak. And somewhat, in my own personal opinion, it was demeaning. Sometimes I've come to see in Statuary Hall a bunch of chairs surrounding the statue. And in my personal opinion, Mr. Speaker, I'm so happy now it's being moved to Emancipation Hall.

Mr. Speaker, King Kamehameha was one of the greatest Hawaiian warrior kings known among the Polynesian people. After some 2,000 years of tremendous rivalries among the warring chiefs of the Hawaii Islands, it was prophesied among the Hawaiian priests that there will one day be born a high chief who will be a slayer of other high chiefs and he will unite all of the Hawaiian Islands under one rule.

□ 1400

King Kamehameha fulfilled that prophecy, after almost 10 years of fighting against other rival chiefs of the Hawaiian Islands. King Kamehameha was taught the ancient arts, the martial arts, known among the Hawaiian people as lua.

He also learned military tactics and the art of warfare from his warrior chief, Kekuhaupio. He was able to lift the ancient Naha Stone, as referred to by my colleague, Mr. ABERCROMBIE. This stone weighed 4,500 pounds and is still in the City of Hilo, if anybody wants to see how big this stone was.

Mr. Speaker, King Kamehameha was about 6 feet, 8 inches and weighed almost 300 pounds. So if you were a warrior, you better watch out if you see King Kamehameha coming at you.

King Kamehameha was a true warrior king, because he would always be in the front line leading his warriors in combat. And he was ferocious in battle, and he had no fear for his life.

One of his favorite sports to prove agility and combat readiness was the ability of a warrior to dodge spears thrown at you at the same time. King Kamehameha was able to do this with six spears thrown at him at the same time.

See if you can do that, my good friend from California.

He would grab two spears, parry the other two spears, and let the other two go by him. That's how you do it, Mr. Speaker.

Mr. Speaker, King Kamehameha unified the islands and established peace and stability. He was shrewd in building prosperity for his people by encouraging agricultural development and promoting commercial trade in Europe and even with the United States. While he was open to new ideas, he was cautious and circumspect in the old way.

At the time King Kamehameha instituted, as noted by my good friend Congresswoman HIRONO, the Law of the Splintered Paddle, or Mamalahoe, as among the Hawaiian people, which protected elderly men and women and children from any harm as they'd travel along the roadside.

Mr. Speaker, the first King Kamehameha Day was proclaimed on June 11, 1871, by his great grandson, King Kamehameha V. The proposed legislation recognizes the United States is built upon diversity, and we all share the same ideals of freedom and democracy and a commitment to justice for all

people. These ideals embody the legacy of King Kamehameha the Great.

The SPEAKER pro tempore (Mr. ALTMIRE). The time of the gentleman has expired.

Mr. BRADY of Pennsylvania. I yield the gentleman an additional 30 seconds.

Mr. FALEOMAVAEGA. It is only fitting that we honor, not only honor the birth date of this great Hawaiian warrior king, but we continue to have the special ceremony of draping hundreds of flower leis on his statue, on the statute that now stands prominently in the Emancipation Hall of the U.S. Capitol Visitor Center.

I urge my colleagues to support this legislation.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I urge all Members to support H. Con. Res. 80, and I yield back the balance of my time.

Mr. BRADY of Pennsylvania. Mr. Speaker, I urge Members to pass this resolution honoring King Kamehameha, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. BRADY) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 80.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

PUBLIC CONTRACT LAW TECHNICAL CORRECTIONS

Mr. COHEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1107) to enact certain laws relating to public contracts as title 41, United States Code, ''Public Contracts''.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1107

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

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.
Sec. 2. Purpose; conformity with original intent.
Sec. 3. Enactment of Title 41, United States Code.
Sec. 4. Conforming amendment.
Sec. 5. Conforming cross-references.
Sec. 6. Transitional and savings provisions.
Sec. 7. Repeals.

SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.

(a) PURPOSE.—The purpose of this Act is to enact certain laws relating to public contracts as title 41, United States Code, ''Public Contracts''.

(b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).

SEC. 3. ENACTMENT OF TITLE 41, UNITED STATES CODE.

Certain general and permanent laws of the United States, related to public contracts, are revised, codified, and enacted as title 41, United States Code, ''Public Contracts'', as follows:

TITLE 41—PUBLIC CONTRACTS

Subtitle		Sec.
I.	**FEDERAL PROCUREMENT POLICY**	**101**
II.	**OTHER ADVERTISING AND CONTRACT PROVISIONS**	**6101**
III.	**CONTRACT DISPUTES**	**7101**
IV.	**MISCELLANEOUS**	**8101**

Subtitle I—Federal Procurement Policy

DIVISION A—GENERAL

Chapter		Sec.
1.	**Definitions**	**101**

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

11.	**Establishment of Office and Authority and Functions of Administrator**	**1101**
13.	**Acquisition Councils**	**1301**
15.	**Cost Accounting Standards**	**1501**
17.	**Agency Responsibilities and Procedures**	**1701**
19.	**Simplified Acquisition Procedures**	**1901**
21.	**Restrictions on Obtaining and Disclosing Certain Information**	**2101**
23.	**Miscellaneous**	**2301**

DIVISION C—PROCUREMENT

31.	**General**	**3101**
33.	**Planning and Solicitation**	**3301**
35.	**Truthful Cost and Pricing Data**	**3501**
37.	**Awarding of Contracts**	**3701**
39.	**Specific Types of Contracts**	**3901**
41.	**Task and Delivery Order Contracts**	**4101**
43.	**Allowable Costs**	**4301**
45.	**Contract Financing**	**4501**
47.	**Miscellaneous**	**4701**

DIVISION A—GENERAL

CHAPTER 1—DEFINITIONS

SUBCHAPTER I—SUBTITLE DEFINITIONS

Sec.
101. Administrator.
102. Commercial component.
103. Commercial item.
104. Commercially available off-the-shelf item.
105. Component.
106. Federal Acquisition Regulation.
107. Full and open competition.
108. Item and item of supply.
109. Major system.
110. Nondevelopmental item.
111. Procurement.
112. Procurement system.
113. Responsible source.
114. Standards.
115. Supplies.
116. Technical data.

SUBCHAPTER II—DIVISION B DEFINITIONS

131. Acquisition.
132. Competitive procedures.
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SUBCHAPTER III—DIVISION C DEFINITIONS

151. Agency head.
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153. Simplified acquisition threshold for contract in support of humanitarian or peacekeeping operation.

SUBCHAPTER I—SUBTITLE DEFINITIONS

§ 101. Administrator

In this subtitle, the term ''Administrator'' means the Administrator for Federal Procurement Policy appointed under section 1102 of this title.

§ 102. Commercial component

In this subtitle, the term ''commercial component'' means a component that is a commercial item.

§ 103. Commercial item

In this subtitle, the term ''commercial item'' means—

(1) an item, other than real property, that—

(A) is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes; and

(B) has been sold, leased, or licensed, or offered for sale, lease, or license, to the general public;

(2) an item that—

(A) evolved from an item described in paragraph (1) through advances in technology or performance; and

(B) is not yet available in the commercial marketplace but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Federal Government solicitation;

(3) an item that would satisfy the criteria in paragraph (1) or (2) were it not for—

(A) modifications of a type customarily available in the commercial marketplace; or

(B) minor modifications made to meet Federal Government requirements;

(4) any combination of items meeting the requirements of paragraph (1), (2), (3), or (5) that are of a type customarily combined and sold in combination to the general public;

(5) installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of an item referred to in paragraph (1), (2), (3), or (4), regardless of whether the services are provided by the same source or at the same time as the item; and

(B) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions;

(7) any item, combination of items, or service referred to in paragraphs (1) to (6) even though the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) a nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local governments.

§ 104. Commercially available off-the-shelf item

In this subtitle, the term ''commercially available off-the-shelf item''—

(1) means an item that—

(A) is a commercial item (as described in section 103(1) of this title);

(B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but

(2) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

§ 105. Component

In this subtitle, the term ''component'' means an item supplied to the Federal Government as part of an end item or of another component.

§ 106. Federal Acquisition Regulation

In this subtitle, the term ''Federal Acquisition Regulation'' means the regulation issued under section 1303(a)(1) of this title.

§ 107. Full and open competition

In this subtitle, the term ''full and open competition'', when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.

§ 108. Item and item of supply

In this subtitle, the terms ''item'' and ''item of supply''—

(1) mean an individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts; but

(2) do not include packaging or labeling associated with shipment or identification of an item.

§ 109. Major system

(a) IN GENERAL.—In this subtitle, the term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. These elements may include hardware, equipment, software, or a combination of hardware, equipment, and software, but do not include construction or other improvements to real property.

(b) SYSTEM DEEMED TO BE MAJOR SYSTEM.—A system is deemed to be a major system if—

(1) the Department of Defense is responsible for the system and the total expenditures for research, development, testing, and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(2) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed the greater of $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a major system established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions''; or

(3) the head of the agency responsible for the system designates the system a major system.

§ 110. Nondevelopmental item

In this subtitle, the term ''nondevelopmental item'' means—

(1) a commercial item;

(2) a previously developed item of supply that is in use by a department or agency of the Federal Government, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(3) an item of supply described in paragraph (1) or (2) that requires only minor modification or modification of the type customarily available in the commercial marketplace to meet the requirements of the procuring department or agency; or

(4) an item of supply currently being produced that does not meet the requirements of paragraph (1), (2), or (3) solely because the item is not yet in use.

§ 111. Procurement

In this subtitle, the term ''procurement'' includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

§ 112. Procurement system

In this subtitle, the term ''procurement system'' means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function.

§ 113. Responsible source

In this subtitle, the term ''responsible source'' means a prospective contractor that—

(1) has adequate financial resources to perform the contract or the ability to obtain those resources;

(2) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(3) has a satisfactory performance record;

(4) has a satisfactory record of integrity and business ethics;

(5) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain the organization, experience, controls, and skills;

(6) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain the equipment and facilities; and

(7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 114. Standards

In this subtitle, the term ''standards'' means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of the system.

§ 115. Supplies

In this subtitle, the term ''supplies''—

(1) means an individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts; but

(2) does not include packaging or labeling associated with shipment or identification of an item.

§ 116. Technical data

In this subtitle, the term ''technical data''—

(1) means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency; but

(2) does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

SUBCHAPTER II—DIVISION B DEFINITIONS

§ 131. Acquisition

In division B, the term ''acquisition''—

(1) means the process of acquiring, with appropriated amounts, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

(2) includes—

(A) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

(B) the description of requirements to satisfy agency needs;

(C) solicitation and selection of sources;

(D) award of contracts;

(E) contract performance;

(F) contract financing;

(G) management and measurement of contract performance through final delivery and payment; and

(H) technical and management functions directly related to the process of fulfilling agency requirements by contract.

§ 132. Competitive procedures

In division B, the term ''competitive procedures'' means procedures under which an agency enters into a contract pursuant to full and open competition.

§ 133. Executive agency

In division B, the term ''executive agency'' means—

(1) an executive department specified in section 101 of title 5;

(2) a military department specified in section 102 of title 5;

(3) an independent establishment as defined in section 104(1) of title 5; and

(4) a wholly owned Government corporation fully subject to chapter 91 of title 31.

§ 134. Simplified acquisition threshold

In division B, the term ''simplified acquisition threshold'' means $100,000.

SUBCHAPTER III—DIVISION C DEFINITIONS

§ 151. Agency head

In division C, the term ''agency head'' means the head or any assistant head of an executive agency, and may at the option of the Administrator of General Services include the chief official of any principal organizational unit of the General Services Administration.

§ 152. Competitive procedures

In division C, the term ''competitive procedures'' means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of those proposals;

(3) the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

(B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of that Act (15 U.S.C. 638).

§ 153. Simplified acquisition threshold for contract in suppport of humanitarian or peacekeeping operation

(1) IN GENERAL.—In division C, the term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of this title, except that, in the case of a contract to be awarded and performed, or purchase to be made, outside the United States

in support of a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in section 134 of this title.

(2) DEFINITION.—In paragraph (1), the term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

CHAPTER 11—ESTABLISHMENT OF OFFICE AND AUTHORITY AND FUNCTIONS OF ADMINISTRATOR

SUBCHAPTER I—GENERAL

Sec.
1101. Office of Federal Procurement Policy.
1102. Administrator.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

1121. General authority.
1122. Functions.
1123. Small business concerns.
1124. Tests of innovative procurement methods and procedures.
1125. Recipients of Federal grants or assistance.
1126. Policy regarding consideration of contractor past performance.
1127. Determining benchmark compensation amount.
1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services.
1129. Center of excellence in contracting for services.
1130. Effect of division on other law.
1131. Annual report.

SUBCHAPTER I—GENERAL

§ 1101. Office of Federal Procurement Policy

(a) ORGANIZATION.—There is an Office of Federal Procurement Policy in the Office of Management and Budget.

(b) PURPOSES.—The purposes of the Office of Federal Procurement Policy are to—

(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and

(2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.

(c) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated each fiscal year for the Office of Federal Procurement Policy to carry out the responsibilities of the Office for that fiscal year.

§ 1102. Administrator

(a) HEAD OF OFFICE.—The head of the Office of Federal Procurement Policy is the Administrator for Federal Procurement Policy.

(b) APPOINTMENT.—The Administrator is appointed by the President, by and with the advice and consent of the Senate.

SUBCHAPTER II—AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

§ 1121. General authority

(a) OVERALL DIRECTION AND LEADERSHIP.—The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

(b) FEDERAL ACQUISITION REGULATION.—To the extent that the Administrator considers appropriate in carrying out the policies and functions set forth in this division, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. The policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulation.

(c) POLICIES TO BE FOLLOWED BY EXECUTIVE AGENCIES.—

(1) AREAS OF PROCUREMENT FOR WHICH POLICIES ARE TO BE FOLLOWED.—The policies implemented in the Federal Acquisition Regulation shall be followed by executive agencies in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property.

(2) PROCEDURES TO ENSURE COMPLIANCE.—The Administrator shall establish procedures to ensure compliance with the Federal Acquisition Regulation by all executive agencies.

(3) APPLICATION OF OTHER LAWS.—The authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in this section and sections 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title.

(d) WHEN CERTAIN AGENCIES ARE UNABLE TO AGREE OR FAIL TO ACT.—In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue Government-wide regulations, procedures, and forms in a timely manner, including regulations, procedures, and forms necessary to implement prescribed policy the Administrator initiates under subsection (b), the Administrator, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this division, shall prescribe Government-wide regulations, procedures, and forms which executive agencies shall follow in procuring items listed in subsection (c)(1).

(e) OVERSIGHT OF PROCUREMENT REGULATIONS OF OTHER AGENCIES.—The Administrator, with the concurrence of the Director of the Office of Management and Budget, and with consultation with the head of the agency concerned, may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that the rule or regulation is inconsistent with any policies, regulations, or procedures issued pursuant to subsection (b).

(f) LIMITATION ON AUTHORITY.—The authority of the Administrator under this division shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications for the property, services, or construction; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

§ 1122. Functions

(a) IN GENERAL.—The functions of the Administrator include—

(1) providing leadership and ensuring action by the executive agencies in establishing, developing, and maintaining the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in developing simplified Government-wide procurement regulations, procedures, and forms;

(2) coordinating the development of Government-wide procurement system standards that executive agencies shall implement in their procurement systems;

(3) providing leadership and coordination in formulating the executive branch position on legislation relating to procurement;

(4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for those activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

(B) ensuring executive agency compliance with the record requirements of section 1712 of this title;

(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for those activities), which shall be located in the General Services Administration, in order to—

(A) foster and promote the development of a professional acquisition workforce Government-wide;

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

(C) collect data and analyze acquisition workforce data from the Office of Personnel Management, from the heads of executive agencies, and, through periodic surveys, from individual employees;

(D) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

(E) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

(F) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

(G) evaluate the effectiveness of training and career development programs for acquisition personnel;

(H) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

(I) facilitate, to the extent requested by agencies, interagency intern and training programs; and

(J) perform other career management or research functions as directed by the Administrator;

(6) administering section 1703(a) to (i) of this title;

(7) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(8) developing standard contract forms and contract language in order to reduce the Federal Government's cost of procuring property and services and the private sector's cost of doing business with the Federal Government;

(9) providing for a Government-wide award to recognize and promote vendor excellence;

(10) providing for a Government-wide award to recognize and promote excellence in officers and employees of the Federal Government serving in procurement-related positions;

(11) developing policies, in consultation with the Administrator of the Small Business Administration, that ensure that small businesses, qualified HUBZone small business concerns (as defined in section 3(p) of

the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women are provided with the maximum practicable opportunities to participate in procurements that are conducted for amounts below the simplified acquisition threshold;

(12) developing policies that will promote achievement of goals for participation by small businesses, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))), small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women; and

(13) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(b) CONSULTATION AND ASSISTANCE.—In carrying out the functions in subsection (a), the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) with the concurrence of the heads of affected executive agencies, may designate one or more executive agencies to assist in performing those functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in performing any other function the Administrator considers appropriate.

(c) ASSIGNMENT, DELEGATION, OR TRANSFER.—

(1) TO ADMINISTRATOR.—Except as otherwise provided by law, only duties, functions, or responsibilities expressly assigned by this division shall be assigned, delegated, or transferred to the Administrator.

(2) BY ADMINISTRATOR.—

(A) WITHIN OFFICE.—The Administrator may make and authorize delegations within the Office of Federal Procurement Policy that the Administrator determines to be necessary to carry out this division.

(B) TO ANOTHER EXECUTIVE AGENCY.—The Administrator may delegate, and authorize successive redelegations of, an authority, function, or power of the Administrator under this division (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out the policy) to another executive agency with the consent of the head of the executive agency or at the direction of the President.

§ 1123. Small business concerns

In formulating the Federal Acquisition Regulation and procedures to ensure compliance with the Regulation, the Administrator, in consultation with the Small Business Administration, shall—

(1) conduct analyses of the impact on small business concerns resulting from revised procurement regulations; and

(2) incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

§ 1124. Tests of innovative procurement methods and procedures

(a) IN GENERAL.—The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. In developing a program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives of the program;

(2) develop the guidelines and procedures for carrying out the program and the criteria to be used in measuring the success of the program;

(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under the program;

(4) select the appropriate executive agencies or components of executive agencies to carry out the program;

(5) specify the categories and types of products or services to be procured under the program; and

(6) develop the methods to be used to analyze the results of the program.

(b) APPROVAL OF EXECUTIVE AGENCIES REQUIRED.—A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out the program.

(c) REQUEST FOR WAIVER OF LAW.—If the Administrator determines that it is necessary to waive the application of a provision of law to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate and request that the Committees take the necessary action to provide that the provision of law does not apply with respect to the proposed program. The notification to Congress shall include—

(1) a description of the proposed program (including the scope and purpose of the proposed program);

(2) the procedures to be followed in carrying out the proposed program;

(3) the provisions of law affected and the application of any provision of law that must be waived in order to carry out the proposed program; and

(4) the executive agencies involved in carrying out the proposed program.

§ 1125. Recipients of Federal grants or assistance

(a) AUTHORITY.—With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms that the Administrator considers appropriate and that executive agencies shall follow in providing for the procurement, to the extent required under those programs, of property or services referred to in section 1121(c)(1) of this title by recipients of Federal grants or assistance under the programs.

(b) LIMITATION.—Subsection (a) does not—

(1) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to a recipient of a Federal grant or assistance; or

(2) authorize action by a recipient contrary to State and local law in the case of a program to provide a Federal grant or assistance to a State or political subdivision.

§ 1126. Policy regarding consideration of contractor past performance

(a) GUIDANCE.—The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

(1) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

(2) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary;

(3) policies for ensuring that—

(A) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, other departments and agencies of the Federal Government, agencies of State and local governments, and commercial customers; and

(B) the information submitted by offerors is considered; and

(4) the period for which information on past performance of offerors may be maintained and considered.

(b) INFORMATION NOT AVAILABLE.—If there is no information on past contract performance of an offeror or the information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.

§ 1127. Determining benchmark compensation amount

(a) DEFINITIONS.—In this section:

(1) BENCHMARK COMPENSATION AMOUNT.—The term ''benchmark compensation amount'', for a fiscal year, is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (b) is made.

(2) BENCHMARK CORPORATION.—The term ''benchmark corporation'', with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of $50,000,000 for the fiscal year.

(3) COMPENSATION.—The term ''compensation'', for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(4) FISCAL YEAR.—The term ''fiscal year'' means a fiscal year a contractor establishes for accounting purposes.

(5) PUBLICLY-OWNED UNITED STATES CORPORATION.—The term ''publicly-owned United States corporation'' means a corporation—

(A) organized under the laws of a State of the United States, the District of Columbia, Puerto Rico, or a possession of the United States; and

(B) whose voting stock is publicly traded.

(6) SENIOR EXECUTIVES.—The term ''senior executives'', with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

(b) DETERMINING BENCHMARK COMPENSATION AMOUNT.—For purposes of section 4304(a)(16) of this title and section 2324(e)(1)(P) of title 10, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection, the Administrator shall consult with the Director of the Defense Contract Audit Agency and other officials of executive agencies as the Administrator considers appropriate.

§ 1128. Maintaining necessary capability with respect to acquisition of architectural and engineering services

The Administrator, in consultation with the Secretary of Defense, the Administrator

of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

(1) ensure that Federal Government employees have the expertise to determine agency requirements for those services;

(2) establish priorities and programs, including acquisition plans;

(3) establish professional standards;

(4) develop scopes of work; and

(5) award and administer contracts for those services.

§ 1129. Center of excellence in contracting for services

The Administrator shall maintain a center of excellence in contracting for services. The center shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

§ 1130. Effect of division on other law

This division does not impair or affect the authorities or responsibilities relating to the procurement of real property conferred by division C of this subtitle and chapters 1 to 11 of title 40.

§ 1131. Annual report

The Administrator annually shall submit to Congress an assessment of the progress made in executive agencies in implementing the policy regarding major acquisitions that is stated in section 3103(a) of this title. The Administrator shall use data from existing management systems in making the assessment.

CHAPTER 13—ACQUISITION COUNCILS

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

Sec.
1301. Definition.
1302. Establishment and membership.
1303. Functions and authority.
1304. Contract clauses and certifications.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

1311. Establishment and membership.
1312. Functions.

SUBCHAPTER I—FEDERAL ACQUISITION REGULATORY COUNCIL

§ 1301. Definition

In this subchapter, the term ''Council'' means the Federal Acquisition Regulatory Council established under section 1302(a) of this title.

§ 1302. Establishment and membership

(a) ESTABLISHMENT.—There is a Federal Acquisition Regulatory Council to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) MEMBERSHIP.—

(1) MAKEUP OF COUNCIL.—The Council consists of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Administrator of National Aeronautics and Space; and

(D) the Administrator of General Services.

(2) DESIGNATION OF OTHER OFFICIALS.—

(A) OFFICIALS WHO MAY BE DESIGNATED.—Notwithstanding section 121(d)(1) and (2) of title 40, the officials specified in subparagraphs (B) to (D) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official—

(i) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(ii) if no official of that agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 1702(c) of this title.

(B) LIMITATION ON DESIGNATION.—No other official or employee may be designated to serve on the Council.

§ 1303. Functions and authority

(a) FUNCTIONS.—

(1) ISSUE AND MAINTAIN FEDERAL ACQUISITION REGULATION.—Subject to sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, the Administrator of General Services, the Secretary of Defense, and the Administrator of National Aeronautics and Space, pursuant to their respective authorities under division C of this subtitle, chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and maintain in accordance with subsection (d) a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.

(2) LIMITATION ON OTHER REGULATIONS.—Other regulations relating to procurement issued by an executive agency shall be limited to—

(A) regulations essential to implement Government-wide policies and procedures within the agency; and

(B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) ENSURE CONSISTENT REGULATIONS.—The Administrator, in consultation with the Council, shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to section 1121(b) of this title.

(4) REQUEST TO REVIEW REGULATION.—

(A) BASIS FOR REQUEST.—Under procedures the Administrator establishes, a person may request the Administrator to review a regulation relating to procurement on the basis that the regulation is inconsistent with the Federal Acquisition Regulation.

(B) PERIOD OF REVIEW.—Unless the request is frivolous or does not, on its face, state a valid basis for the review, the Administrator shall complete the review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) WHEN REGULATION IS INCONSISTENT OR NEEDS TO BE IMPROVED.—If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation otherwise should be revised to remove an inconsistency with the policies prescribed under section 1121(b) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take other action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title as may be necessary to remove the inconsistency. If the Administrator determines that the regulation, although not inconsistent with the Federal Acquisition Regulation or those policies, should be revised to improve compliance with the Regulation or policies, the Administrator shall take action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 as may be necessary and appropriate.

(6) DECISIONS TO BE IN WRITING AND PUBLICLY AVAILABLE.—The decisions of the Administrator shall be in writing and made publicly available.

(b) ADDITIONAL RESPONSIBILITIES OF MEMBERSHIP.—

(1) IN GENERAL.—Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to section 1302(b) of this title shall—

(A) approve or disapprove all regulations relating to procurement that are proposed for public comment, prescribed in final form, or otherwise made effective by that agency before the regulation may be prescribed in final form, or otherwise made effective, except that the official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(B) carry out the responsibilities of that agency set forth in chapter 35 of title 44 for each information collection request that relates to procurement rules or regulations; and

(C) eliminate or reduce—

(i) any redundant or unnecessary levels of review and approval in the procurement system of that agency; and

(ii) redundant or unnecessary procurement regulations which are unique to that agency.

(2) LIMITATION ON DELEGATION.—The authority to review and approve or disapprove regulations under paragraph (1)(A) may not be delegated to an individual outside the office of the official who represents the agency on the Council pursuant to section 1302(b) of this title.

(c) GOVERNING POLICIES.—All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies prescribed under section 1121(b) of this title.

(d) GENERAL AUTHORITY WITH RESPECT TO FEDERAL ACQUISITION REGULATION.—Subject to section 1121(d) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation.

§ 1304. Contract clauses and certifications

(a) REPETITIVE NONSTANDARD CONTRACT CLAUSES DISCOURAGED.—The Council shall prescribe regulations to discourage the use of a nonstandard contract clause on a repetitive basis. The regulations shall include provisions that—

(1) clearly define what types of contract clauses are to be treated as nonstandard clauses; and

(2) require prior approval for the use of a nonstandard clause on a repetitive basis by an official at a level of responsibility above the contracting officer.

(b) WHEN CERTIFICATION REQUIRED.—

(1) BY LAW.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.

(2) IN FEDERAL ACQUISITION REGULATION.—A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

(A) the certification requirement is specifically imposed by statute; or

(B) written justification for the certification requirement is provided to the Administrator by the Council and the Administrator approves in writing the inclusion of the certification requirement.

(3) EXECUTIVE AGENCY PROCUREMENT REGULATION.—

(A) DEFINITION.—In subparagraph (B), the term ''head of the executive agency'' with respect to a military department means the Secretary of Defense.

(B) WHEN CERTIFICATION REQUIREMENT MAY BE INCLUDED IN REGULATION.—A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

(i) the certification requirement is specifically imposed by statute; or

(ii) written justification for the certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency and the head of the executive agency approves in writing the inclusion of the certification requirement.

SUBCHAPTER II—CHIEF ACQUISITION OFFICERS COUNCIL

§ 1311. Establishment and membership

(a) ESTABLISHMENT.—There is in the executive branch a Chief Acquisition Officers Council.

(b) MEMBERSHIP.—The members of the Council are—

(1) the Deputy Director for Management of the Office of Management and Budget;

(2) the Administrator;

(3) the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(4) the chief acquisition officer of each executive agency that is required to have a chief acquisition officer under section 1702 of this title and the senior procurement executive of each military department; and

(5) any other senior agency officer of each executive agency, appointed by the head of the agency in consultation with the Chairman of the Council, who can effectively assist the Council in performing the functions set forth in section 1312(b) of this title and supporting the associated range of acquisition activities.

(c) LEADERSHIP AND SUPPORT.—

(1) CHAIRMAN.—The Deputy Director for Management of the Office of Management and Budget is the Chairman of the Council.

(2) VICE CHAIRMAN.—The Vice Chairman of the Council shall be selected by the Council from among its members. The Vice Chairman serves for one year and may serve multiple terms.

(3) LEADER OF ACTIVITIES.—The Administrator shall lead the activities of the Council on behalf of the Deputy Director for Management.

(4) SUPPORT.—The Administrator of General Services shall provide administrative and other support for the Council.

§ 1312. Functions

(a) PRINCIPAL FORUM.—The Chief Acquisition Officers Council is the principal interagency forum for monitoring and improving the Federal acquisition system.

(b) FUNCTIONS.—The Council shall perform functions that include the following:

(1) Develop recommendations for the Director of the Office of Management and Budget on Federal acquisition policies and requirements.

(2) Share experiences, ideas, best practices, and innovative approaches related to Federal acquisition.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Federal acquisition.

(4) Promote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public policy objectives.

(5) Further integrity, fairness, competition, openness, and efficiency in the Federal acquisition system.

(6) Work with the Office of Personnel Management to assess and address the hiring, training, and professional development needs of the Federal Government related to acquisition.

(7) Work with the Administrator and the Federal Acquisition Regulatory Council to promote the business practices referred to in paragraph (4) and other results of the functions carried out under this subsection.

CHAPTER 15—COST ACCOUNTING STANDARDS

Sec.
1501. Cost Accounting Standards Board.
1502. Cost accounting standards.
1503. Contract price adjustment.
1504. Effect on other standards and regulations.
1505. Examinations.
1506. Authorization of appropriations.

§ 1501. Cost Accounting Standards Board

(a) ORGANIZATION.—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(b) MEMBERSHIP.—

(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

(A) 2 representatives of the Federal Government—

(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and

(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.

(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—

(i) one of whom is a representative of industry; and

(ii) one of whom is particularly knowledgeable about cost accounting problems and systems.

(2) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING AGENCY.—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

(3) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(c) SENIOR STAFF.—The Administrator, after consultation with the Board, may—

(1) appoint an executive secretary and 2 additional staff members without regard to the provisions of title 5 governing appointments in the competitive service; and

(2) pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable under section 5376 of title 5.

(d) OTHER STAFF.—The Administrator may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(e) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the Administrator, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(f) COMPENSATION.—

(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (e)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under subsection (e)(2) may receive compensation at a rate fixed by the Administrator, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) TRAVEL EXPENSES.—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

§ 1502. Cost accounting standards

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or

(iv) a contract or subcontract with a value of less than $7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than $7,500,000 that is covered by the standards.

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than $15,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

§ 1503. Contract price adjustment

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 of this title.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under section 1502(f)(2) of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

§ 1504. Effect on other standards and regulations

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of this division in the same manner as if prescribed by the Board under this division.

(b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 of this title, shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

§ 1505. Examinations

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the agency concerned, of the offices of inspector general established under the Inspector General Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

§ 1506. Authorization of appropriations

Necessary amounts may be appropriated to carry out this chapter.

CHAPTER 17—AGENCY RESPONSIBILITIES AND PROCEDURES

Sec.
1701. Cooperation with the Administrator.
1702. Chief Acquisition Officers and senior procurement executives.
1703. Acquisition workforce.
1704. Planning and policy-making for acquisition workforce.
1705. Advocates for competition.
1706. Personnel evaluation.
1707. Publication of proposed regulations.
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1710. Public-private competition required before conversion to contractor performance.
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§ 1701. Cooperation with the Administrator

On the request of the Administrator, each executive agency shall—

(1) make its services, personnel, and facilities available to the Office of Federal Procurement Policy to the greatest practicable extent for the performance of functions under this division; and

(2) except when prohibited by law, furnish to the Administrator, and give the Administrator access to, all information and records in its possession that the Administrator may determine to be necessary for the performance of the functions of the Office.

§ 1702. Chief Acquisition Officers and senior procurement executives

(a) APPOINTMENT OR DESIGNATION OF CHIEF ACQUISITION OFFICER.—The head of each executive agency described in section 901(b)(1) (other than the Department of Defense) or 901(b)(2)(C) of title 31 with a Chief Financial Officer appointed or designated under section 901(a) of title 31 shall appoint or designate a non-career employee as Chief Acquisition Officer for the agency.

(b) AUTHORITY AND FUNCTIONS OF CHIEF ACQUISITION OFFICER.—

(1) PRIMARY DUTY.—The primary duty of a Chief Acquisition Officer is acquisition management.

(2) ADVICE AND ASSISTANCE.—A Chief Acquisition Officer shall advise and assist the head of the executive agency and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities.

(3) OTHER FUNCTIONS.—The functions of each Chief Acquisition Officer include—

(A) monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;

(B) increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;

(C) increasing appropriate use of performance-based contracting and performance specifications;

(D) making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency;

(E) managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;

(F) developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and

(G) as part of the strategic planning and performance evaluation process required under section 306 of title 5 and sections 1105(a)(28), 1115, 1116, and 9703 (added by section 5(a) of Public Law 103–62 (107 Stat. 289)) of title 31—

(i) assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;

(ii) developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and

(iii) reporting to the head of the executive agency on the progress made in improving acquisition management capability.

(c) SENIOR PROCUREMENT EXECUTIVE.—

(1) DESIGNATION.—The head of each executive agency shall designate a senior procurement executive.

(2) RESPONSIBILITY.—The senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

(3) WHEN CHIEF ACQUISITION OFFICER APPOINTED OR DESIGNATED.—For an executive agency for which a Chief Acquisition Officer has been appointed or designated under subsection (a), the head of the executive agency shall—

(A) designate the Chief Acquisition Officer as the senior procurement executive for the executive agency; or

(B) ensure that the senior procurement executive designated under paragraph (1) reports directly to the Chief Acquisition Officer without intervening authority.

§ 1703. Acquisition workforce

(a) DESCRIPTION.—For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

(b) APPLICABILITY.—

(1) NONAPPLICABILITY TO CERTAIN EXECUTIVE AGENCIES.—Except as provided in subsection (i), this section does not apply to an executive agency that is subject to chapter 87 of title 10.

(2) APPLICABILITY OF PROGRAMS.—The programs established by this section apply to the acquisition workforce of each executive agency.

(c) MANAGEMENT POLICIES.—

(1) DUTIES OF HEAD OF EXECUTIVE AGENCY.—

(A) ESTABLISH POLICIES AND PROCEDURES.—After consultation with the Administrator, the head of each executive agency shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(B) ENSURE UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(2) DUTIES OF ADMINISTRATOR.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that the policies are consistent with the policies and procedures established, and enhanced system of incentives provided, pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 108 Stat. 3351). The Administrator shall evaluate the implementation of this section by executive agencies.

(d) AUTHORITY AND RESPONSIBILITY OF SENIOR PROCUREMENT EXECUTIVE.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementing this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(e) COLLECTING AND MAINTAINING INFORMATION.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementing this section. To the maximum extent practicable, information requirements shall conform to standards the Director of the Office of Personnel Management establishes for the Central Personnel Data File.

(f) CAREER DEVELOPMENT.—

(1) CAREER PATHS.—

(A) IDENTIFICATION.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make available information on those career paths.

(B) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(C) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency also shall encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(2) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide for an enhanced system of incentives to encourage excellence in the acquisition workforce that rewards performance of employees who contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 3103(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in the workforce contributes to achieving the cost goals, schedule goals, and performance goals.

(g) QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator shall—

(A) establish qualification requirements, including education requirements, for—

(i) entry-level positions in the General Schedule Contracting series (GS–1102);

(ii) senior positions in the General Schedule Contracting series (GS–1102);

(iii) all positions in the General Schedule Purchasing series (GS–1105); and

(iv) positions in other General Schedule series in which significant acquisition-related functions are performed; and

(B) prescribe the manner and extent to which the qualification requirements shall apply to an individual serving in a position described in subparagraph (A) at the time the requirements are established.

(2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. The Director is deemed to have approved the requirement or prescription if the Director does not disapprove the requirement or prescription within 30 days after receiving it.

(h) EDUCATION AND TRAINING.—

(1) FUNDING LEVELS.—The head of an executive agency shall set forth separately the funding levels requested for educating and training the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(2) TUITION ASSISTANCE.—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(3) RESTRICTED OBLIGATION.—Amounts appropriated for education and training under this section may not be obligated for another purpose.

(i) TRAINING FUND.—

(1) PURPOSES.—The purposes of this subsection are to ensure that the Federal acquisition workforce—

(A) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

(B) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.

(2) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is an acquisition workforce training fund. The Administrator of General Services shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies, except as provided in paragraph (5). The Administrator of General Services shall consult with the Administrator in managing the fund.

(3) CREDITS TO FUND.—Five percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund:

(A) Government-wide task and delivery-order contracts entered into under sections 4103 and 4105 of this title.

(B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multi-agency acquisition contracts for that technology authorized by section 11314 of title 40.

(C) multiple-award schedule contracts entered into by the Administrator of General Services.

(4) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency that administers a contract described in paragraph (3) shall remit to the General Services Administration the amount required to be credited to the fund with respect to the contract at the end of each quarter of the fiscal year.

(5) TRANSFER AND USE OF FEES COLLECTED FROM DEPARTMENT OF DEFENSE.—The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to paragraph (3). The Defense Acquisition University shall use the fees for acquisition workforce training.

(6) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of General Services, through the Office of Federal Procurememt Policy, shall ensure that amounts collected for training under this subsection are not used for a purpose other than the purpose specified in paragraph (2).

(7) AMOUNTS ARE IN ADDITION TO OTHER AMOUNTS FOR EDUCATION AND TRAINING.—Amounts credited to the fund are in addition to amounts requested and appropriated for education and training referred to in subsection (h)(1).

(8) AVAILABILITY OF AMOUNTS.—Amounts credited to the fund remain available to be expended only in the fiscal year for which they are credited and the 2 succeeding fiscal years.

(j) RECRUITMENT PROGRAM.—

(1) SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, the head of a department or agency of the Federal Government (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in subsection (g)(1)(A)) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified individuals directly to those positions in the department or agency.

(2) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint an individual to a position of employment under this subsection after September 30, 2012.

(k) REEMPLOYMENT WITHOUT LOSS OF ANNUITY.—

(1) ESTABLISHMENT OF POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of the individual's service, without discontinuing the annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) CRITERIA FOR CONTINUATION OF ANNUITY.—Policies and procedures established under paragraph (1) shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if any of the following makes the reemployment of an individual essential:

(A) The unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of the individual's service.

(B) The exceptional difficulty in recruiting or retaining a qualified employee.

(C) A temporary emergency hiring need.

(3) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual reemployed under this subsection shall not be deemed an employee for purposes of chapter 83 or 84 of title 5.

(4) REPORTING REQUIREMENT.—The Administrator shall submit annually to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

(5) SUNSET PROVISION.—The authority under this subsection expires on December 31, 2011.

§ 1704. Planning and policy-making for acquisition workforce

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Acquisition Workforce Programs as designated by the Administrator pursuant to subsection (b).

(2) CHIEF ACQUISITION OFFICER.—The term ''Chief Acquisition Officer'' means a Chief Acquisition Officer for an executive agency appointed pursuant to section 1702 of this title.

(b) ASSOCIATE ADMINISTRATOR FOR ACQUISITION WORKFORCE PROGRAMS.—The Administrator shall designate a member of the Senior Executive Service as the Associate Administrator for Acquisition Workforce Programs. The Associate Administrator shall be located in the Federal Acquisition Institute (or its successor). The Associate Administrator shall be responsible for—

(1) supervising the acquisition workforce training fund established under section 1703(i) of this title;

(2) developing, in coordination with Chief Acquisition Officers and Chief Human Capital Officers, a strategic human capital plan for the acquisition workforce of the Federal Government;

(3) reviewing and providing input to individual agency acquisition workforce succession plans;

(4) recommending to the Administrator and other senior government officials appropriate programs, policies, and practices to increase the quantity and quality of the Federal acquisition workforce; and

(5) carrying out other functions that the Administrator may assign.

(c) ACQUISITION AND CONTRACTING TRAINING PROGRAMS WITHIN EXECUTIVE AGENCIES.—

(1) CHIEF ACQUISITION OFFICER AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the Chief Acquisition Officer for that agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this subsection. The Chief Acquisition Officer shall ensure that the policies established by the head of the agency in accordance with this subsection are implemented throughout the agency.

(2) REQUIREMENT.—The head of each executive agency, after consultation with the Associate Administrator, shall establish and operate acquisition and contracting training programs. The programs shall—

(A) have curricula covering a broad range of acquisition and contracting disciplines corresponding to the specific acquisition and contracting needs of the agency involved;

(B) be developed and applied according to rigorous standards; and

(C) be designed to maximize efficiency, through the use of self-paced courses, online courses, on-the-job training, and the use of remote instructors, wherever those features can be applied without reducing the effectiveness of the training or negatively affecting academic standards.

(d) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote the development of performance standards for training and uniform implementation of this section by executive

agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall evaluate the implementation of the provisions of subsection (c) by executive agencies.

(e) INFORMATION ON ACQUISITION AND CONTRACTING TRAINING.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition and contracting workforce related to the implementation of subsection (c).

(f) ACQUISITION WORKFORCE HUMAN CAPITAL SUCCESSION PLAN.—

(1) IN GENERAL.—Each Chief Acquisition Officer for an executive agency shall develop, in consultation with the Chief Human Capital Officer for the agency and the Associate Administrator, a succession plan consistent with the agency's strategic human capital plan for the recruitment, development, and retention of the agency's acquisition workforce, with a particular focus on warranted contracting officers and program managers of the agency.

(2) CONTENT OF PLAN.—The acquisition workforce succession plan shall address—

(A) recruitment goals for personnel from procurement intern programs;

(B) the agency's acquisition workforce training needs;

(C) actions to retain high performing acquisition professionals who possess critical relevant skills;

(D) recruitment goals for personnel from the Federal Career Intern Program; and

(E) recruitment goals for personnel from the Presidential Management Fellows Program.

(g) ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

(1) PURPOSE.—The purpose of this subsection is to authorize the preparation and completion of the Acquisition Workforce Development Strategic Plan, which is a plan for Federal agencies other than the Department of Defense to—

(A) develop a specific and actionable 5-year plan to increase the size of the acquisition workforce; and

(B) operate a government-wide acquisition intern program for the Federal agencies.

(2) ESTABLISHMENT OF PLAN.—The Associate Administrator shall be responsible for the management, oversight, and administration of the Acquisition Workforce Development Strategic Plan in cooperation and consultation with the Office of Federal Procurement Policy and with the assistance of the Federal Acquisition Institute.

(3) CRITERIA.—The Acquisition Workforce Development Strategic Plan shall include an examination of the following matters:

(A) The variety and complexity of acquisitions conducted by each Federal agency covered by the plan, and the workforce needed to effectively carry out the acquisitions.

(B) The development of a sustainable funding model to support efforts to hire, retain, and train an acquisition workforce of appropriate size and skill to effectively carry out the acquisition programs of the Federal agencies covered by the plan, including an examination of interagency funding methods and a discussion of how the model of the Defense Acquisition Workforce Development Fund could be applied to civilian agencies.

(C) Any strategic human capital planning necessary to hire, retain, and train an acquisition workforce of appropriate size and skill at each Federal agency covered by the plan.

(D) Methodologies that Federal agencies covered by the plan can use to project future acquisition workforce personnel hiring requirements, including an appropriate distribution of such personnel across each category of positions designated as acquisition workforce personnel under section 1703(g) of this title.

(E) Government-wide training standards and certification requirements necessary to enhance the mobility and career opportunities of the Federal acquisition workforce within the Federal agencies covered by the plan.

(F) If the Associate Administrator recommends as part of the plan a growth in the acquisition workforce of the Federal agencies covered by the plan below 25 percent over the next 5 years, an examination of each of the matters specified in subparagraphs (A) to (E) in the context of a 5-year plan that increases the size of such acquisition workforce by not less than 25 percent, or an explanation why such a level of growth would not be in the best interest of the Federal Government.

(4) DEADLINE FOR COMPLETION.—The Acquisition Workforce Development Strategic Plan shall be completed not later than one year after October 14, 2008, and in a fashion that allows for immediate implementation of its recommendations and guidelines.

(5) FUNDS.—The acquisition workforce development strategic plan shall be funded from the acquisition workforce training fund under section 1703(i) of this title.

(h) TRAINING IN THE ACQUISITION OF ARCHITECT AND ENGINEERING SERVICES.—The Administrator shall ensure that a sufficient number of Federal employees are trained in the acquisition of architect and engineering services.

(i) UTILIZATION OF RECRUITMENT AND RETENTION AUTHORITIES.— The Administrator, in coordination with the Director of the Office of Personnel Management, shall encourage executive agencies to use existing authorities, including direct hire authority and tuition assistance programs, to recruit and retain acquisition personnel and consider recruiting acquisition personnel who may be retiring from the private sector, consistent with existing laws and regulations.

§ 1705. Advocates for competition

(a) ESTABLISHMENT AND DESIGNATION.—

(1) ESTABLISHMENT.—Each executive agency has an advocate for competition.

(2) DESIGNATION.—The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for the executive agency on July 18, 1984 (other than the senior procurement executive designated pursuant to section 1702(c) of this title) to serve as the advocate for competition;

(B) not assign those officers or employees duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide those officers or employees with the staff or assistance necessary to carry out the duties and responsibilities of the advocate for competition, such as individuals who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) DUTIES AND FUNCTIONS.—The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to, and promoting full and open competition in, the procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency;

(4) prepare and transmit to the senior procurement executive an annual report describing—

(A) the advocate's activities under this section;

(B) new initiatives required to increase competition; and

(C) remaining barriers to full and open competition;

(5) recommend to the senior procurement executive—

(A) goals and the plans for increasing competition on a fiscal year basis; and

(B) a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(6) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) RESPONSIBILITIES.—The advocate for competition for each procuring activity is responsible for promoting full and open competition, promoting the acquisition of commercial items, and challenging barriers to acquisition, including unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

§ 1706. Personnel evaluation

The head of each executive agency subject to division C shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066), that the performance appraisal system applicable to those employees affords appropriate recognition to, among other factors, efforts to—

(1) increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98–577, 98 Stat. 3066) and the Defense Procurement Reform Act of 1984 (Public Law 98–525, title XII, 98 Stat. 2588); and

(3) further other objectives and purposes of the Federal acquisition system authorized by law.

§ 1707. Publication of proposed regulations

(a) COVERED POLICIES, REGULATIONS, PROCEDURES, AND FORMS.—

(1) REQUIRED COMMENT PERIOD.—Except as provided in subsection (d), a procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may not take effect until 60 days after it is published for public comment in the Federal Register pursuant to subsection (b) if it—

(A) relates to the expenditure of appropriated funds; and

(B)(i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or

(ii) has a significant cost or administrative impact on contractors or offerors.

(2) EXCEPTION.—A policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but the effective date may not

be less than 30 days after the publication date.

(b) PUBLICATION IN FEDERAL REGISTER AND COMMENT PERIOD.—Subject to subsection (c), the head of the agency shall have published in the Federal Register a notice of the proposed procurement policy, regulation, procedure, or form and provide for a public comment period for receiving and considering the views of all interested parties on the proposal. The length of the comment period may not be less than 30 days.

(c) CONTENTS OF NOTICE.—Notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and the name and address of the officer or employee of the Federal Government designated to receive the comments.

(d) WAIVER.—The requirements of subsections (a) and (b) may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable.

(e) EFFECTIVENESS OF POLICY, REGULATION, PROCEDURE, OR FORM.—

(1) TEMPORARY BASIS.—A procurement policy, regulation, procedure, or form for which the requirements of subsections (a) and (b) are waived under subsection (d) is effective on a temporary basis if—

(A) a notice of the policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

(2) FINAL POLICY, REGULATION, PROCEDURE, OR FORM.—After considering the comments received, the head of the agency waiving the requirements of subsections (a) and (b) under subsection (d) may issue the final procurement policy, regulation, procedure, or form.

§ 1708. Procurement notice

(a) NOTICE REQUIREMENT.—Except as provided in subsection (b)—

(1) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, but not to exceed $25,000, shall post, for not less than 10 days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (c);

(2) an executive agency shall publish a notice of solicitation described in subsection (c) if the agency intends to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(B) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement; and

(3) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order exceeding $25,000 under a basic agreement, basic ordering agreement, or similar arrangement, shall furnish for publication a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) EXEMPTIONS.—

(1) IN GENERAL.—A notice is not required under subsection (a) if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency's needs and disclosure would compromise national security;

(C) the proposed procurement would result from acceptance of—

(i) an unsolicited proposal that demonstrates a unique and innovative research concept and publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of the Small Business Act (15 U.S.C. 638);

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) CERTAIN PROCUREMENTS.—The requirements of subsection (a)(2) do not apply to a procurement—

(A) under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(B) for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(3) IMPLEMENTATION CONSISTENT WITH INTERNATIONAL AGREEMENTS.—Paragraph (1)(A) shall be implemented in a manner consistent with applicable international agreements.

(c) CONTENTS OF NOTICE.—Each notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(1) an accurate description of the property or services to be contracted for, which description—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A)(i) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(ii) identify the source in the Federal Government, if any, from which the technical data may be obtained; and

(B)(i) state whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and

(ii) if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of those procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial items using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(d) ELECTRONIC PUBLICATION OF NOTICE OF SOLICITATION, AWARD, OR ORDER.—A notice of solicitation, award, or order required to be published under subsection (a) shall be published by electronic means. The notice must be electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

(e) TIME LIMITATIONS.—

(1) ISSUING NOTICE OF SOLICITATION AND ESTABLISHING DEADLINE FOR SUBMITTING BIDS AND PROPOSALS.—An executive agency required by subsection (a)(2) to publish a notice of solicitation may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(2) that—

(i) in the case of a solicitation for research and development, is earlier than 45 days after the date the notice required for a bid or proposal for a contract described in subsection (a)(2)(A) is published;

(ii) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than 30 days after the date the notice required for an order described in subsection (a)(2)(B) is published; or

(iii) in any other case, is earlier than 30 days after the date the solicitation is issued.

(2) ESTABLISHING DEADLINE WHEN NONE PROVIDED BY STATUTE.—An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation for which a deadline is not provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(3) FLEXIBLE DEADLINES.—The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (1) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(f) CONSIDERATION OF CERTAIN TIMELY RECEIVED OFFERS.—An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under subsection (a)(1) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(g) AVAILABILITY OF COMPLETE SOLICITATION PACKAGE AND PAYMENT OF FEE.—An executive agency shall make available to a

business concern, or the authorized representative of a concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of the package.

§ 1709. Contracting functions performed by Federal personnel

(a) COVERED PERSONNEL.—Personnel referred to in subsection (b) are—

(1) an employee, as defined in section 2105 of title 5;

(2) a member of the armed forces; and

(3) an employee from State or local governments assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5.

(b) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—No individual who is not an individual described in subsection (a) may be paid by an executive agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (a) with adequate training and capabilities to perform the evaluations and analyses are not readily available in the agency or another Federal agency. When administering this subsection, the head of each executive agency shall determine in accordance with standards and procedures prescribed in the Federal Acquisition Regulation whether—

(1) a sufficient number of personnel described in subsection (a) in the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the head of the executive agency making the determination; and

(2) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

(c) CERTAIN RELATIONSHIP NOT AFFECTED.—This section does not affect the relationship between the Federal Government and a Federally funded research and development center.

§ 1710. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—

(1) WHEN CONVERSION TO CONTRACTOR PERFORMANCE IS ALLOWED.—A function of an executive agency performed by 10 or more agency civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by agency civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the executive agency with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by agency civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Federal Government over the life of the contract, including—

(i) the estimated cost to the Federal Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Federal Government for performance of the function by agency civilian employees; and

(iii) an estimate of all other costs and expenditures that the Federal Government would incur because of the award of the contract;

(F) requires continued performance of the function by agency civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by agency civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) $10,000,000; and

(G) examines the effect of performance of the function by a contractor on the agency mission associated with the performance of the function.

(2) NOT A NEW REQUIREMENT.—A function that is performed by the executive agency and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) PROHIBITIONS.—In no case may a function being performed by executive agency personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(b) CONSULTING WITH AFFECTED EMPLOYEES OR THEIR REPRESENTATIVES.—

(1) CONSULTING WITH AFFECTED EMPLOYEES.—Each civilian employee of an executive agency responsible for determining under Office of Management and Budget Circular A76 whether to convert to contractor performance any function of the executive agency—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of the employees on the development and preparation of that statement and that study; and

(B) may consult with the employees on other matters relating to that determination.

(2) CONSULTING WITH REPRESENTATIVES.—

(A) EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) EMPLOYEES NOT REPRESENTED BY A LABOR ORGANIZATION.—In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) REGULATIONS.—The head of each executive agency shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—

(1) REPORT.—Before commencing a public-private competition under subsection (a), the head of an executive agency shall submit to Congress a report containing the following:

(A) The function for which the public-private competition is to be conducted.

(B) The location at which the function is performed by agency civilian employees.

(C) The number of agency civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of an executive agency to impose predetermined constraints or limitations on agency civilian employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) EXAMINATION OF POTENTIAL ECONOMIC EFFECT.—The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) agency civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Federal Government, if more than 50 agency civilian employees perform the function.

(3) OBJECTIONS TO PUBLIC-PRIVATE COMPETITION.—

(A) GROUNDS.—A representative individual or entity at a facility where a public-private competition is conducted may submit to the head of the executive agency an objection to the public-private competition on the grounds that—

(i) the report required by paragraph (1) has not been submitted; or

(ii) the certification required by paragraph (1)(E) was not included in the report required by paragraph (1).

(B) DEADLINES.—The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(C) REPORT AND CERTIFICATION REQUIRED BEFORE SOLICITATION OR AWARD OF CONTRACT.—If the head of the executive agency determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY DISABLED PEOPLE.—This section shall not apply to a commercial or industrial type function of an executive agency that is—

(1) included on the procurement list established pursuant to section 8503 of this title; or

(2) planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled people in accordance with chapter 85 of this title.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

§ 1711. Value engineering

Each executive agency shall establish and maintain cost-effective procedures and processes for analyzing the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of the agency. The analysis shall be—

(1) performed by qualified agency or contractor personnel; and

(2) directed at improving performance, reliability, quality, safety, and life cycle costs.

§ 1712. Record requirements

(a) MAINTAINING RECORDS ON COMPUTER.—Each executive agency shall establish and maintain for 5 years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in that fiscal year.

(b) CONTENTS.—The record established under subsection (a) shall include, with respect to each procurement carried out using—

(1) competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) the property or services the Federal Government obtains under the procurement; and

(D) the total cost of the procurement; or

(2) procedures other than competitive procedures—

(A) the information described in paragraph (1);

(B) the reason under section 3304(a) of this title or section 2304(c) of title 10 for using the procedures; and

(C) the identity of the organization or activity that conducted the procurement.

(c) SEPARATE RECORD CATEGORY FOR PROCUREMENTS RESULTING IN ONE BID OR PROPOSAL.—Information included in a record pursuant to subsection (b)(1) that relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in the record. The record of that information shall be designated ''noncompetitive procurements using competitive procedures''.

(d) TRANSMISSION AND DATA ENTRY OF INFORMATION.—The head of each executive agency shall—

(1) ensure the accuracy of the information included in the record established and maintained by the agency under subsection (a); and

(2) transmit in a timely manner such information to the General Services Administration for entry into the Federal Procurement Data System referred to in section 1122(a)(4) of this title, or any successor system.

§ 1713. Procurement data

(a) DEFINITIONS.—In this section:

(1) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term ''qualified HUBZone small business concern'' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(p)).

(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(3) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term ''small business concern owned and controlled by women'' has the meaning given that term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of the Women's Business Ownership Act of 1988 (Public Law 100–533, 102 Stat. 2692).

(b) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, that are first time recipients of contracts from the agency. The Office shall take appropriate action to ascertain, for each fiscal year, the number of those small businesses that have newly entered the Federal market.

CHAPTER 19—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1901. Simplified acquisition procedures.
1902. Procedures applicable to purchases below micro-purchase threshold.
1903. Special emergency procurement authority.
1904. Certain transactions for defense against attack.
1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold.
1906. List of laws inapplicable to procurements of commercial items.
1907. List of laws inapplicable to procurements of commercially available off-the-shelf items.
1908. Inflation adjustment of acquisition-related dollar thresholds.

§ 1901. Simplified acquisition procedures

(a) WHEN PROCEDURES ARE TO BE USED.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than $5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) PROHIBITION ON DIVIDING PURCHASES.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified acquisition procedures required by subsection (a).

(c) PROMOTION OF COMPETITION REQUIRED.—When using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) CONSIDERATION OF OFFERS TIMELY RECEIVED.—The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition Regulation shall provide that an executive agency using special simplified procedures to purchase commercial items—

(1) shall publish a notice in accordance with section 1708 of this title and, as provided in section 1708(c)(4) of this title, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) that the agency shall consider;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304(f) of title 10 or section 3304(e) of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.

§ 1902. Procedures applicable to purchases below micro-purchase threshold

(a) DEFINITION.—For purposes of this section, the micro-purchase threshold is $2,500.

(b) COMPLIANCE WITH CERTAIN REQUIREMENTS AND NONAPPLICABILITY OF CERTAIN AUTHORITY.—

(1) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The head of each executive agency shall ensure that procuring activities of that agency, when awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note).

(2) NONAPPLICABILITY OF CERTAIN AUTHORITY.—The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to a purchase with a price exceeding the micro-purchase threshold.

(c) NONAPPLICABILITY OF CERTAIN PROVISIONS.—An executive agency purchase with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and chapter 83 of this title.

(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS.—A purchase not greater than $2,500 may be made without obtaining competitive quotations if an employee of an executive agency or a member of the armed forces, authorized to do so, determines that the price for the purchase is reasonable.

(e) EQUITABLE DISTRIBUTION.—Purchases not greater than $2,500 shall be distributed equitably among qualified suppliers.

(f) IMPLEMENTATION THROUGH FEDERAL ACQUISITION REGULATION.—This section shall be implemented through the Federal Acquisition Regulation.

§ 1903. Special emergency procurement authority

(a) APPLICABILITY.—The authorities provided in subsections (b) and (c) apply with respect to a procurement of property or services by or for an executive agency that the head of the executive agency determines are to be used—

(1) in support of a contingency operation (as defined in section 101(a) of title 10); or

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(b) INCREASED THRESHOLDS AND LIMITATION.—For a procurement to which this section applies under subsection (a)—

(1) the amount specified in section 1902(a), (d), and (e) of this title shall be deemed to be—

(A) $15,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $25,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States;

(2) the term ''simplified acquisition threshold'' means—

(A) $250,000 in the case of a contract to be awarded and performed, or purchase to be made, in the United States; and

(B) $1,000,000 in the case of a contract to be awarded and performed, or purchase to be made, outside the United States; and

(3) the $5,000,000 limitation in sections 1901(a)(2) and 3305(a)(2) of this title and section 2304(g)(1)(B) of title 10 is deemed to be $10,000,000.

(c) AUTHORITY TO TREAT PROPERTY OR SERVICE AS COMMERCIAL ITEM.—

(1) IN GENERAL.—The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) may treat the property or service as a commercial item for the purpose of carrying out the procurement.

(2) CERTAIN CONTRACTS NOT EXEMPT FROM STANDARDS OR REQUIREMENTS.—A contract in an amount of more than $15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) is not exempt from—

(A) cost accounting standards prescribed under section 1502 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under chapter 35 of this title and section 2306a of title 10.

§ 1904. Certain transactions for defense against attack

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency that engages in basic research, applied research, advanced research, and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371 of title 10, except for subsections (b) and (f) of section 2371.

(2) PROTOTYPE PROJECTS.—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under section 2371(h) of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

§ 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

§ 1906. List of laws inapplicable to procurements of commercial items

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial items.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the applicability of the provision.

(c) SUBCONTRACTS.—

(1) DEFINITION.—In this subsection, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to subcontracts under a contract or subcontract for the procurement of commercial items. A provision of law properly included on the list pursuant to paragraph (3) does not apply to those subcontracts. This section does not render a provision of law not included on the list inapplicable to subcontracts under a contract for the procurement of commercial items.

(3) PROVISIONS TO BE EXCLUDED FROM LIST.—A provision of law described in subsection (d) shall be included on the list of inapplicable provisions of law required by paragraph (2) unless the Council makes a written determination that it would not be in the best interest of the Federal Government to exempt subcontracts under a contract for the procurement of commercial items from the applicability of the provision.

(4) WAIVER NOT AUTHORIZED.—This subsection does not authorize the waiver of the applicability of any provision of law with respect to any subcontract under a contract with a prime contractor reselling or distributing commercial items of another contractor without adding value.

(d) COVERED LAW.—A provision of law referred to in subsections (b)(2) and (c) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial items.

(e) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (d) is not included on the list of inapplicable provisions of law as required by subsection (b) or (c) and the Council has not made a written determination pursuant to subsection (b)(2) or (c)(3). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) or (c)(3) within 60 days after the petition is received.

§ 1907. List of laws inapplicable to procurements of commercially available off-the-shelf items

(a) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts for the procurement of commercially available off-

the-shelf items. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) LAWS TO BE INCLUDED.—A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision.

(3) OTHER AUTHORITIES OR RESPONSIBILITIES NOT AFFECTED.—This section does not modify, supersede, impair, or restrict authorities or responsibilities under—

(A) section 15 of the Small Business Act (15 U.S.C. 644); or

(B) bid protest procedures developed under the authority of—

(i) subchapter V of chapter 35 of title 31;

(ii) section 2305(e) and (f) of title 10; or

(iii) sections 3706 and 3707 of this title.

(b) COVERED LAW.—Except as provided in subsection (a)(3), a provision of law referred to in subsection (a)(1) is a provision of law that the Administrator determines imposes Federal Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services on persons whom the Federal Government has awarded contracts for the procurement of commercially available off-the-shelf items, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercially available off-the-shelf items.

§ 1908. Inflation adjustment of acquisition-related dollar thresholds

(a) DEFINITION.—In this section, the term ''Council'' has the meaning given that term in section 1301 of this title.

(b) APPLICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the requirement for adjustment under subsection (c) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the Council determines.

(2) EXCEPTIONS.—Subsection (c) does not apply to dollar thresholds—

(A) in chapter 67 of this title;

(B) in sections 3141 to 3144, 3146, and 3147 of title 40; or

(C) the United States Trade Representative establishes pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

(3) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—This section supersedes the applicability of other provisions of law that provide for the adjustment of a dollar threshold that is adjustable under this section.

(c) REQUIREMENT FOR PERIODIC ADJUSTMENT.—

(1) BASELINE CONSTANT DOLLAR VALUE.—For purposes of paragraph (2), the baseline constant dollar value for a dollar threshold—

(A) in effect on October 1, 2000, that was first specified in a law that took effect on or before October 1, 2000, is the October 1, 2000, constant dollar value of that dollar threshold; and

(B) specified in a law that takes effect after October 1, 2000, is the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to that law.

(2) ADJUSTMENT.—On October 1 of each year evenly divisible by 5, the Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (b)(1), to the baseline constant dollar value of that threshold.

(3) EXCLUSIVE MEANS OF ADJUSTMENT.—A dollar threshold adjustable under this section shall be adjusted only as provided in this section.

(d) PUBLICATION.—The Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The thresholds take effect on the date of publication.

(e) CALCULATION.—An adjustment under this section shall be—

(1) calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Secretary of Labor; and

(2) rounded, in the case of a dollar threshold that on the day before the adjustment is—

(A) less than $10,000, to the nearest $500;

(B) not less than $10,000, but less than $100,000, to the nearest $5,000;

(C) not less than $100,000, but less than $1,000,000, to the nearest $50,000; and

(D) $1,000,000 or more, to the nearest $500,000.

(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—

(1) PETITION SUBMITTED TO ADMINISTRATOR.—A person may request adjustment of a dollar threshold adjustable under this section that is not included in a notice of adjustment published under subsection (d) by submitting a petition for adjustment to the Administrator.

(2) ACTIONS OF ADMINISTRATOR.—On receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator—

(A) shall determine, in writing, whether the dollar threshold is required to be adjusted under this section; and

(B) on determining that it should be adjusted, shall publish in the Federal Register a revised notice of the adjustment dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

(3) EFFECTIVE DATE OF ADJUSTMENT BY PETITION.—The adjustment of a dollar threshold pursuant to a petition under this subsection takes effect on the date the revised notice adding the adjustment under paragraph (2)(B) is published.

CHAPTER 21—RESTRICTIONS ON OBTAINING AND DISCLOSING CERTAIN INFORMATION

Sec.
2101. Definitions.
2102. Prohibitions on disclosing and obtaining procurement information.
2103. Actions required of procurement officers when contacted regarding non-Federal employment.
2104. Prohibition on former official's acceptance of compensation from contractor.
2105. Penalties and administrative actions.
2106. Reporting information believed to constitute evidence of offense.
2107. Savings provisions.

§ 2101. Definitions

In this chapter:

(1) CONTRACTING OFFICER.—The term ''contracting officer'' means an individual who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to the contract.

(2) CONTRACTOR BID OR PROPOSAL INFORMATION.—The term ''contractor bid or proposal information'' means any of the following information submitted to a Federal agency as part of, or in connection with, a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in section 2306a(h) of title 10 with respect to procurements subject to that section and section 3501(a) of this title with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as ''contractor bid or proposal information'', in accordance with applicable law or regulation.

(3) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given that term in section 102 of title 40.

(4) FEDERAL AGENCY PROCUREMENT.—The term ''Federal agency procurement'' means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

(5) OFFICIAL.—The term ''official'' means—

(A) an officer, as defined in section 2104 of title 5;

(B) an employee, as defined in section 2105 of title 5; and

(C) a member of the uniformed services, as defined in section 2101(3) of title 5.

(6) PROTEST.—The term ''protest'' means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) SOURCE SELECTION INFORMATION.—The term ''source selection information'' means any of the following information prepared for use by a Federal agency to evaluate a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) Reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as ''source selection information'' based on a case-by-case determination by the head of the agency, the head's designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

§ 2102. Prohibitions on disclosing and obtaining procurement information

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not

knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee's assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A)(i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

§ 2104. Prohibition on former official's acceptance of compensation from contractor

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of $10,000,000;

(C) approve issuance of one or more contract payments in excess of $10,000,000 to that contractor; or

(D) pay or settle a claim in excess of $10,000,000 with that contractor.

(b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) IMPLEMENTING REGULATIONS.—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

§ 2105. Penalties and administrative actions

(a) CRIMINAL PENALTIES.—A person that violates section 2102 of this title to exchange information covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) ADMINISTRATIVE ACTIONS.—

(1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

§ 2106. Reporting information believed to constitute evidence of offense

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

§ 2107. Savings provisions

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

CHAPTER 23—MISCELLANEOUS

Sec.
2301. Use of electronic commerce in Federal procurement.
2302. Rights in technical data.
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2304. Conflict of interest standards for consultants.
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2311. Enhanced transparency on interagency contracting and other transactions.
2312. Contingency Contracting Corps.
2313. Database for Federal agency contract and grant officers and suspension and debarment officials

§ 2301. Use of electronic commerce in Federal procurement

(a) DEFINITION.—For the purposes of this section, the term ''electronic commerce'' means electronic techniques for accomplishing business transactions, including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfers, and electronic data interchange.

(b) ESTABLISHMENT, MAINTENANCE, AND USE OF ELECTRONIC COMMERCE PROCEDURES AND PROCESSES.—The head of each executive agency, after consulting with the Administrator, shall establish, maintain, and use, to the maximum extent that is practicable and cost-effective, procedures and processes that employ electronic commerce in the conduct and administration of the procurement system of the agency.

(c) APPLICABLE STANDARDS.—In conducting electronic commerce, the head of an executive agency shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

(d) REQUIREMENTS OF SYSTEMS, TECHNOLOGIES, PROCEDURES, AND PROCESSES.—The head of each executive agency shall ensure that systems, technologies, procedures, and processes established pursuant to this section—

(1) are implemented with uniformity throughout the agency, to the extent practicable;

(2) are implemented only after granting due consideration to the use or partial use, as appropriate, of existing electronic commerce and electronic data interchange systems and infrastructures such as the Federal acquisition computer network architecture known as FACNET;

(3) facilitate access to Federal Government procurement opportunities, including opportunities for small business concerns, socially and economically disadvantaged small business concerns, and business concerns owned predominantly by women; and

(4) ensure that any notice of agency requirements or agency solicitation for contract opportunities is provided in a form that allows convenient and universal user access through a single, Government-wide point of entry.

(e) IMPLEMENTATION.—In carrying out the requirements of this section, the Administrator shall—

(1) issue policies to promote, to the maximum extent practicable, uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may require departures from uniform procedures and processes in appropriate cases, when warranted because of the agency mission;

(2) ensure that the head of each executive agency complies with the requirements of subsection (d); and

(3) consult with the heads of appropriate Federal agencies with applicable technical and functional expertise, including the Office of Information and Regulatory Affairs, the National Institute of Standards and Technology, the General Services Administration, and the Department of Defense.

§ 2302. Rights in technical data

(a) WHERE DEFINED.—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) GENERAL EXTENT OF REGULATIONS.—

(1) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.—

(1) USE BY GOVERNMENT AND AGENCIES.—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.—The requirements of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97–219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) PROVISIONS REQUIRED IN CONTRACTS.—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;

(2) specifying technical data to be delivered under the contract and schedules for delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for technical data to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term ''relevant acquisition function'' means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—The Administrator shall develop and

issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—

(A) define ''personal conflict of interest'' as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer's representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) CONTRACT CLAUSE.—

(A) CONTENTS.—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor's responsibilities under the policy.

(B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

§ 2304. Conflict of interest standards for consultants

(a) CONTENT OF REGULATIONS.—The Administrator shall prescribe under this division Government-wide regulations that set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) procedures, including registration, certification, and enforcement requirements as may be appropriate, to promote compliance with the standards.

(b) SERVICES SUBJECT TO REGULATIONS.—Regulations required by subsection (a) apply to—

(1) advisory and assistance services provided to the Federal Government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of the services in the regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) other services related to Federal contracts as specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

(c) INTELLIGENCE ACTIVITIES EXEMPTION.—

(1) ACTIVITIES THAT MAY BE EXEMPT.—Intelligence activities as defined in section 3.4(e) of Executive Order No. 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a).

(2) REPORT.—The Director of National Intelligence shall report to the Intelligence and Appropriations Committees of Congress each January 1, delineating the activities and organizations that have been exempted under paragraph (1).

(d) PRESIDENTIAL DETERMINATION.—Before the regulations required by subsection (a) are prescribed, the President shall determine if prescribing the regulations will have a significantly adverse effect on the accomplishment of the mission of the Defense Department or another Federal agency. If the President determines that the regulations will have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for the determination. If such a report is submitted, the requirement for the regulations shall be null and void.

§ 2305. Authority of Director of Office of Management and Budget not affected

This division does not limit the authorities and responsibilities of the Director of the Office of Management and Budget in effect on December 1, 1983.

§ 2306. Openness of meetings

The Administrator by regulation shall require that—

(1) formal meetings of the Office of Federal Procurement Policy, as designated by the Administrator, for developing procurement policies and regulations be open to the public; and

(2) public notice of each meeting be given not less than 10 days prior to the meeting.

§ 2307. Comptroller General's access to information

The Administrator and personnel in the Office of Federal Procurement Policy shall furnish information the Comptroller General may require to discharge the responsibilities of the Comptroller General. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office of Federal Procurement Policy.

§ 2308. Modular contracting for information technology

(a) USE.—To the maximum extent practicable, the head of an executive agency should use modular contracting for an acquisition of a major system of information technology.

(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) PROVISIONS IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attaining those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(2) to the maximum extent practicable, a contract for an increment of an information technology acquisition should be awarded within 180 days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the solicitation resulting in award of the contract was issued.

§ 2309. Protection of constitutional rights of contractors

(a) PROHIBITION ON REQUIRING WAIVER OF RIGHTS.—A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive a right under the Constitution for a purpose relating to the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 et seq.) or the Chemical Weapons Convention (as defined in section 3 of that Act (22 U.S.C. 6701)).

(b) PERMISSIBLE CONTRACT CLAUSES.—Subsection (a) does not prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections to ensure that the contractor is performing the contract in accordance with the provisions of the contract.

§ 2310. Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items

(a) CRITERIA.—A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed $25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) REGULATIONS.—Regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) REPORT.—Not later than 2 years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Homeland Security and Governmental Affairs and on Armed Services of the Senate and the Committees on Oversight and Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of the authority, both government-wide and for each department and agency.

(d) EXPIRATION.—The authority under this section expires 10 years after November 24, 2003.

§ 2311. Enhanced transparency on interagency contracting and other transactions

The Director of the Office of Management and Budget shall direct appropriate revisions to the Federal Procurement Data System or any successor system to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on transactions other than contracts, grants, and cooperative agreements issued pursuant to section 2371 of title 10 or similar authorities. The Director of the Office of Management and Budget shall ensure that data, consistent with what is collected for contract actions, is obtained on—

(1) interagency contracting actions, including data at the task or delivery-order level; and

(2) other transactions, including the initial award and any subsequent modifications awarded or orders issued (other than transactions that are reported through the Federal Assistance Awards Data System).

§ 2312. Contingency Contracting Corps

(a) DEFINITION.—In this section, the term ''Corps'' means the Contingency Contracting Corps established in subsection (b).

(b) ESTABLISHMENT.—The Administrator of General Services, pursuant to policies established by the Office of Management and Budget, and in consultation with the Secretary of Defense and the Secretary of Homeland Security, shall establish a Government-wide Contingency Contracting Corps.

(c) FUNCTION.—The members of the Corps shall be available for deployment in responding to an emergency or major disaster, or a contingency operation, both within or outside the continental United States.

(d) APPLICABILITY.—The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used—

(1) in support of a contingency operation as defined in section 101(a)(13) of title 10; or

(2) to respond to an emergency or major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(e) MEMBERSHIP.—Membership in the Corps shall be voluntary and open to all Federal employees and members of the Armed Forces who are members of the Federal acquisition workforce.

(f) EDUCATION AND TRAINING.—The Administrator of General Services may, in consultation with the Director of the Federal Acquisition Institute and the Chief Acquisition Officers Council, establish educational and training requirements for members of the Corps. Education and training carried out pursuant to the requirements shall be paid for from funds available in the acquisition workforce training fund established pursuant to section 1703(i) of this title.

(g) SALARY.—The salary for a member of the Corps shall be paid—

(1) in the case of a member of the Armed Forces, out of funds available to the Armed Force concerned; and

(2) in the case of a Federal employee, out of funds available to the employing agency.

(h) AUTHORITY TO DEPLOY THE CORPS.—

(1) DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall have the authority, upon request by an executive agency, to determine when members of the Corps shall be deployed, with the concurrence of the head of the agency or agencies employing the members to be deployed.

(2) SECRETARY OF DEFENSE.—Nothing in this section shall preclude the Secretary of Defense or the Secretary's designee from deploying members of the Armed Forces or civilian personnel of the Department of Defense in support of a contingency operation as defined in section 101(a)(13) of title 10.

(i) ANNUAL REPORT.—

(1) IN GENERAL.—The Administrator of General Services shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Corps as of September 30 of each fiscal year.

(2) CONTENT.—Each report under paragraph (1) shall include the number of members of the Corps, the total cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

§ 2313. Database for Federal agency contract and grant officers and suspension and debarment officials

(a) IN GENERAL.—Subject to the authority, direction, and control of the Director of the Office of Management and Budget, the Administrator of General Services shall establish and maintain a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants.

(b) PERSONS COVERED.—The database shall cover the following:

(1) Any person awarded a Federal agency contract or grant in excess of $500,000, if any information described in subsection (c) exists with respect to the person.

(2) Any person awarded such other category or categories of Federal agency contract as the Federal Acquisition Regulation may provide, if any information described in subsection (c) exists with respect to the person.

(c) INFORMATION INCLUDED.—With respect to a covered person, the database shall include information (in the form of a brief description) for the most recent 5-year period regarding the following:

(1) Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the person during the period to the extent that the proceeding results in the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(i) the payment of a monetary fine or penalty of $5,000 or more; or

(ii) the payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in subparagraph (A), (B), or (C).

(2) Each Federal contract and grant awarded to the person that was terminated in the period due to default.

(3) Each Federal suspension and debarment of the person.

(4) Each Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding.

(5) Each final finding by a Federal official in the period that the person has been determined not to be a responsible source under paragraph (3) or (4) of section 113 of this title.

(6) Other information that shall be provided for purposes of this section in the Federal Acquisition Regulation.

(7) To the maximum extent practicable, information similar to the information covered by paragraphs (1) to (4) in connection with the award or performance of a contract or grant with a State government.

(d) REQUIREMENTS RELATING TO DATABASE INFORMATION.—

(1) DIRECT INPUT AND UPDATE.—The Administrator of General Services shall design and maintain the database in a manner that allows the appropriate Federal agency officials to directly input and update information in the database relating to actions that the officials have taken with regard to contractors or grant recipients.

(2) TIMELINESS AND ACCURACY.—The Administrator of General Services shall develop policies to require—

(A) the timely and accurate input of information into the database;

(B) the timely notification of any covered person when information relevant to the person is entered into the database; and

(C) opportunities for any covered person to submit comments pertaining to information about the person for inclusion in the database.

(e) USE OF DATABASE.—

(1) AVAILABILITY TO GOVERNMENT OFFICIALS.—The Administrator of General Services shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies, other government officials as the Administrator of General Services determines appropriate, and, on request, the Chairman and Ranking Member of the committees of Congress having jurisdiction.

(2) REVIEW AND ASSESSMENT OF DATA.—

(A) IN GENERAL.—Before awarding a contract or grant in excess of the simplified acquisition threshold under section 134 of this title, the Federal agency official responsible for awarding the contract or grant shall review the database and consider all information in the database with regard to any offer

or proposal, and in the case of a contract, shall consider other past performance information available with respect to the offeror in making any responsibility determination or past performance evaluation for the offeror.

(B) DOCUMENTATION IN CONTRACT FILE.—The contract file for each contract of a Federal agency in excess of the simplified acquisition threshold shall document the manner in which the material in the database was considered in any responsibility determination or past performance evaluation.

(f) DISCLOSURE IN APPLICATIONS.—The Federal Acquisition Regulation shall require that persons with Federal agency contracts and grants valued in total greater than $10,000,000 shall—

(1) submit to the Administrator of General Services, in a manner determined appropriate by the Administrator of General Services, the information subject to inclusion in the database as listed in subsection (c) current as of the date of submittal of the information under this subsection; and

(2) update the information submitted under paragraph (1) on a semiannual basis.

(g) RULEMAKING.—The Administrator of General Services shall prescribe regulations that may be necessary to carry out this section.

DIVISION C—PROCUREMENT

CHAPTER 31—GENERAL

Sec.
3101. Applicability.
3102. Delegation and assignment of powers, functions, and responsibilities.
3103. Acquisition programs.
3104. Small business concerns.
3105. New contracts and grants and merit-based selection procedures.
3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division.

§ 3101. Applicability

(a) IN GENERAL.—An executive agency shall make purchases and contracts for property and services in accordance with this division and implementing regulations of the Administrator of General Services.

(b) SIMPLIFIED ACQUISITION THRESHOLD AND PROCEDURES.—

(1) SIMPLIFIED ACQUISITION THRESHOLD.—

(A) DEFINITION.—For purposes of an acquisition by an executive agency, the simplified acquisition threshold is as specified in section 134 of this title.

(B) INAPPLICABLE LAWS.—A law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of this title does not apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(2) SIMPLIFIED ACQUISITION PROCEDURES.—Simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of this title apply in executive agencies as provided in section 1901.

(c) EXCEPTIONS.—

(1) IN GENERAL.—This division does not apply—

(A) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(B) except as provided in paragraph (2), when this division is made inapplicable pursuant to law.

(2) APPLICABILITY OF CERTAIN LAWS RELATED TO ADVERTISING, OPENING OF BIDS, AND LENGTH OF CONTRACT.—Sections 6101, 6103, and 6304 of this title do not apply to the procurement of property or services made by an executive agency pursuant to this division. However, when this division is made inapplicable by any law, sections 6101 and 6103 of this title apply in the absence of authority conferred by statute to procure without advertising or without regard to section 6101 of this title. A law that authorizes an executive agency (other than an executive agency exempted from this division by this subsection) to procure property or services without advertising or without regard to section 6101 of this title is deemed to authorize the procurement pursuant to the provisions of this division relating to procedures other than sealed-bid procedures.

§ 3102. Delegation and assignment of powers, functions, and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another law, the head of an executive agency may delegate to another officer or official of that agency any power under this division.

(b) PROCUREMENTS FOR OR WITH ANOTHER AGENCY.—Subject to subsection (a), to facilitate the procurement of property and services covered by this division by an executive agency for another executive agency, and to facilitate joint procurement by executive agencies—

(1) the head of an executive agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within the agency;

(2) the heads of 2 or more executive agencies, consistent with section 1535 of title 31 and regulations prescribed under section 1074 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 31 U.S.C. 1535 note), may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

(3) the heads of 2 or more executive agencies may establish joint or combined offices to exercise procurement functions and responsibilities.

§ 3103. Acquisition programs

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency.

(b) ESTABLISHMENT OF GOALS.—

(1) BY HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

(2) BY CHIEF FINANCIAL OFFICER.—The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major acquisition program of the agency.

(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—When it is necessary to implement the policy set out in subsection (a), the head of an executive agency shall—

(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

(2) identify suitable actions to be taken, including termination, with respect to those programs.

§ 3104. Small business concerns

It is the policy of Congress that a fair proportion of the total purchases and contracts for property and services for the Federal Government shall be placed with small business concerns.

§ 3105. New contracts and grants and merit-based selection procedures

(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

(1) an executive agency should not be required by legislation to award—

(A) a new contract to a specific non-Federal Government entity; or

(B) a new grant for research, development, test, or evaluation to a non-Federal Government entity; and

(2) a program, project, or technology identified in legislation be procured or awarded through merit-based selection procedures.

(b) NEW CONTRACT AND NEW GRANT DESCRIBED.—For purposes of this section—

(1) a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a prior contract; and

(2) a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a prior grant.

(c) REQUIREMENTS FOR AWARDING NEW CONTRACT OR NEW GRANT.—A provision of law may not be construed as requiring a new contract or a new grant to be awarded to a specified non-Federal Government entity unless the provision of law specifically—

(1) refers to this section;

(2) identifies the particular non-Federal Government entity involved; and

(3) states that the award to that entity is required by the provision of law in contravention of the policy set forth in subsection (a).

(d) EXCEPTION.—This section does not apply to a contract or grant that calls on the National Academy of Sciences to investigate, examine, or experiment on a subject of science or art of significance to an executive agency and to report on those matters to Congress or an agency of the Federal Government.

§ 3106. Erection, repair, or furnishing of public buildings and improvements not authorized, and certain contracts not permitted, by this division

This division does not—

(1) authorize the erection, repair, or furnishing of a public building or public improvement; or

(2) permit a contract for the construction or repair of a building, road, sidewalk, sewer, main, or similar item using procedures other than sealed-bid procedures under section 3301(b)(1)(A) of this title if the conditions set forth in section 3301(b)(1)(A) of this title apply or the contract is to be performed outside the United States.

CHAPTER 33—PLANNING AND SOLICITATION

Sec.
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§ 3301. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3303, 3304(a), and 3305 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services shall—

(1) obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation; and

(2) use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) APPROPRIATE COMPETITIVE PROCEDURES.—

(1) USE OF SEALED BIDS.—In determining the competitive procedures appropriate under the circumstance, an executive agency shall—

(A) solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; or

(B) request competitive proposals if sealed bids are not appropriate under subparagraph (A).

(2) SEALED BID NOT REQUIRED.—Paragraph (1)(A) does not require the use of sealed-bid procedures in cases in which section 204(e) of title 23 applies.

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Federal Government's requirements.

§ 3302. Requirements for purchase of property and services pursuant to multiple award contracts

(a) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.— The term ''executive agency'' has the same meaning given in section 133 of this title.

(2) INDIVIDUAL PURCHASE.—The term ''individual purchase'' means a task order, delivery order, or other purchase.

(3) MULTIPLE AWARD CONTRACT.—The term ''multiple award contract'' means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10;

(B) a multiple award task order contract that is entered into under the authority of sections 2304a to 2304d of title 10, or chapter 41 of this title; and

(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of an executive agency with 2 or more sources pursuant to the same solicitation.

(4) SOLE SOURCE TASK OR DELIVERY ORDER.—The term ''sole source task or delivery order'' means any order that does not follow the competitive procedures in paragraph (2) or (3) of subsection (c).

(b) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple award contracts.

(c) CONTENT OF REGULATIONS.—

(1) IN GENERAL.—The regulations required by subsection (b) shall provide that each individual purchase of property or services in excess of the simplified acquisition threshold that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer—

(A) waives the requirement on the basis of a determination that—

(i) one of the circumstances described in paragraphs (1) to (4) of section 4106(c) of this title or section 2304c(b) of title 10 applies to the individual purchase; or

(ii) a law expressly authorizes or requires that the purchase be made from a specified source; and

(B) justifies the determination in writing.

(2) COMPETITIVE BASIS PROCEDURES.—For purposes of this subsection, an individual purchase of property or services is made on a competitive basis only if it is made pursuant to procedures that—

(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering the property or services under the multiple award contract; and

(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

(3) EXCEPTION TO NOTICE REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), and subject to subparagraph (B), notice may be provided to fewer than all contractors offering the property or services under a multiple award contract as described in subsection (a)(3)(A) if notice is provided to as many contractors as practicable.

(B) LIMITATION ON EXCEPTION.—A purchase may not be made pursuant to a notice that is provided to fewer than all contractors under subparagraph (A) unless—

(i) offers were received from at least 3 qualified contractors; or

(ii) a contracting officer of the executive agency determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

(d) PUBLIC NOTICE REQUIREMENTS RELATED TO SOLE SOURCE TASK OR DELIVERY ORDERS.—

(1) PUBLIC NOTICE REQUIRED.—The Federal Acquisition Regulation shall require the head of each executive agency to—

(A) publish on FedBizOpps notice of all sole source task or delivery orders in excess of the simplified acquisition threshold that are placed against multiple award contracts not later than 14 days after the orders are placed, except in the event of extraordinary circumstances or classified orders; and

(B) disclose the determination required by subsection (c)(1) related to sole source task or delivery orders in excess of the simplified acquisition threshold placed against multiple award contracts through the same mechanism and to the same extent as the disclosure of documents containing a justification and approval required by section 2304(f)(1) of title 10 and section 3304(e)(1) of this title, except in the event of extraordinary circumstances or classified orders.

(2) EXEMPTION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(e) APPLICABILITY.—The regulations required by subsection (b) shall apply to all individual purchases of property or services that are made under multiple award contracts on or after the effective date of the regulations, without regard to whether the multiple award contracts were entered into before, on, or after the effective date.

§ 3303. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) CRITERIA FOR EXCLUSION.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures but excluding a particular source to establish or maintain an alternative source of supply for that property or service if the agency head determines that to do so would—

(A) increase or maintain competition and likely result in reduced overall cost for the procurement, or for an anticipated procurement, of the property or services;

(B) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(D) ensure the continuous availability of a reliable source of supply of the property or service;

(E) satisfy projected needs for the property or service determined on the basis of a history of high demand for the property or service; or

(F) satisfy a critical need for medical, safety, or emergency supplies.

(2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—An executive agency may provide for the procurement of property or services covered by section 3301 of this title using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) NONAPPLICATION OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in subsections (a) and (b) is not subject to the justification and approval required by section 3304(e)(1) of this title.

§ 3304. Use of noncompetitive procedures

(a) WHEN NONCOMPETITIVE PROCEDURES MAY BE USED.—An executive agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Federal Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source—

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization;

(B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center;

(C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before a court, administrative tribunal, or agency, whether or not the expert is expected to testify; or

(D) to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or treaty between the Federal Government and a foreign government or an international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for that government, have the effect of requiring the

use of procedures other than competitive procedures;

(5) subject to section 3105 of this title, a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the executive agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned; and

(B) notifies Congress in writing of that determination not less than 30 days before the award of the contract.

(b) PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE.—For the purposes of subsection (a)(1), in the case of—

(1) a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services are deemed to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which is not otherwise available to the Federal Government and does not resemble the substance of a pending competitive procurement; or

(2) a follow-on contract for the continued development or production of a major system or highly specialized equipment, the property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(A) substantial duplication of cost to the Federal Government that is not expected to be recovered through competition; or

(B) unacceptable delay in fulfilling the executive agency's needs.

(c) PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING URGENCY.—

(1) ALLOWABLE CONTRACT PERIOD.—The contract period of a contract described in paragraph (2) that is entered into by an executive agency pursuant to the authority provided under subsection (a)(2)—

(A) may not exceed the time necessary—

(i) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(B) may not exceed one year unless the head of the executive agency entering into the contract determines that exceptional circumstances apply.

(2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This subsection applies to any contract in an amount greater than the simplified acquisition threshold.

(d) OFFER REQUESTS TO POTENTIAL SOURCES.—An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of paragraph (2) or (6) of subsection (a) shall request offers from as many potential sources as is practicable under the circumstances.

(e) JUSTIFICATION FOR USE OF NONCOMPETITIVE PROCEDURES.—

(1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided in paragraphs (3) and (4), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of those procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved, in the case of a contract for an amount—

(i) exceeding $500,000 but equal to or less than $10,000,000, by the advocate for competition for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) exceeding $10,000,000 but equal to or less than $50,000,000, by the head of the procuring activity or by a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in which the individual is entitled to receive the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of title 5 (or in a comparable or higher position under another schedule); or

(iii) exceeding $50,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of this title (without further delegation); and

(C) any required notice has been published with respect to the contract pursuant to section 1708 of this title and the executive agency has considered all bids or proposals received in response to that notice.

(2) ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of any sources that expressed in writing an interest in the procurement; and

(F) a statement of any actions the agency may take to remove or overcome a barrier to competition before a subsequent procurement for those needs.

(3) JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the case of a procurement permitted by subsection (a)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded.

(4) JUSTIFICATION NOT REQUIRED.—The justification and approval required by paragraph (1) are not required if—

(A) a statute expressly requires that the procurement be made from a specified source;

(B) the agency's need is for a brand-name commercial item for authorized resale;

(C) the procurement is permitted by subsection (a)(7); or

(D) the procurement is conducted under chapter 85 of this title or section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(5) RESTRICTIONS ON EXECUTIVE AGENCIES.—

(A) CONTRACTS AND PROCUREMENT OF PROPERTY OR SERVICES.—In no case may an executive agency—

(i) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount available to the agency for procurement functions; or

(ii) procure property or services from another executive agency unless the other executive agency complies fully with the requirements of this division in its procurement of the property or services.

(B) ADDITIONAL RESTRICTION.—The restriction set out in subparagraph (A)(ii) is in addition to any other restriction provided by law.

(f) PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED FOR USING NONCOMPETITIVE PROCEDURES.—

(1) TIME REQUIREMENT.—

(A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (a), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (e)(1) with respect to the procurement.

(B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of a procurement permitted by subsection (a)(2), subparagraph (A) shall be applied by substituting ''30 days'' for ''14 days''.

(2) AVAILABILITY ON WEBSITES.—The documents referred to in subparagraph (A) of paragraph (1) shall be made available on the website of the agency and through a Government-wide website selected by the Administrator.

(3) EXCEPTION TO AVAILABILITY AND APPROVAL REQUIREMENT.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

§ 3305. Simplified procedures for small purchases

(a) AUTHORIZATION.—To promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts—

(1) not greater than the simplified acquisition threshold; and

(2) greater than the simplified acquisition threshold but not greater than $5,000,000 for which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) LEASEHOLD INTERESTS IN REAL PROPERTY.—The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold. The rental rate under a multiyear lease does not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(c) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts to use the simplified procedures required by subsection (a).

(d) PROMOTION OF COMPETITION.—In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(e) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of this title.

§ 3306. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in the manner necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this division shall include specifications that—

(A) consistent with this division, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy those needs. Subject to those needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), each solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors that the executive agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and the award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and the award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an executive agency shall—

(A) establish clearly the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—Regulations implementing paragraph (1)(C) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not prohibit an executive agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—An executive agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in the solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the executive agency has determined that there is a reasonable likelihood that the options will be exercised.

(f) AUTHORIZATION OF TELECOMMUTING FOR FEDERAL CONTRACTORS.—

(1) DEFINITION.—In this subsection, the term ''executive agency'' has the meaning given that term in section 133 of this title.

(2) FEDERAL ACQUISITION REGULATION TO ALLOW TELECOMMUTING.—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall permit telecommuting by employees of Federal Government contractors in the performance of contracts entered into with executive agencies.

(3) SCOPE OF ALLOWANCE.—The Federal Acquisition Regulation at a minimum shall provide that a solicitation for the acquisition of property or services may not set forth any requirement or evaluation criteria that would—

(A) render an offeror ineligible to enter into a contract on the basis of the inclusion of a plan of the offeror to allow the offeror's employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is allowed and documents in writing the basis for the determination; or

(B) reduce the scoring of an offer on the basis of the inclusion in the offer of a plan of the offeror to allow the offeror's employees to telecommute, unless the contracting officer concerned first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed and documents in writing the basis for the determination.

§ 3307. Preference for commercial items

(a) RELATIONSHIP OF PROVISIONS OF LAW TO PROCUREMENT OF COMMERCIAL ITEMS.—

(1) THIS DIVISION.—Unless otherwise specifically provided, all other provisions in this division also apply to the procurement of commercial items.

(2) LAWS LISTED IN FEDERAL ACQUISITION REGULATION.—A contract for the procurement of a commercial item entered into by the head of an executive agency is not subject to a law properly listed in the Federal Acquisition Regulation pursuant to section 1906 of this title.

(b) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

(1) requirements of the executive agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) those requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items may be procured to fulfill those requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill those requirements.

(c) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the executive agency;

(2) require that prime contractors and subcontractors at all levels under contracts of the executive agency incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the executive agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items in response to the executive agency solicitations;

(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(d) MARKET RESEARCH.—

(1) WHEN TO BE USED.—The head of an executive agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that executive agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) USE OF RESULTS.—The head of an executive agency shall use the results of market research to determine whether commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items are available that—

(A) meet the executive agency's requirements;

(B) could be modified to meet the executive agency's requirements; or

(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.

(3) ONLY MINIMUM INFORMATION REQUIRED TO BE SUBMITTED.—In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(e) REGULATIONS.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall provide regulations to implement this section, sections 102, 103, 105, and 110 of this title, and chapter 140 of title 10.

(2) CONTRACT CLAUSES.—

(A) DEFINITION.—In this paragraph, the term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) LIST OF CLAUSES TO BE INCLUDED.—The regulations prescribed under paragraph (1) shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. To the maximum extent practicable, the list shall include only those contract clauses that are—

(i) required to implement provisions of law or executive orders applicable to acquisitions of commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(C) REQUIREMENTS OF PRIME CONTRACTOR.—The regulations shall provide that the Federal Government shall not require a prime contractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial items any contract clause except those that are—

(i) required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) determined to be consistent with standard commercial practice.

(D) CLAUSES THAT MAY BE USED IN A CONTRACT.—To the maximum extent practicable, only the contract clauses listed pursuant to subparagraph (B) may be used in a contract, and only the contract clauses referred to in subparagraph (C) may be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

(E) WAIVER OF CONTRACT CLAUSES.—The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to subparagraph (B), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

(3) MARKET ACCEPTANCE.—

(A) REQUIREMENT OF OFFERORS.—The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

(i) have achieved commercial market acceptance or been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

(ii) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

(B) REGULATION TO PROVIDE GUIDANCE ON CRITERIA.—The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

(i) the minimum needs of the executive agency concerned; and

(ii) the entire relevant commercial market, including small businesses.

(4) PROVISIONS RELATING TO TYPES OF CONTRACTS.—

(A) TYPES OF CONTRACTS THAT MAY BE USED.—The Federal Acquisition Regulation shall include, for acquisitions of commercial items—

(i) a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts be used to the maximum extent practicable;

(ii) a prohibition on use of cost type contracts; and

(iii) subject to subparagraph (B), authority for use of a time-and-materials or labor-hour contract for the procurement of commercial services that are commonly sold to the general public through those contracts and are purchased by the procuring agency on a competitive basis.

(B) WHEN TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT MAY BE USED.—A time-and-materials or labor-hour contract may be used pursuant to the authority referred to in subparagraph (A)(iii)—

(i) only for a procurement of commercial services in a category of commercial services described in subparagraph (C); and

(ii) only if the contracting officer for the procurement—

(I) executes a determination and findings that no other contract type is suitable;

(II) includes in the contract a ceiling price that the contractor exceeds at its own risk; and

(III) authorizes a subsequent change in the ceiling price only on a determination, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(C) CATEGORIES OF COMMERCIAL SERVICES.—The categories of commercial services referred to in subparagraph (B) are as follows:

(i) Commercial services procured for support of a commercial item, as described in section 103(5) of this title.

(ii) Any other category of commercial services that the Administrator for Federal Procurement Policy designates in the Federal Acquisition Regulation for the purposes of this subparagraph on the basis that—

(I) the commercial services in the category are of a type of commercial services that are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(II) it would be in the best interests of the Federal Government to authorize use of time-and-materials or labor-hour contracts for purchases of the commercial services in the category.

(5) CONTRACT QUALITY REQUIREMENTS.—Regulations prescribed under paragraph (1) shall include provisions that—

(A) allow, to the maximum extent practicable, a contractor under a commercial items acquisition to use the existing quality assurance system of the contractor as a substitute for compliance with an otherwise applicable requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;

(B) require that, to the maximum extent practicable, the executive agency take advantage of warranties (including extended warranties) offered by offerors of commercial items and use those warranties for the repair and replacement of commercial items; and

(C) set forth guidance regarding the use of past performance of commercial items and sources as a factor in contract award decisions.

§ 3308. Planning for future competition in contracts for major systems

(a) DEVELOPMENT CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a solicitation for the award of a development contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

(A) Proposals to incorporate in the design of the major system items that are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(B) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items that the Federal Government will be able to acquire competitively in the future.

(b) PRODUCTION CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—In preparing a solicitation for the award of a production contract for a major system, the head of an agency shall consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require the proposals, the head of the agency shall consider the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If the proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENT OF PROPOSALS.—The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the Federal Government will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to this requirement may include the following:

(A) Proposals to provide to the Federal Government the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the Federal Government of acquiring the data and the right to use the data.

(B) Proposals for the qualification or development of multiple sources of supply for the item.

(c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in subsections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.

§ 3309. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under sections 1101 to 1104 of title 40 or another acquisition procedure authorized by law is used, the head of an executive agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

(1) the contracting officer anticipates that 3 or more offers will be received for the contract;

(2) design work must be performed before an offeror can develop a price or cost proposal for the contract;

(3) the offeror will incur a substantial amount of expense in preparing the offer; and

(4) the contracting officer has considered information such as the following:

(A) The extent to which the project requirements have been adequately defined.

(B) The time constraints for delivery of the project.

(C) The capability and experience of potential contractors.

(D) The suitability of the project for use of the two-phase selection procedures.

(E) The capability of the agency to manage the two-phase selection process.

(F) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Federal Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals that meet the Federal Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with sections 1101 to 1104 of title 40.

(2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) EVALUATION FACTORS.—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team), and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) SELECTION BY CONTRACTING OFFICER.—

(A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work, or both; and

(ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b) to (d) of section 3306 of this title.

(B) SEPARATE EVALUATIONS.—The contracting officer separately evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

(5) AWARDING OF CONTRACT.—The agency awards the contract in accordance with chapter 37 of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE-TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Federal Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

§ 3310. Quantities to order

(a) FACTORS AFFECTING QUANTITY TO ORDER.—Each executive agency shall procure supplies in a quantity that—

(1) will result in the total cost and unit cost most advantageous to the Federal Government, where practicable; and

(2) does not exceed the quantity reasonably expected to be required by the agency.

(b) OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of supplies proposed to be procured is economically advantageous to the Federal Government and, if applicable, to recommend a quantity that would be more economically advantageous to the Federal Government. Each recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

§ 3311. Qualification requirement

(a) DEFINITION.—In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Except as provided in subsection (c), the head of an agency, before enforcing any qualification requirement, shall—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror on request all requirements that a prospective offeror, or its product, must satisfy to become qualified, with those requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the cost of testing and evaluation likely to be incurred by a potential offeror to become qualified;

(4) ensure that a potential offeror is provided, on request, a prompt opportunity to demonstrate at its own expense (except as provided in subsection (d)) its ability to meet the standards specified for qualification using—

(A) qualified personnel and facilities—

(i) of the agency concerned;

(ii) of another agency obtained through interagency agreement; or

(iii) under contract; or

(B) other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that those services be provided by a contractor that—

(A) is not expected to benefit from an absence of additional qualified sources; and

(B) is required in the contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed whether qualification is attained and, if not attained, is promptly furnished specific information about why qualification was not attained.

(c) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

(1) APPLICABILITY.—Subsection (b) does not apply to a qualification requirement established by statute prior to October 30, 1984.

(2) WAIVER AUTHORITY.—

(A) SUBMISSION OF DETERMINATION OF UNREASONABLENESS.—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification that a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) AUTHORITY TO GRANT WAIVER.—After considering any comments of the advocate for competition reviewing the determination, the head of the procuring activity may waive the requirements of paragraphs (2) to (5) of subsection (b) for up to 2 years with respect to the item subject to the qualification requirement.

(C) NONAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—Waiver authority under this paragraph does not apply with respect to a qualified products list.

(3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED.—A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror has not been identified as meeting a qualification requirement if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet those standards before the date specified for award of the contract.

(4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT REQUIRED.—This subsection does not require the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with that requirement.

(5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not delay a proposed procurement to comply with subsection (b) or to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

(1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PRODUCTS.—If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than 2 actual manufacturers or the products of 2 actual manufacturers, respectively, the head of the agency concerned shall—

(A) publish notice periodically soliciting additional sources or products to seek qualification, unless the contracting officer determines that doing so would compromise national security; and

(B) subject to paragraph (2), bear the cost of conducting the specified testing and evaluation (excluding the cost associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern that has met the standards specified for qualification and that could reasonably be expected to compete for a contract for that requirement.

(2) WHEN AGENCY MAY BEAR COST.—The head of the agency concerned may bear the cost under paragraph (1)(B) only if the head of the agency determines that the additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to offset (within a reasonable period of time considering the duration and dollar value of anticipated future requirements) the cost incurred by the agency.

(3) CERTIFICATION REQUIRED.—The head of the agency shall require a prospective contractor requesting the Federal Government to bear testing and evaluation costs under paragraph (1)(B) to certify its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within 7 years after the establishment of a qualification requirement, the need for the requirement shall be examined and the standards of the requirement revalidated in accordance with the requirements of subsection (b). This subsection does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT NOT ALLOWED.—Except in an emergency as determined by the head of the agency, after the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not enforce the requirement unless the agency complies with the requirements of subsection (b).

CHAPTER 35—TRUTHFUL COST AND PRICING DATA

Sec.
3501. General.
3502. Required cost or pricing data and certification.
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3507. Interest and penalties for certain overpayments.
3508. Right to examine contractor records.
3509. Notification of violations of Federal criminal law or overpayments.

§ 3501. General

(a) DEFINITIONS.—In this chapter:

(1) COMMERCIAL ITEM.—The term ''commercial item'' has the meaning provided the term by section 103 of this title.

(2) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with section 3506(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include factual information from which a judgment was derived.

(3) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(b) REGULATIONS.—

(1) MINIMIZING ABUSE OF COMMERCIAL SERVICES ITEM AUTHORITY.—The Federal Acquisition Regulation shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items for purposes of this chapter only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the services.

(2) INFORMATION TO SUBMIT.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

(A) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

§ 3502. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an executive agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under this division to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after October 13, 1994, the price of the contract to the Federal Government is expected to exceed $500,000; and

(B) in the case of a prime contract entered into on or before October 13, 1994, the price of the contract to the Federal Government is expected to exceed $100,000.

(2) CONTRACTOR.—The contractor for a prime contract under this division shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(A) in the case of a change or modification made to a prime contract referred to in paragraph (1)(A), the price adjustment is expected to exceed $500,000;

(B) in the case of a change or modification made to a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price adjustment is expected to exceed $500,000; and

(C) in the case of a change or modification not covered by subparagraph (A) or (B), the price adjustment is expected to exceed $100,000.

(3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at any tier) of a contract under this division shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this chapter and—

(A) in the case of a subcontract under a prime contract referred to in paragraph (1)(A), the price of the subcontract is expected to exceed $500,000;

(B) in the case of a subcontract entered into under a prime contract that was entered into on or before October 13, 1994, and that has been modified pursuant to subsection (f), the price of the subcontract is expected to exceed $500,000; and

(C) in the case of a subcontract not covered by subparagraph (A) or (B), the price of the subcontract is expected to exceed $100,000.

(4) SUBCONTRACTOR.—The subcontractor for a subcontract covered by paragraph (3) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(A) in the case of a change or modification to a subcontract referred to in paragraph (3)(A) or (B), the price adjustment is expected to exceed $500,000; and

(B) in the case of a change or modification to a subcontract referred to in paragraph (3)(C), the price adjustment is expected to exceed $100,000.

(b) CERTIFICATION.—A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of the procuring activity concerned to submit the data under section 3504 of this title) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(c) TO WHOM SUBMITTED.—Cost or pricing data required to be submitted under subsection (a) (or under section 3504 of this title), and a certification required to be submitted under subsection (b), shall be submitted—

(1) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) APPLICATION OF CHAPTER.—Except as provided under section 3503 of this title, this chapter applies to contracts entered into by the head of an executive agency on behalf of a foreign government.

(e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of requirements for submission of certified cost or pricing data that is granted under section 3503(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under subsection (a)(3) of this section should be waived in the case of those subcontracts and justifies in writing the reason for the determination.

(f) MODIFICATIONS TO PRIOR CONTRACTS.—On the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before October 13, 1994, the head of the executive agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All those modifications shall be made without requiring consideration.

(g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of

the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

§ 3503. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3502 of this title in the case of a contract, a subcontract, or a modification of a contract or subcontract—

(1) for which the price agreed on is based on—

(A) adequate price competition; or

(B) prices set by law or regulation;

(2) for the acquisition of a commercial item; or

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for the determination.

(b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3502 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

§ 3504. Cost or pricing data on below-threshold contracts

(a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3502 of this title for a contract, subcontract, or modification of a contract or subcontract, the data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that the data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires the data to be submitted under this section, the head of the procuring activity shall justify in writing the reason for the requirement.

(b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this section for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in section 3503(a)(1) or (2) of this title.

(c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate the functions under this section.

§ 3505. Submission of other information

(a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3503(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

(b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under subsection (a):

(1) REASONABLE LIMITATIONS.—Reasonable limitations on requests for sales data relating to commercial items.

(2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) INFORMATION NOT TO BE DISCLOSED.—A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

§ 3506. Price reductions for defective cost or pricing data

(a) PROVISION REQUIRING ADJUSTMENT.—

(1) IN GENERAL.—A prime contract (or change or modification to a prime contract) under which a certificate under section 3502(b) of this title is required shall contain a provision that the price of the contract to the Federal Government, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the executive agency that the price was increased because the contractor (or any subcontractor required to make the certificate available) submitted defective cost or pricing data.

(2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of this chapter, defective cost or pricing data are cost or pricing data that, as of the date of agreement on the price of the contract (or another date agreed on between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree on a date other than the date of agreement on the price of the contract, the date agreed on by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it is a defense that the Federal Government did not rely on the defective data submitted by the contractor or subcontractor.

(c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the Federal Government about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost or pricing data relating to the contract as required by section 3502(b) of this title.

(d) OFFSETS.—

(1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable, consistent with subsection (a)(2), another date agreed on by the parties, and that the data were not submitted as specified in section 3502(c) of this title before that date.

(2) WHEN NOT ALLOWED.—A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3502(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the Federal Government proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the Federal Government before date of agreement on the price of the contract (or price of the modification), or, if applicable, under subsection (a)(2), another date agreed on by the parties, the submission of the cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

§ 3507. Interest and penalties for certain overpayments

(a) IN GENERAL.—If the Federal Government makes an overpayment to a contractor under a contract with an executive agency subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the Federal Government—

(1) for interest on the amount of the overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of the overpayment to the Federal Government; and

(B) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621); and

(2) if the submission of the defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.—Any liability under this section of a contractor that submits cost or pricing data but refuses to submit the certification required by section 3502(b) of this title with respect to the cost or pricing data is not affected by the refusal to submit the certification.

§ 3508. Right to examine contractor records

For the purpose of evaluating the accuracy, completeness, and currency of cost or

pricing data required to be submitted by this chapter, an executive agency shall have the authority provided by section 4706(b)(2) of this title.

§ 3509. Notification of violations of Federal criminal law or overpayments

(a) DEFINITION.—In this section, the term ''covered contract'' means any contract in an amount greater than $5,000,000 and more than 120 days in duration.

(b) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include, pursuant to FAR Case 2007–006 (as published at 72 Fed. Reg. 64019, November 14, 2007) or any follow-on FAR case, provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

CHAPTER 37—AWARDING OF CONTRACTS

Sec.
3701. Basis of award and rejection.
3702. Sealed bids.
3703. Competitive proposals.
3704. Post-award debriefings.
3705. Pre-award debriefings.
3706. Encouragement of alternative dispute resolution.
3707. Antitrust violations.
3708. Protests.

§ 3701. Basis of award and rejection

(a) AWARD.—An executive agency shall evaluate sealed bids and competitive proposals, and award a contract, based solely on the factors specified in the solicitation.

(b) REJECTION.—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the agency head determines that rejection is in the public interest.

§ 3702. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The executive agency shall evaluate the bids in accordance with section 3701(a) of this title without discussions with the bidders and, except as provided in section 3701(b) of this title, shall award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the Federal Government, considering only price and the other price-related factors included in the solicitation.

(c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within 3 days after the date of contract award, the executive agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

§ 3703. Competitive proposals

(a) EVALUATION AND AWARD.—An executive agency shall evaluate competitive proposals in accordance with section 3701(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), if, as required by section 3306(b)(2)(B)(i) of this title, the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with those criteria.

(c) CRITERIA FOR AWARDING CONTRACT.—Except as otherwise provided in section 3701(b) of this title, the executive agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the Federal Government, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The executive agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to that source and, within 3 days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

§ 3704. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, on written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The executive agency shall debrief the offeror within, to the maximum extent practicable, 5 days after receipt of the request by the executive agency.

(c) INFORMATION TO BE PROVIDED.—The debriefing shall include, at a minimum—

(1) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(2) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(3) the overall ranking of all offers;

(4) a summary of the rationale for the award;

(5) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(6) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of the contract award and as a result of a successful procurement protest, the executive agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the head of the executive agency shall make available to all offerors—

(1) the information provided in debriefings under this section regarding the offer of the contractor awarded the contract; and

(2) the same information that would have been provided to the original offerors.

(g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

§ 3705. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes that offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Federal Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3704 of this title only if that offeror requested and was refused a pre-award debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under this section shall include—

(1) the executive agency's evaluation of the significant elements in the offeror's offer;

(2) a summary of the rationale for the offeror's exclusion; and

(3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted pursuant to this section may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of the debriefing in the contract file.

§ 3706. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

§ 3707. Antitrust violations

If the agency head considers that a bid or proposal evidences a violation of the antitrust laws, the agency head shall refer the bid or proposal to the Attorney General for appropriate action.

§ 3708. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an executive agency, a

protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, and an actual or prospective offeror requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an executive agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the executive agency may—

(1) take any action set out in subparagraphs (A) to (F) of subsection (b)(1) of section 3554 of title 31; and

(2) pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of section 3554(c).

CHAPTER 39—SPECIFIC TYPES OF CONTRACTS

Sec.
3901. Contracts awarded using procedures other than sealed-bid procedures.
3902. Severable services contracts for periods crossing fiscal years.
3903. Multiyear contracts.
3904. Contract authority for severable services contracts and multiyear contracts.
3905. Cost contracts.
3906. Cost-reimbursement contracts.

§ 3901. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business.

(2) REMEDY FOR BREACH OR VIOLATION.—For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

(3) NONAPPLICATION.—Paragraph (1) does not apply to a contract for an amount that is not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

§ 3902. Severable services contracts for periods crossing fiscal years

(a) AUTHORITY TO ENTER INTO CONTRACT.—The head of an executive agency may enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of this section.

§ 3903. Multiyear contracts

(a) DEFINITION.—In this section, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than 5, program years.

(b) AUTHORITY TO ENTER INTO CONTRACT.—An executive agency may enter into a multiyear contract for the acquisition of property or services if—

(1) funds are available and obligated for the contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with a necessary termination of the contract; and

(2) the executive agency determines that—

(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

(B) a multiyear contract will serve the best interests of the Federal Government by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(c) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of the contract in a fiscal year covered by the contract. Funds available for paying termination costs shall remain available for that purpose until the costs associated with termination of the contract are paid.

(d) CANCELLATION CEILING NOTICE.—Before a contract described in subsection (b) that contains a clause setting forth a cancellation ceiling in excess of $10,000,000 may be awarded, the executive agency shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to Congress. The contract may not be awarded until the end of the 30-day period beginning on the date of the notification.

(e) CONTINGENCY CLAUSE FOR APPROPRIATION OF FUNDS.—A multiyear contract may provide that performance under the contract after the first year of the contract is contingent on the appropriation of funds and (if the contract does so provide) that a cancellation payment shall be made to the contractor if the funds are not appropriated.

(f) OTHER LAW NOT AFFECTED.—This section does not modify or affect any other provision of law that authorizes multiyear contracts.

§ 3904. Contract authority for severable services contracts and multiyear contracts

(a) COMPTROLLER GENERAL.—The Comptroller General may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and nonaudit-related services to the same extent as executive agencies under sections 3902 and 3903 of this title.

(b) LIBRARY OF CONGRESS.—The Library of Congress may use available funds to enter into contracts for the lease or procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and to enter into multiyear contracts for the acquisition of property and services pursuant to sections 3902 and 3903 of this title.

(c) CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES.—The Chief Administrative Officer of the House of Representatives may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(d) CONGRESSIONAL BUDGET OFFICE.—The Congressional Budget Office may use available funds to enter into contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year and may enter into multiyear contracts for the acquisition of property and services to the same extent as executive agencies under the authority of sections 3902 and 3903 of this title.

(e) SECRETARY AND SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE.—Subject to regulations prescribed by the Committee on Rules and Administration of the Senate, the Secretary and the Sergeant at Arms and Doorkeeper of the Senate may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent and under the same conditions as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as executive agencies under the authority of section 3903 of this title.

(f) CAPITOL POLICE.—The United States Capitol Police may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(g) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year to the same extent as the head of an executive agency under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisitions of property and nonaudit-related services to the same extent as executive agencies under the authority of section 3903 of this title.

(h) SECRETARY OF THE SMITHSONIAN INSTITUTION.—The Secretary of the Smithsonian Institution may enter into—

(1) contracts for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year under the authority of section 3902 of this title; and

(2) multiyear contracts for the acquisition of property and services under the authority of section 3903 of this title.

§ 3905. Cost contracts

(a) COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS DISALLOWED.—The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(b) COST-PLUS-A-FIXED-FEE CONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee in a cost-plus-a-fixed-fee contract shall not exceed 10 percent of the estimated cost of the contract, not including the fee, as determined by the agency head at the time of entering into the contract.

(2) EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee in a cost-plus-a-fixed-fee contract for experimental, developmental, or research work shall not exceed 15 percent of the estimated cost of the contract, not including the fee.

(3) ARCHITECTURAL OR ENGINEERING SERVICES.—The fee in a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public works or utility

project may include the contractor's costs and shall not exceed 6 percent of the estimated cost, not including the fee, as determined by the agency head at the time of entering into the contract, of the project to which the fee applies.

(c) NOTIFICATION.—All cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring agency of any subcontract on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either the simplified acquisition threshold or 5 percent of the total estimated cost of the prime contract.

(d) RIGHT TO AUDIT.—A procuring agency, through any authorized representative thereof, has the right to inspect the plans and to audit the books and records of a prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract.

§ 3906. Cost-reimbursement contracts

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) REGULATIONS ON THE USE OF COST-REIMBURSEMENT CONTRACTS.—The Federal Acquisition Regulation shall address the use of cost-reimbursement contracts.

(c) CONTENT.—The regulations promulgated under subsection (b) shall include guidance regarding—

(1) when and under what circumstances cost-reimbursement contracts are appropriate;

(2) the acquisition plan findings necessary to support a decision to use cost-reimbursement contracts; and

(3) the acquisition workforce resources necessary to award and manage cost-reimbursement contracts.

(d) ANNUAL REPORT.—

(1) IN GENERAL.—The Director of the Office of Management and Budget shall submit an annual report to Congressional committees identified in subsection (e) on the use of cost-reimbursement contracts and task or delivery orders by all executive agencies.

(2) CONTENTS.—The report shall include—

(A) the total number and value of contracts awarded and orders issued during the covered fiscal year;

(B) the total number and value of cost-reimbursement contracts awarded and orders issued during the covered fiscal year; and

(C) an assessment of the effectiveness of the regulations promulgated pursuant to subsection (b) in ensuring the appropriate use of cost-reimbursement contracts.

(3) TIME REQUIREMENTS.—

(A) DEADLINE.—The report shall be submitted no later than March 1 and shall cover the fiscal year ending September 30 of the prior year.

(B) LIMITATION.—The report shall be submitted from March 1, 2009, until March 1, 2014.

(e) CONGRESSIONAL COMMITTEES.—The report required by subsection (d) shall be submitted to—

(1) the Committee on Oversight and Government Reform of the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committees on Appropriations of the House of Representatives and the Senate; and

(4) in the case of the Department of Defense and the Department of Energy, the Committees on Armed Services of the Senate and the House of Representatives.

CHAPTER 41—TASK AND DELIVERY ORDER CONTRACTS

Sec.
4101. Definitions.
4102. Authorities or responsibilities not affected.
4103. General authority.
4104. Guidance on use of task and delivery order contracts.
4105. Advisory and assistance services.
4106. Orders.

§ 4101. Definitions

In this chapter:

(1) DELIVERY ORDER CONTRACT.—The term ''delivery order contract'' means a contract for property that—

(A) does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the delivery of property during the period of the contract.

(2) TASK ORDER CONTRACT.—The term ''task order contract'' means a contract for services that—

(A) does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the performance of tasks during the period of the contract.

§ 4102. Authorities or responsibilities not affected

This chapter does not modify or supersede, and is not intended to impair or restrict, authorities or responsibilities under sections 1101 to 1104 of title 40.

§ 4103. General authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task or delivery order contract for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include—

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option;

(2) the maximum quantity or dollar value of the services or property to be procured under the contract; and

(3) a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an executive agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in section 3304(a) of this title applies to the contract and the use of those procedures is approved in accordance with section 3304(e) of this title.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

(1) EXERCISE OF AUTHORITY.—The head of an executive agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the executive agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to 2 or more sources.

(2) DETERMINATION NOT REQUIRED.—No determination under section 3303 of this title is required for an award of multiple task or delivery order contracts under paragraph (1)(B).

(3) SINGLE SOURCE AWARD FOR TASK OR DELIVERY ORDER CONTRACTS EXCEEDING $100,000,000.—

(A) WHEN SINGLE AWARDS ARE ALLOWED.—No task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source unless the head of the executive agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the Federal Government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) NOTIFICATION OF CONGRESS.—The head of the executive agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).

(4) REGULATIONS.—Regulations implementing this subsection shall establish—

(A) a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under paragraph (1)(B); and

(B) criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 4105 of this title, this section does not apply to a task or delivery order contract for the acquisition of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an executive agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

§ 4104. Guidance on use of task and delivery order contracts

(a) GUIDANCE IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation issued in accordance with sections 1121(b) and 1303(a)(1) of this title shall provide guidance to agencies on the appropriate use of task and delivery order contracts in accordance with this chapter and sections 2304a to 2304d of title 10.

(b) CONTENT OF REGULATIONS.—The regulations issued pursuant to subsection (a) at a minimum shall provide specific guidance on—

(1) the appropriate use of Government-wide and other multiagency contracts entered into in accordance with this chapter and sections 2304a to 2304d of title 10; and

(2) steps that agencies should take in entering into and administering multiple award task and delivery order contracts to ensure compliance with the requirement in—

(A) section 11312 of title 40 for capital planning and investment control in purchases of information technology products and services;

(B) section 4106(c) of this title and section 2304c(b) of title 10 to ensure that all contractors are afforded a fair opportunity to be

considered for the award of task and delivery orders; and

(C) section 4106(e) of this title and section 2304c(c) of title 10 for a statement of work in each task or delivery order issued that clearly specifies all tasks to be performed or property to be delivered under the order.

(c) FEDERAL SUPPLY SCHEDULES PROGRAM.—The Administrator for Federal Procurement Policy shall consult with the Administrator of General Services to assess the effectiveness of the multiple awards schedule program of the General Services Administration referred to in section 152(3) of this title that is administered as the Federal Supply Schedules program. The assessment shall include examination of—

(1) the administration of the program by the Administrator of General Services; and

(2) the ordering and program practices followed by Federal customer agencies in using schedules established under the program.

§ 4105. Advisory and assistance services

(a) DEFINITION.—In this section, the term ''advisory and assistance services'' has the same meaning given that term in section 1105(g) of title 31.

(b) AUTHORITY TO AWARD.—

(1) IN GENERAL.—Subject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task order contract for procurement of advisory and assistance services.

(2) ONLY UNDER THIS SECTION.—The head of an executive agency may enter into a task order contract for advisory and assistance services only under this section.

(c) CONTRACT PERIOD.—

(1) CONTRACT NOT TO EXCEED 5 YEARS.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to the contract.

(2) WAIVER AUTHORITY TO EXTEND CONTRACT.—

(A) WHEN WAIVER MAY BE ISSUED.—The head of an executive agency may issue a waiver to extend a task order contract entered into under this section for a period not exceeding 10 years, through 5 one-year options, if the head of the agency determines in writing—

(i) that the contract provides engineering or technical services of such a unique and substantial technical nature that award of a new contract would be harmful to the continuity of the program for which the services are performed;

(ii) that award of a new contract would create a large disruption in services provided to the executive agency; and

(iii) that the executive agency would, through award of a new contract, endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

(B) DELEGATION.—The authority of the head of an executive agency under subparagraph (A) may be delegated only to the Chief Acquisition Officer of the agency (or the senior procurement executive in the case of an agency for which a Chief Acquisition Officer has not been appointed or designated under section 1702(a) of this title).

(C) REPORT.—Not later than April 1, 2007, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on advisory and assistance services. The report shall include the following information:

(i) The methods used by executive agencies to identify a contract as an advisory and assistance services contract, as defined in subsection (a).

(ii) The number of advisory and assistance services contracts awarded by each executive agency during the 5-year period preceding October 17, 2006.

(iii) The average annual expenditures by each executive agency for advisory and assistance services contracts.

(iv) The average length of advisory and assistance services contracts.

(v) The number of advisory and assistance services contracts recompeted and awarded to the previous award winner.

(D) PROHIBITION ON USE OF AUTHORITY BY EXECUTIVE AGENCIES IF REPORT NOT SUBMITTED.—The head of an executive agency may not issue a waiver under subparagraph (A) if the report required by subparagraph (C) is not submitted by April 1, 2007.

(E) TERMINATION OF AUTHORITY.—A waiver may not be issued under this paragraph after December 31, 2011.

(d) CONTENT OF NOTICE.—The notice required by section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

(1) SOLICITATION.—The solicitation shall include the information (regarding services) described in section 4103(b) of this title.

(2) CONTRACT.—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) MULTIPLE AWARDS.—

(1) AUTHORITY TO MAKE MULTIPLE AWARDS.—On the basis of one solicitation, the head of an executive agency may award separate task order contracts under this section for the same or similar services to 2 or more sources if the solicitation states that the head of the executive agency has the option to do so.

(2) CONTENT OF SOLICITATION.—In the case of a task order contract for advisory and assistance services to be entered into under this section, if the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the executive agency may also elect to award only one task order contract if the head of the executive agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation for which the head of the executive agency concerned determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) CONTRACT MODIFICATIONS.—

(1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than competitive procedures is authorized by an exception in section 3304(a) of this title and approved in accordance with section 3304(e) of this title, competitive procedures shall be used for making such a modification.

(3) NOTICE.—Notice regarding the modification shall be provided in accordance with section 1708 of this title and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) CONTRACT EXTENSIONS.—

(1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a contract entered into by the head of an executive agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the head of the executive agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

§ 4106. Orders

(a) APPLICATION.—This section applies to task and delivery order contracts entered into under sections 4103 and 4105 of this title.

(b) ACTIONS NOT REQUIRED FOR ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for the order under section 1708 of this title or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3304(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.—When multiple contracts are awarded under section 4103(d)(1)(B) or 4105(f) of this title, all contractors awarded the contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts, unless—

(1) the executive agency's need for the services or property ordered is of such unusual urgency that providing the opportunity to all of those contractors would result in unacceptable delays in fulfilling that need;

(2) only one of those contractors is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor to satisfy a minimum guarantee.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.—In the case of a task or

delivery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the executive agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting—

(A) the basis for the award; and

(B) the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title.

(e) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) PROTESTS.—

(1) PROTEST NOT AUTHORIZED.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of $10,000,000.

(2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(3) EFFECTIVE PERIOD.—This subsection shall be in effect for three years, beginning on the date that is 120 days after January 28, 2008.

(g) TASK AND DELIVERY ORDER OMBUDSMAN.—

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each executive agency who awards multiple task or delivery order contracts under section 4103(d)(1)(B) or 4105(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the executive agency's advocate for competition.

CHAPTER 43—ALLOWABLE COSTS

Sec.
4301. Definitions.
4302. Adjustment of threshold amount of covered contract.
4303. Effect of submission of unallowable costs.
4304. Specific costs not allowable.
4305. Required regulations.
4306. Applicability of regulations to subcontractors.
4307. Contractor certification.
4308. Penalties for submission of cost known to be unallowable.
4309. Burden of proof on contractor.
4310. Proceeding costs not allowable.

§ 4301. Definitions

In this chapter:

(1) COMPENSATION.—The term ''compensation'', for a fiscal year, means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(2) COVERED CONTRACT.—The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that the term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(3) FISCAL YEAR.—The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(4) SENIOR EXECUTIVE.—The term ''senior executive'', with respect to a contractor, means the 5 most highly compensated employees in management positions at each home office and each segment of the contractor.

§ 4302. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by 5, the amount set forth in section 4301(2) of this title shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An adjusted amount that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. If an amount is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

§ 4303. Effect of submission of unallowable costs

(a) INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST PRINCIPLE.—An executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued and if that proposal includes the submission of a cost that is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) UNALLOWABLE COST IN PROPOSAL.—If the executive agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the executive agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the Federal Government for the use of the amount which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If the executive agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of that contractor before the submission of that proposal, the executive agency shall assess a penalty against the contractor in an amount equal to 2 times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—An action of an executive agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of this title; and

(2) is appealable in the manner provided in section 7104(a) of this title.

§ 4304. Specific costs not allowable

(a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with those costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the Federal Government where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance those payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft that exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') that is—

(A) in an amount in excess of the normal severance pay paid by the contractor to an employee on termination of employment; and

(B) paid to the employee contingent on, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor

for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a Federal Government facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the Federal Government or a State, to the extent provided in section 4310 of this title.

(16) Costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that the compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator under section 1127 of this title.

(b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATIONALS.—

(1) EXECUTIVE AGENCY DETERMINATION.—Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, an executive agency, in awarding a covered contract, may waive the application of paragraphs (13) and (14) of subsection (a) to that contract if the executive agency determines that—

(A) the application of those provisions to that contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

(B) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(C) the payment of severance pay is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—An executive agency shall include in the solicitation for a covered contract a statement indicating—

(A) that a waiver has been granted under paragraph (1) for the contract; or

(B) whether the executive agency will consider granting a waiver and, if the executive agency will consider granting a waiver, the criteria to be used in granting the waiver.

(3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—An executive agency shall make the final determination whether to grant a waiver under paragraph (1) with respect to a covered contract before award of the contract.

(c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation implementing this chapter may establish appropriate definitions, exclusions, limitations, and qualifications. A submission by a contractor of costs that are incurred by the contractor and that are claimed to be allowable under Department of Energy management and operating contracts shall be considered a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued.

§ 4305. Required regulations

(a) IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Those provisions shall define in detail and in specific terms the costs that are unallowable, in whole or in part, under covered contracts.

(b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(1) Air shows.

(2) Membership in civic, community, and professional organizations.

(3) Recruitment.

(4) Employee morale and welfare.

(5) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(6) Community relations.

(7) Dining facilities.

(8) Professional and consulting services, including legal services.

(9) Compensation.

(10) Selling and marketing.

(11) Travel.

(12) Public relations.

(13) Hotel and meal expenses.

(14) Expense of corporate aircraft.

(15) Company-furnished automobiles.

(16) Advertising.

(17) Conventions.

(c) ADDITIONAL REQUIREMENTS.—

(1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—

(A) adequate documentation of those costs; and

(B) the opinion of the contract auditor on the allowability of those costs.

(2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, a contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of a contract auditor as questioned with respect to a proposal for settlement be resolved in a manner so that the amount of the individual questioned costs that are paid will be reflected in the settlement.

§ 4306. Applicability of regulations to subcontractors

The regulations referred to in sections 4304 and 4305(a) and (b) of this title shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of those regulations to all subcontractors of the covered contract.

§ 4307. Contractor certification

(a) CONTENT AND FORM.—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. The certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) WAIVER.—An executive agency may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of a contract if the agency—

(1) determines that it would be in the interest of the Federal Government to waive the certification; and

(2) states in writing the reasons for the determination and makes the determination available to the public.

§ 4308. Penalties for submission of cost known to be unallowable

The submission to an executive agency of a proposal for settlement of costs for any period after those costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that the cost is unallowable, is subject to section 287 of title 18 and section 3729 of title 31.

§ 4309. Burden of proof on contractor

In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Federal Government is in issue, the burden of proof is on the contractor to establish that those costs are reasonable.

§ 4310. Proceeding costs not allowable

(a) DEFINITIONS.—In this section:

(1) COSTS.—The term ''costs'', with respect to a proceeding, means all costs incurred by a contractor, whether before or after the commencement of the proceeding, including—

(A) administrative and clerical expenses;

(B) the cost of legal services, including legal services performed by an employee of the contractor;

(C) the cost of the services of accountants and consultants retained by the contractor; and

(D) the pay of directors, officers, and employees of the contractor for time devoted by those directors, officers, and employees to the proceeding.

(2) PENALTY.—The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(3) PROCEEDING.—The term ''proceeding'' includes an investigation.

(b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State are not allowable as reimbursable costs under a covered contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation; and

(2) results in a disposition described in subsection (c).

(c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in subsection (b).

(4) A final decision to do any of the following, by reason of the violation or failure referred to in subsection (b):

(A) Debar or suspend the contractor.

(B) Rescind or void the contract.

(C) Terminate the contract for default.

(5) A disposition of the proceeding by consent or compromise if the disposition could

have resulted in a disposition described in paragraph (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY FEDERAL GOVERNMENT.—In the case of a proceeding referred to in subsection (b) that is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the Federal Government, the costs incurred by the contractor in connection with the proceeding that are otherwise not allowable as reimbursable costs under subsection (b) may be allowed to the extent specifically provided in that agreement.

(e) COSTS SPECIFICALLY AUTHORIZED BY EXECUTIVE AGENCY IN PROCEEDING COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the executive agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with the proceeding as reimbursable costs if the executive agency determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of—

(1) a specific term or condition of the contract; or

(2) specific written instructions of the executive agency.

(f) OTHER ALLOWABLE COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the Federal Government or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if the costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) AMOUNT OF ALLOWABLE COSTS.—

(A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that the costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the Federal Government as a party, and other factors as may be appropriate.

(3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a proceeding referred to in paragraph (1), contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) the proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of the other proceeding are not allowable under subsection (b).

CHAPTER 45—CONTRACT FINANCING

Sec.
4501. Authority of executive agency.
4502. Payment.
4503. Security for advance payments.
4504. Conditions for progress payments.
4505. Payments for commercial items.
4506. Action in case of fraud.

§ 4501. Authority of executive agency

An executive agency may—

(1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

§ 4502. Payment

(a) BASIS FOR PAYMENT.—When practicable, payments under section 4501 of this title shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) PAYMENT AMOUNT.—Payments made under section 4501 of this title may not exceed the unpaid contract price.

§ 4503. Security for advance payments

Advance payments under section 4501 of this title may be made only on adequate security and a determination by the agency head that to do so would be in the public interest. The security may be in the form of a lien in favor of the Federal Government on the property contracted for, on the balance in an account in which the payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien shall be paramount to all other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the Federal Government.

§ 4504. Conditions for progress payments

(a) PAYMENT COMMENSURATE WITH WORK.—The executive agency shall ensure that a payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for those payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide information and evidence the executive agency determines is necessary to permit the executive agency to carry out this subsection.

(b) LIMITATION.—The executive agency shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under the contract as long as the executive agency has not made the contractual terms, specifications, and price definite.

(c) APPLICATION.—This section applies to a contract in an amount greater than $25,000.

§ 4505. Payments for commercial items

(a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 4501 of this title for commercial items may be made under terms and conditions that the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the Federal Government.

(b) SECURITY FOR PAYMENTS.—The head of the executive agency shall obtain adequate security for the payments. If the security is in the form of a lien in favor of the Federal Government, the lien is paramount to all other liens and is effective immediately on the first payment, without filing, notice, or other action by the Federal Government.

(c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section 4501 of this title for commercial items may include payments, in a total amount not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sections 4503 and 4504 of this title need not be applied if they would be inconsistent, as determined by the head of the executive agency, with commercial terms and conditions pursuant to this section.

§ 4506. Action in case of fraud

(a) DEFINITION.—In this section, the term ''remedy coordination official'', with respect to an executive agency, means the individual or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the executive agency reduce or suspend further payments to that contractor.

(c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an executive agency receiving a recommendation under subsection (b) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. On making an affirmative determination, the head of the executive agency may reduce or suspend further payments to the contractor under the contract.

(d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduction or suspension of payments by an executive agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the Federal Government resulting from the fraud.

(e) WRITTEN JUSTIFICATION.—A written justification for each decision of the head of an executive agency whether to reduce or suspend payments under subsection (c), and for each recommendation received by the executive agency in connection with the decision, shall be prepared and be retained in the files of the executive agency.

(f) NOTICE.—The head of each executive agency shall prescribe procedures to ensure that, before the head of the executive agency decides to reduce or suspend payments in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the executive agency in response to the proposed reduction or suspension.

(g) REVIEW.—Not later than 180 days after the date on which the head of an executive agency reduces or suspends payments to a contractor under subsection (c), the remedy coordination official of the executive agency shall—

(1) review the determination of fraud on which the reduction or suspension is based; and

(2) transmit a recommendation to the head of the executive agency whether the suspension or reduction should continue.

(h) REPORT.—The head of each executive agency who receives recommendations made by the remedy coordination official of the executive agency to reduce or suspend payments under subsection (c) during a fiscal year shall prepare for that year a report that contains the recommendations, the actions taken on the recommendations and the reasons for those actions, and an assessment of the effects of those actions on the Federal Government. The report shall be available to any Member of Congress on request.

(i) RESTRICTION ON DELEGATION.—The head of an executive agency may not delegate responsibilities under this section to an individual in a position below level IV of the Executive Schedule.

CHAPTER 47—MISCELLANEOUS

Sec.
4701. Determinations and decisions.
4702. Prohibition on release of contractor proposals.

4703. Validation of proprietary data restrictions.
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4709. Implementation of electronic commerce capability.
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§ 4701. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—

(1) IN GENERAL.—Determinations and decisions required to be made under this division by the head of an executive agency or provided in this division or chapters 1 to 11 of title 40 to be made by the Administrator of General Services or other agency head may be made for an individual purchase or contract or, except for determinations or decisions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and 3308, chapter 37, and section 4702 of this title or to the extent expressly prohibited by another law, for a class of purchases or contracts.

(2) DELEGATION.—Except as provided in section 3304(a)(7) of this title, and except as provided in section 121(d)(1) and (2) of title 40 with respect to the Administrator of General Services, the agency head, in the discretion and subject to the direction of the agency head, may delegate powers provided by this division or chapters 1 to 11 of title 40, including the making of determinations and decisions described in paragraph (1), to other officers or officials of the agency.

(3) FINALITY.—The determinations and decisions are final.

(b) WRITTEN FINDINGS.—

(1) BASIS FOR CERTAIN DETERMINATIONS.—Each determination or decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written finding by the individual making the determination or decision. A finding under section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the determination or decision.

(2) FINALITY.—Each finding referred to in paragraph (1) is final.

(3) MAINTAINING COPIES OF FINDINGS.—The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by an individual in that executive agency. The period begins on the date of the determination or decision to which the finding relates.

§ 4702. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term ''proposal'' means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—A proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5.

(c) NONAPPLICATION.—Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

§ 4703. Validation of proprietary data restrictions

(a) CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.—A contract for property or services entered into by an executive agency that provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction the contractor or subcontractor asserts on the right of the Federal Government to use the data; and

(2) the contracting officer may review the validity of a restriction the contractor or subcontractor asserts under the contract on the right of the Federal Government to use technical data furnished to the Federal Government under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the Federal Government would make it impracticable to procure the item competitively at a later time.

(b) CHALLENGE OF RESTRICTION.—If after a review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. The notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) ADDITIONAL TIME FOR RESPONSES.—If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, the contracting officer shall provide appropriate additional time to adequately permit the justification to be submitted.

(d) MULTIPLE CHALLENGES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the earliest challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each challenge.

(e) DECISION ON VALIDITY OF ASSERTED RESTRICTION.—

(1) NO RESPONSE SUBMITTED.—The contracting officer shall issue a decision pertaining to the validity of the asserted restriction if the contractor or subcontractor does not submit a response under subsection (b).

(2) RESPONSE SUBMITTED.—Within 60 days of receipt of a justification submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) CLAIM DEEMED CLAIM WITHIN CHAPTER 71.—A claim pertaining to the validity of the asserted restriction that is submitted in writing to a contracting officer by a contractor or subcontractor at any tier is deemed to be a claim within the meaning of chapter 71 of this title.

(g) FINAL DISPOSITION OF CHALLENGE.—

(1) CHALLENGE IS SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is sustained on final disposition—

(A) the restriction is cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, is liable to the Federal Government for payment of the cost to the Federal Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the Federal Government in challenging the asserted restriction, unless special circumstances would make the payment unjust.

(2) CHALLENGE NOT SUSTAINED.—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is not sustained on final disposition, the Federal Government—

(A) continues to be bound by the restriction; and

(B) is liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Federal Government is found not to be made in good faith.

§ 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government

(a) CONTRACT RESTRICTIONS.—Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into an agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the Federal Government of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales described in paragraph (1) to the Federal Government.

(b) RIGHTS UNDER LAW PRESERVED.—This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.

(d) INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER PURCHASERS.—An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under the contract that restricts sales by the subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the Federal Government in violation of the provision included in the contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of the commercial items from that subcontractor.

§ 4705. Protection of contractor employees from reprisal for disclosure of certain information

(a) DEFINITIONS.—In this section:

(1) CONTRACT.—The term ''contract'' means a contract awarded by the head of an executive agency.

(2) CONTRACTOR.—The term ''contractor'' means a person awarded a contract with an executive agency.

(3) INSPECTOR GENERAL.—The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for, or negotiation of, a contract).

(c) INVESTIGATION OF COMPLAINTS.—An individual who believes that the individual has been subjected to a reprisal prohibited by subsection (b) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, on completion of the investigation, submit a report of the findings of the investigation to the individual, the contractor concerned, and the head of the agency. If the executive agency does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

(d) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) ACTIONS CONTRACTOR MAY BE ORDERED TO TAKE.—If the head of an executive agency determines that a contractor has subjected an individual to a reprisal prohibited by subsection (b), the head of the executive agency may take one or more of the following actions:

(A) ABATEMENT.—Order the contractor to take affirmative action to abate the reprisal.

(B) REINSTATEMENT.—Order the contractor to reinstate the individual to the position that the individual held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the individual in that position if the reprisal had not been taken.

(C) PAYMENT.—Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that the complainant reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) ENFORCEMENT ORDER.—When a contractor fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of the order in the United States district court for a district in which the reprisal was found to have occurred. In an action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) REVIEW OF ENFORCEMENT ORDER.—A person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. A petition seeking review must be filed no more than 60 days after the head of the agency issues the order. Review shall conform to chapter 7 of title 5.

(e) SCOPE OF SECTION.—This section does not—

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

§ 4706. Examination of facilities and records of contractor

(a) DEFINITION.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of those subcontracts, under a contract referred to in subparagraph (A).

(2) EXAMINATION OF RECORDS.—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(c) SUBPOENA POWER.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be delegated.

(4) REPORT.—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) AUTHORITY OF COMPTROLLER GENERAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller General may examine records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding the transactions.

(2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the concurrence of the Comptroller General or the designee of the Comptroller General, that applying paragraph (1) to the contract or subcontract would not be in the public interest. The concurrence of the Comptroller General or the designee is not required when—

(A) the contractor or subcontractor is—

(i) the government of a foreign country or an agency of that government; or

(ii) precluded by the laws of the country involved from making its records available for examination; and

(B) the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) does not require a contractor or subcontractor to create or maintain a record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another law.

(e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—An executive agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by another department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(f) EXPIRATION OF AUTHORITY.—The authority of an executive agency under subsection (b) and the authority of the Comptroller General under subsection (d) shall expire 3 years after final payment under the contract or subcontract.

(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is not greater than the simplified acquisition threshold.

(h) ELECTRONIC FORM ALLOWED.—This section does not preclude a contractor from duplicating or storing original records in electronic form.

(i) ORIGINAL RECORDS NOT REQUIRED.—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) INDEXING SYSTEM MAINTAINED.—The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) ORIGINAL RECORDS RETAINED.—The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

§ 4707. Remission of liquidated damages

When a contract made on behalf of the Federal Government by the head of a Federal

agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.

§ 4708. Payment of reimbursable indirect costs in cost-type research and development contracts with educational institutions

A cost-type research and development contract (including a grant) with a university, college, or other educational institution may provide for payment of reimbursable indirect costs on the basis of predetermined fixed-percentage rates applied to the total of the reimbursable direct costs incurred or to an element of the total of the reimbursable direct costs incurred.

§ 4709. Implementation of electronic commerce capability

(a) ROLE OF HEAD OF EXECUTIVE AGENCY.—The head of each executive agency shall implement the electronic commerce capability required by section 2301 of this title. In implementing the capability, the head of an executive agency shall consult with the Administrator.

(b) PROGRAM MANAGER.—The head of each executive agency shall designate a program manager to implement the electronic commerce capability for the agency. The program manager reports directly to an official at a level not lower than the senior procurement executive designated for the agency under section 1702(c) of this title.

§ 4710. Limitations on tiering of subcontractors

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) REGULATIONS.—For executive agencies other than the Department of Defense, the Federal Acquisition Regulation shall—

(1) require contractors to minimize the excessive use of subcontractors, or of tiers of subcontractors, that add no or negligible value; and

(2) ensure that neither a contractor nor a subcontractor receives indirect costs or profit on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value (but not to limit charges for indirect costs and profit based on the direct costs of managing lower-tier subcontracts).

(c) COVERED CONTRACTS.—This section applies to any cost-reimbursement type contract or task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 134 of this title).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the ability of the Department of Defense to implement more restrictive limitations on the tiering of subcontractors.

(e) APPLICABILITY.—The Department of Defense shall continue to be subject to guidance on limitations on tiering of subcontractors issued by the Department of Defense pursuant to section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2324 note).

§ 4711. Linking of award and incentive fees to acquisition outcomes

(a) DEFINITION.—In this section, the term ''executive agency'' has the same meaning given in section 133 of this title.

(b) GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—The Federal Acquisition Regulation shall provide executive agencies other than the Department of Defense with instructions, including definitions, on the appropriate use of award and incentive fees in Federal acquisition programs.

(c) ELEMENTS.—The regulations under subsection (b) shall—

(1) ensure that all new contracts using award fees link the fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be ''excellent'' or ''superior'' and the percentage of the available award fee which contractors should be paid for the performance;

(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be ''acceptable'', ''average'', ''expected'', ''good'', or ''satisfactory'';

(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

(8) ensure that each executive agency—

(A) collects relevant data on award and incentive fees paid to contractors; and

(B) has mechanisms in place to evaluate the data on a regular basis;

(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

(d) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 10 U.S.C. 2302 note).

Subtitle II—Other Advertising and Contract Provisions

Chapter	Sec.
61. Advertising	**6101**
63. General Contract Provisions	**6301**
65. Contracts for Materials, Supplies, Articles, and Equipment Exceeding $10,000	**6501**
67. Service Contract Labor Standards	**6701**

CHAPTER 61—ADVERTISING

Sec.
6101. Advertising requirement for Federal Government purchases and sales.
6102. Exceptions from advertising requirement.
6103. Opening of bids.

§ 6101. Advertising requirement for Federal Government purchases and sales

(a) DEFINITIONS.—In this section—

(1) APPROPRIATION.—The term ''appropriation'' includes amounts made available by legislation under section 9104 of title 31.

(2) FEDERAL GOVERNMENT.—The term ''Federal Government'' includes the government of the District of Columbia.

(b) PURCHASES.—

(1) IN GENERAL.—Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Federal Government may be made or entered into only after advertising for proposals for a sufficient time.

(2) LIMITATIONS ON APPLICABILITY.—Paragraph (1) does not apply when—

(A) the amount involved in any one case does not exceed $25,000;

(B) public exigencies require the immediate delivery of articles or performance of services;

(C) only one source of supply is available and the Federal Government purchasing or contracting officer so certifies; or

(D) services are required to be performed by a contractor in person and are—

(i) of a technical and professional nature; or

(ii) under Federal Government supervision and paid for on a time basis.

(c) SALES.—Except when otherwise authorized by law or when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Federal Government are governed by the requirements of this section for advertising.

(d) APPLICATION TO WHOLLY OWNED GOVERNMENT CORPORATIONS.—For wholly owned Government corporations, this section applies only to administrative transactions.

§ 6102. Exceptions from advertising requirement

(a) AMERICAN BATTLE MONUMENTS COMMISSION.—Section 6101 of this title does not apply to the American Battle Monuments Commission with respect to leases in foreign countries for office or garage space.

(b) BUREAU OF INTERPARLIAMENTARY UNION FOR PROMOTION OF INTERNATIONAL ARBITRATION.—Section 6101 of this title does not apply to the Bureau of Interparliamentary Union for Promotion of International Arbitration with respect to necessary stenographic reporting services by contract.

(c) DEPARTMENT OF STATE.—Section 6101 of this title does not apply to the Department of State when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(d) INTERNATIONAL COMMITTEE OF AERIAL LEGAL EXPERTS.—Section 6101 of this title does not apply to the International Committee of Aerial Legal Experts with respect to necessary stenographic and other services by contract.

(e) ARCHITECT OF THE CAPITOL.—The purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market according to common business practice, without compliance with section 6101 of this title, when the aggregate amount of the purchase or the service does not exceed $25,000 in any instance.

(f) FOREST PRODUCTS FROM INDIAN RESERVATIONS.—Lumber and other forest products produced by Indian enterprises from forests on Indian reservations may be sold under regulations the Secretary of the Interior prescribes, without compliance with section 6101 of this title.

(g) HOUSE OF REPRESENTATIVES.—Section 6101 of this title does not apply to purchases and contracts for supplies or services for any office of the House of Representatives.

(h) CONGRESSIONAL BUDGET OFFICE.—The Director of the Congressional Budget Office may enter into agreements or contracts without regard to section 6101 of this title.

§ 6103. Opening of bids

Whenever proposals for supplies have been solicited, the parties responding to the solicitation shall be notified of the time and

place of the opening of the bids, and be permitted to be present either in person or by attorney. A record of each bid shall be made at the time and place of the opening of the bids.

CHAPTER 63—GENERAL CONTRACT PROVISIONS

Sec.
6301. Authorization requirement.
6302. Contracts for fuel made by Secretary of the Army.
6303. Certain contracts limited to appropriated amounts.
6304. Certain contracts limited to one-year term.
6305. Prohibition on transfer of contract and certain allowable assignments.
6306. Prohibition on Members of Congress making contracts with Federal Government.
6307. Contracts with Federal Government-owned establishments and availability of appropriations.
6308. Contracts for transportation of Federal Government securities.
6309. Honorable discharge certificate in lieu of birth certificate.

§ 6301. Authorization requirement

(a) IN GENERAL.—A contract or purchase on behalf of the Federal Government shall not be made unless the contract or purchase is authorized by law or is under an appropriation adequate to its fulfillment.

(b) EXCEPTION.—

(1) DEFINITION.—In this subsection, the term ''defined Secretary'' means—

(A) the Secretary of Defense; or

(B) the Secretary of Homeland Security with respect to the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(2) IN GENERAL.—Subsection (a) does not apply to a contract or purchase made by a defined Secretary for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.

(3) CURRENT YEAR LIMITATION.—A contract or purchase made by a defined Secretary under this subsection may not exceed the necessities of the current year.

(4) REPORTS.—The defined Secretary shall immediately advise Congress when authority is exercised under this subsection. The defined Secretary shall report quarterly on the estimated obligations incurred pursuant to the authority granted in this subsection.

(c) SPECIAL RULE FOR PURCHASE OF LAND.—Land may not be purchased by the Federal Government unless the purchase is authorized by law.

§ 6302. Contracts for fuel made by Secretary of the Army

The Secretary of the Army, when the Secretary believes it is in the interest of the United States, may enter into contracts and incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year. Amounts appropriated for the fiscal year in which the contract is made or amounts appropriated or which may be appropriated for the following fiscal year may be used to pay for supplies delivered under a contract made pursuant to this section.

§ 6303. Certain contracts limited to appropriated amounts

A contract to erect, repair, or furnish a public building, or to make any public improvement, shall not be made on terms requiring the Federal Government to pay more than the amount specifically appropriated for the activity covered by the contract.

§ 6304. Certain contracts limited to one-year term

Except as otherwise provided, an executive department shall not make a contract for stationery or other supplies for a term longer than one year from the time the contract is made.

§ 6305. Prohibition on transfer of contract and certain allowable assignments

(a) GENERAL PROHIBITION ON TRANSFER OF CONTRACTS.—The party to whom the Federal Government gives a contract or order may not transfer the contract or order, or any interest in the contract or order, to another party. A purported transfer in violation of this subsection annuls the contract or order so far as the Federal Government is concerned, except that all rights of action for breach of contract are reserved to the Federal Government.

(b) ASSIGNMENT.—

(1) IN GENERAL.—Notwithstanding subsection (a) and in accordance with the requirements of this subsection, amounts due from the Federal Government under a contract may be assigned to a bank, trust company, Federal lending agency, or other financing institution.

(2) MINIMUM AMOUNT.—This subsection applies only to a contract under which the aggregate amounts due from the Federal Government total at least $1,000.

(3) ACCORD WITH CONTRACT TERMS.—Assignment may not be made under this subsection if the contract forbids the assignment.

(4) FULL BALANCE DUE.—Unless otherwise expressly permitted by the contract, an assignment under this subsection must cover the balance of all amounts due from the Federal Government under the contract.

(5) SINGLE ASSIGNMENT.—Unless otherwise expressly permitted by the contract, an assignment under this subsection may not be made to more than one party or be subject to further assignment, except that assignment may be made to one party as agent or trustee for 2 or more parties participating in the financing.

(6) WRITTEN NOTICE.—The assignee of an assignment under this subsection shall file written notice of the assignment and a true copy of the instrument of assignment with—

(A) the contracting officer or head of the officer's department or agency;

(B) the surety on any bond connected with the contract; and

(C) the disbursing officer, if any, designated in the contract to make payment.

(7) VALIDITY.—Notwithstanding any law to the contrary governing the validity of assignments, an assignment under this subsection is a valid assignment for all purposes.

(8) NO REFUND TO COVER ASSIGNOR'S LIABILITY.—The assignee of an assignment under this subsection is not liable to make any refund to the Federal Government because of an assignor's liability to the Federal Government, whether that liability arises from the contract or independently.

(9) AVOIDING REDUCTION OR SETOFF WITH CERTAIN CONTRACTS.—

(A) CONTRACT PROVISION.—A contract of the Department of Defense, the General Services Administration, the Department of Energy, or another department or agency of the Federal Government designated by the President may, on a determination of need by the President, provide or be amended without consideration to provide that payments made to an assignee under the contract are not subject to reduction or setoff. Each determination of need by the President under this subparagraph shall be published in the Federal Register.

(B) CARRYING OUT CONTRACT PROVISION.—When a ''no reduction or setoff'' provision as described in subparagraph (A) is included in a contract, payments to the assignee are not subject to reduction or setoff for an assignor's liability arising—

(i) independently of the contract;

(ii) on account of renegotiation under a renegotiation statute or under a statutory renegotiation article in the contract;

(iii) on account of fines;

(iv) on account of penalties; or

(v) on account of taxes, social security contributions, or the withholding or non-withholding of taxes or social security contributions, whether arising from or independently of the contract.

(C) LIMITATION.—Subparagraph (B)(iv) does not apply to amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract.

§ 6306. Prohibition on Members of Congress making contracts with Federal Government

(a) IN GENERAL.—A Member of Congress may not enter into or benefit from a contract or agreement or any part of a contract or agreement with the Federal Government.

(b) EXEMPTIONS.—

(1) IN GENERAL.—Subsection (a) does not apply to contracts that the Secretary of Agriculture may enter into with farmers.

(2) CERTAIN ACTS.—Subsection (a) does not apply to a contract entered into under—

(A) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.);

(B) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(C) the Home Owners' Loan Act (12 U.S.C. 1461 et seq.).

(3) PUBLIC RECORD.—An exemption under this subsection shall be made a matter of public record.

§ 6307. Contracts with Federal Government-owned establishments and availability of appropriations

An order or contract placed with a Federal Government-owned establishment for work, material, or the manufacture of material pertaining to an approved project is deemed to be an obligation in the same manner that a similar order or contract placed with a commercial manufacturer or private contractor is an obligation. Appropriations remain available to pay an obligation to a Federal Government-owned establishment just as appropriations remain available to pay an obligation to a commercial manufacturer or private contractor.

§ 6308. Contracts for transportation of Federal Government securities

When practicable, a contract for transporting bullion, cash, or securities of the Federal Government shall be awarded to the lowest responsible bidder after notice to all parties with means of transportation.

§ 6309. Honorable discharge certificate in lieu of birth certificate

(a) IN GENERAL.—An employer described in subsection (b) may not deny employment, on account of failure to produce a birth certificate, to an individual who submits, in lieu of the birth certificate, an honorable discharge certificate (or certificate issued in lieu of an honorable discharge certificate) from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless the honorable discharge certificate shows on its face that the individual may have been an alien at the time of its issuance.

(b) EMPLOYERS TO WHICH SECTION APPLIES.—An employer referred to in subsection (a) is an employer—

(1) engaged in—

(A) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or

(B) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility; and

(2) engaged in the activity described in paragraph (1) under—

(A) a contract with the Federal Government; or

(B) any contract that the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Secretary of the Department in which the Coast Guard is operating certifies to the employer to be necessary to the national defense.

CHAPTER 65—CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $10,000

Sec.
6501. Definitions.
6502. Required contract terms.
6503. Breach or violation of required contract terms.
6504. Three-year prohibition on new contracts in case of breach or violation.
6505. Exclusions.
6506. Administrative provisions.
6507. Hearing authority and procedures.
6508. Authority to make exceptions.
6509. Other procedures.
6510. Manufacturers and regular dealers.
6511. Effect on other law.

§ 6501. Definitions

In this chapter—

(1) AGENCY OF THE UNITED STATES.—The term ''agency of the United States'' means an executive department, independent establishment, or other agency or instrumentality of the United States, the District of Columbia, or a corporation in which all stock is beneficially owned by the Federal Government.

(2) PERSON.—The term ''person'' includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

§ 6502. Required contract terms

A contract made by an agency of the United States for the manufacture or furnishing of materials, supplies, articles, or equipment, in an amount exceeding $10,000, shall include the following representations and stipulations:

(1) MINIMUM WAGES TO BE PAID.—All individuals employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract will be paid, without subsequent deduction or rebate on any account, not less than the prevailing minimum wages, as determined by the Secretary, for individuals employed in similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract, except that this paragraph applies only to purchases or contracts relating to industries that have been the subject matter of a determination by the Secretary.

(2) MAXIMUM NUMBER OF HOURS TO BE WORKED IN A WEEK.—No individual employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract shall be permitted to work in excess of 40 hours in any one week, except that this paragraph does not apply to an employer who has entered into an agreement with employees pursuant to paragraph (1) or (2) of section 7(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(b)(1) or (2)).

(3) INELIGIBLE EMPLOYEES.—No individual under 16 years of age and no incarcerated individual will be employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract, except that this section, or other law or executive order containing similar prohibitions against the purchase of goods by the Federal Government, does not apply to convict labor that satisfies the conditions of section 1761(c) of title 18.

(4) STANDARDS OF PLACES AND WORKING CONDITIONS WHERE CONTRACT PERFORMED.—No part of the contract will be performed, and no materials, supplies, articles, or equipment will be manufactured or fabricated under the contract, in plants, factories, buildings, or surroundings, or under working conditions, that are unsanitary, hazardous, or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part of the work is to be performed is prima facie evidence of compliance with this paragraph.

§ 6503. Breach or violation of required contract terms

(a) APPLICABLE BREACH OR VIOLATION.—This section applies in case of breach or violation of a representation or stipulation included in a contract under section 6502 of this title.

(b) LIQUIDATED DAMAGES.—In addition to damages for any other breach of the contract, the party responsible for a breach or violation described in subsection (a) is liable to the Federal Government for the following liquidated damages:

(1) An amount equal to the sum of $10 per day for each individual under 16 years of age and each incarcerated individual knowingly employed in the performance of the contract.

(2) An amount equal to the sum of each underpayment of wages due an employee engaged in the performance of the contract, including any underpayments arising from deductions, rebates, or refunds.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to the Federal Government being entitled to damages described in subsection (b), the agency of the United States that made the contract may cancel the contract and make open-market purchases or make other contracts for the completion of the original contract, charging any additional cost to the original contractor.

(d) RECOVERY OF AMOUNTS DUE.—An amount due the Federal Government because of a breach or violation described in subsection (a) may be withheld from any amounts owed the contractor under any contract under section 6502 of this title or may be recovered in a suit brought by the Attorney General.

(e) EMPLOYEE REIMBURSEMENT FOR UNDERPAYMENT OF WAGES.—An amount withheld or recovered under subsection (d) that is based on an underpayment of wages as described in subsection (b)(2) shall be held in a special deposit account. On order of the Secretary, the amount shall be paid directly to the underpaid employee on whose account the amount was withheld or recovered. However, an employee's claim for payment under this subsection may be entertained only if made within one year from the date of actual notice to the contractor of the withholding or recovery.

§ 6504. Three-year prohibition on new contracts in case of breach or violation

(a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency of the United States a list containing the names of persons found by the Secretary to have breached or violated a representation or stipulation included in a contract under section 6502 of this title.

(b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise, a contract described in section 6502 of this title may not be awarded to a person named on the list under subsection (a), or to a firm, corporation, partnership, or association in which the person has a controlling interest, until 3 years have elapsed from the date of the determination by the Secretary that a breach or violation occurred.

§ 6505. Exclusions

(a) ITEMS AVAILABLE IN THE OPEN MARKET.—This chapter does not apply to the purchase of materials, supplies, articles, or equipment that may usually be bought in the open market.

(b) PERISHABLES AND AGRICULTURAL PRODUCTS.—This chapter does not apply to any of the following:

(1) Perishables, including dairy, livestock and nursery products.

(2) Agricultural or farm products processed for first sale by the original producers.

(3) Contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or products of agricultural commodities.

(c) CARRIAGE OF FREIGHT OR PERSONNEL.—This chapter may not be construed to apply to—

(1) the carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect; or

(2) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

§ 6506. Administrative provisions

(a) IN GENERAL.—The Secretary shall administer this chapter.

(b) REGULATIONS.—The Secretary may make, amend, and rescind regulations as necessary to carry out this chapter.

(c) USE OF GOVERNMENT OFFICERS AND EMPLOYEES.—The Secretary shall use Federal officers and employees and, with a State's consent, State and local officers and employees as the Secretary finds necessary to assist in the administration of this chapter.

(d) APPOINTMENTS.—The Secretary shall appoint an administrative officer and attorneys, experts, and other employees from time to time as the Secretary finds necessary for the administration of this chapter. The appointments are subject to chapter 51 and subchapter III of chapter 53 of title 5 and other law applicable to the employment and compensation of officers and employees of the Federal Government.

(e) INVESTIGATIONS.—The Secretary, or an authorized representative of the Secretary, may make investigations and findings as provided in this chapter and may, in any part of the United States, prosecute an inquiry necessary to carry out this chapter.

§ 6507. Hearing authority and procedures

(a) RECORD AND HEARING REQUIREMENTS FOR WAGE DETERMINATIONS.—A wage determination under section 6502(1) of this title shall be made on the record after opportunity for a hearing.

(b) AUTHORITY TO HOLD HEARINGS.—The Secretary or an impartial representative designated by the Secretary may hold hearings when there is a complaint of breach or violation of a representation or stipulation included in a contract under section 6502 of this title. The Secretary may initiate hearings on the Secretary's own motion or on the application of a person affected by the ruling of an agency of the United States relating to a proposal or contract under this chapter.

(c) ORDERS TO COMPEL TESTIMONY.—The Secretary or an impartial representative designated by the Secretary may issue orders requiring witnesses to attend hearings held under this section and to produce evidence and testify under oath. Witnesses shall

be paid fees and mileage at the same rates as witnesses in courts of the United States.

(d) ENFORCEMENT OF ORDERS.—If a person refuses or fails to obey an order issued under subsection (c), the Secretary or an impartial representative designated by the Secretary may bring an action to enforce the order in a district court of the United States or in the district court of a territory or possession of the United States. A court has jurisdiction to enforce the order if the inquiry is being carried out within the court's judicial district or if the person is found or resides or transacts business within the court's judicial district. The court may issue an order requiring the person to obey the order issued under subsection (c), and the court may punish any further refusal or failure as contempt of court.

(e) FINDINGS OF FACT.—After notice and a hearing, the Secretary or an impartial representative designated by the Secretary shall make findings of fact. The findings are conclusive for agencies of the United States. If supported by a preponderance of the evidence, the findings are conclusive in any court of the United States.

(f) DECISIONS.—The Secretary or an impartial representative designated by the Secretary may make decisions, based on findings of fact, that are considered necessary to enforce this chapter.

§ 6508. Authority to make exceptions

(a) DUTY OF THE SECRETARY TO MAKE EXCEPTIONS.—When the head of an agency of the United States makes a written finding that the inclusion of representations or stipulations under section 6502 of this title in a proposal or contract will seriously impair the conduct of Federal Government business, the Secretary shall make exceptions, in specific cases or otherwise, when justice or the public interest will be served.

(b) AUTHORITY OF THE SECRETARY TO MODIFY EXISTING CONTRACTS.—When an agency of the United States and a contractor jointly recommend, the Secretary may modify the terms of an existing contract with respect to minimum wages and maximum hours of labor as the Secretary finds necessary and proper in the public interest or to prevent injustice and undue hardship.

(c) AUTHORITY OF THE SECRETARY TO ALLOW LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe regulations to allow reasonable variations, tolerances, and exemptions in the application of this chapter to contractors, including with respect to minimum wages and maximum hours of labor.

(d) RATE OF PAY FOR OVERTIME.—When the Secretary permits an increase in the maximum hours of labor stipulated in a contract, the Secretary shall set a rate of pay for overtime. The overtime rate must be at least one and one-half times the basic hourly rate.

(e) AUTHORITY OF THE PRESIDENT TO SUSPEND.—The President may suspend any of the representations and stipulations contained in section 6502 of this title whenever, in the President's judgment, suspension is in the public interest.

§ 6509. Other procedures

(a) APPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—Notwithstanding section 553 of title 5, subchapter II of chapter 5 and chapter 7 of title 5 are applicable in the administration of sections 6501 to 6507 and 6511 of this title.

(b) JUDICIAL REVIEW IN GENERAL.—Notwithstanding the inclusion of representations and stipulations in a contract under section 6502 of this title, an interested person has the right of judicial review of any legal question which might otherwise be raised, including wage determinations and the interpretation of the terms ''locality'' and ''open market''.

(c) JUDICIAL REVIEW OF WAGE DETERMINATIONS.—A person adversely affected or aggrieved by a wage determination under section 6502(1) of this title has the right of judicial review of the determination, or of the applicability of the determination, within 90 days after the determination is made, in the manner provided by chapter 7 of title 5. A person adversely affected or aggrieved by a wage determination is deemed to include a person in an industry to which the determination applies that is a supplier of materials, supplies, articles, or equipment that are purchased or intended to be purchased by the Federal Government from any source.

§ 6510. Manufacturers and regular dealers

(a) PRESCRIBING STANDARDS.—The Secretary may prescribe, in regulations, standards for determining whether a contractor is a manufacturer or regular dealer with respect to materials, supplies, articles, or equipment to be manufactured or furnished under, or used in the performance of, a contract entered into by an agency of the United States.

(b) JUDICIAL REVIEW.—An interested person has the right of judicial review of any legal question relating to interpretation of the terms ''regular dealer'' and ''manufacturer'' as defined pursuant to subsection (a).

§ 6511. Effect on other law

This chapter may not be construed to modify or amend the following provisions:

(1) Chapter 83 of this title.

(2) Sections 3141 to 3144, 3146, and 3147 of title 40.

(3) Chapter 307 of title 18.

CHAPTER 67—SERVICE CONTRACT LABOR STANDARDS

Sec.
6701. Definitions.
6702. Contracts to which this chapter applies.
6703. Required contract terms.
6704. Limitation on minimum wage.
6705. Violations.
6706. Three-year prohibition on new contracts in case of violation.
6707. Enforcement and administration of chapter.

§ 6701. Definitions

In this chapter:

(1) COMPENSATION.—The term ''compensation'' means any of the payments or fringe benefits described in section 6703 of this title.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(3) SERVICE EMPLOYEE.—The term ''service employee''—

(A) means an individual engaged in the performance of a contract made by the Federal Government and not exempted under section 6702(b) of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States;

(B) includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor; but

(C) does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations.

(4) UNITED STATES.—The term ''United States''—

(A) includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. §1331 et seq.), American Samoa, Guam, Wake Island, and Johnston Island; but

(B) does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

§ 6702. Contracts to which this chapter applies

(a) IN GENERAL.—Except as provided in subsection (b), this chapter applies to any contract or bid specification for a contract, whether negotiated or advertised, that—

(1) is made by the Federal Government or the District of Columbia;

(2) involves an amount exceeding $2,500; and

(3) has as its principal purpose the furnishing of services in the United States through the use of service employees.

(b) EXEMPTIONS.—This chapter does not apply to—

(1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works;

(2) any work required to be done in accordance with chapter 65 of this title;

(3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(5) a contract for public utility services, including electric light and power, water, steam, and gas;

(6) an employment contract providing for direct services to a Federal agency by an individual; and

(7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

§ 6703. Required contract terms

A contract, and bid specification for a contract, to which this chapter applies under section 6702 of this title shall contain the following terms:

(1) MINIMUM WAGE.—The contract and bid specification shall contain a provision specifying the minimum wage to be paid to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative, in accordance with prevailing rates in the locality, or, where a collective-bargaining agreement covers the service employees, in accordance with the rates provided for in the agreement, including prospective wage increases provided for in the agreement as a result of arm's length negotiations. In any case the minimum wage may not be less than the minimum wage specified in section 6704 of this title.

(2) FRINGE BENEFITS.—The contract and bid specification shall contain a provision specifying the fringe benefits to be provided to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary's authorized representative to be prevailing in the locality, or, where a collective-bargaining agreement covers the service employees, to be provided for under the agreement, including prospective fringe benefit increases provided for in the agreement as a result of arm's-length negotiations. The fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs

and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under regulations established by the Secretary.

(3) WORKING CONDITIONS.—The contract and bid specification shall contain a provision specifying that no part of the services covered by this chapter may be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to provide the services.

(4) NOTICE.—The contract and bid specification shall contain a provision specifying that on the date a service employee begins work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.—The contract and bid specification shall contain a statement of the rates that would be paid by the Federal agency to each class of service employee if section 5332 or 5341 of title 5 were applicable to them. The Secretary shall give due consideration to these rates in making the wage and fringe benefit determinations specified in this section.

§ 6704. Limitation on minimum wage

(a) IN GENERAL.—A contractor that makes a contract with the Federal Government, the principal purpose of which is to furnish services through the use of service employees, and any subcontractor, may not pay less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in performing work on the contract.

(b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of this section.

§ 6705. Violations

(a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a contract provision required under section 6703(1) or (2) of this title or a violation of section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate, refund, or underpayment of compensation due any employee engaged in the performance of the contract.

(b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

(1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The total amount determined under subsection (a) to be due any employee engaged in the performance of a contract may be withheld from accrued payments due on the contract or on any other contract between the same contractor and the Federal Government. The amount withheld shall be held in a deposit fund. On order of the Secretary, the compensation found by the Secretary or the head of a Federal agency to be due an underpaid employee pursuant to this chapter shall be paid from the deposit fund directly to the underpaid employee.

(2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments withheld under the terms of the contract are insufficient to reimburse a service employee with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the Federal Government may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayment. Any amount recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee. Any amount not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury as miscellaneous receipts.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in accordance with this section, when a violation of any contract stipulation is found, the Federal agency that made the contract may cancel the contract on written notice to the original contractor. The Federal Government may then make other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry out this section.

§ 6706. Three-year prohibition on new contracts in case of violation

(a) DISTRIBUTION OF LIST.—The Comptroller General shall distribute to each agency of the Federal Government a list containing the names of persons or firms that a Federal agency or the Secretary has found to have violated this chapter.

(b) THREE-YEAR PROHIBITION.—Unless the Secretary recommends otherwise because of unusual circumstances, a Federal Government contract may not be awarded to a person or firm named on the list under subsection (a), or to an entity in which the person or firm has a substantial interest, until 3 years have elapsed from the date of publication of the list. If the Secretary does not recommend otherwise because of unusual circumstances, the Secretary shall, not later than 90 days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the person or firm found to have violated this chapter.

§ 6707. Enforcement and administration of chapter

(a) ENFORCEMENT OF CHAPTER.—Sections 6506 and 6507 of this title govern the Secretary's authority to enforce this chapter, including the Secretary's authority to prescribe regulations, issue orders, hold hearings, make decisions based on findings of fact, and take other appropriate action under this chapter.

(b) LIMITATIONS AND REGULATIONS FOR VARIATIONS, TOLERANCES, AND EXEMPTIONS.—The Secretary may provide reasonable limitations and may prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to this chapter (other than subsection (f)), but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.

(c) PRESERVATION OF WAGES AND BENEFITS DUE UNDER PREDECESSOR CONTRACTS.—

(1) IN GENERAL.—Under a contract which succeeds a contract subject to this chapter, and under which substantially the same services are furnished, a contractor or subcontractor may not pay a service employee less than the wages and fringe benefits the service employee would have received under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations.

(2) EXCEPTION.—This subsection does not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that wages and fringe benefits under the predecessor contract are substantially at variance with wages and fringe benefits prevailing in the same locality for services of a similar character.

(d) DURATION OF CONTRACTS.—Subject to limitations in annual appropriation acts but notwithstanding any other law, a contract to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding 5, if the contract provides for periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 6703 of this title at least once every 2 years during the term of the contract, covering each class of service employee.

(e) EXCLUSION OF FRINGE BENEFIT PAYMENTS IN DETERMINING OVERTIME PAY.—In determining any overtime pay to which a service employee is entitled under Federal law, the regular or basic hourly rate of pay of the service employee does not include any fringe benefit payments computed under this chapter which are excluded from the definition of ''regular rate'' under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(f) TIMELINESS OF WAGE AND FRINGE BENEFIT DETERMINATIONS.—It is the intent of Congress that determinations of minimum wages and fringe benefits under section 6703(1) and (2) of this title should be made as soon as administratively feasible for all contracts subject to this chapter. In any event, the Secretary shall at least make the determinations for contracts under which more than 5 service employees are to be employed.

Subtitle III—Contract Disputes

Chapter	Sec.
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CHAPTER 71—CONTRACT DISPUTES

Sec.
7101. Definitions.
7102. Applicability of chapter.
7103. Decision by contracting officer.
7104. Contractor's right of appeal from decision by contracting officer.
7105. Agency boards.
7106. Agency board procedures for accelerated and small claims.
7107. Judicial review of agency board decisions.
7108. Payment of claims.
7109. Interest.

§ 7101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term ''agency board'' or ''agency board of contract appeals'' means—

(A) the Armed Services Board;

(B) the Civilian Board;

(C) the board of contract appeals of the Tennessee Valley Authority; or

(D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) AGENCY HEAD.—The term ''agency head'' means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) ARMED SERVICES BOARD.—The term ''Armed Services Board'' means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) CIVILIAN BOARD.—The term ''Civilian Board'' means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) CONTRACTING OFFICER.—The term ''contracting officer''—

(A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and

(B) includes an authorized representative of the contracting officer, acting within the limits of the representative's authority.

(7) CONTRACTOR.—The term ''contractor'' means a party to a Federal Government contract other than the Federal Government.

(8) EXECUTIVE AGENCY.—The term ''executive agency'' means—

(A) an executive department as defined in section 101 of title 5;

(B) a military department as defined in section 102 of title 5;

(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; and

(D) a wholly owned Government corporation as defined in section 9101(3) of title 31.

(9) MISREPRESENTATION OF FACT.—The term ''misrepresentation of fact'' means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

§ 7102. Applicability of chapter

(a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair, or maintenance of real property; or

(4) the disposal of personal property.

(b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

(1) IN GENERAL.—With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) EXCLUSION.—Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system.

(c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.—If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) MARITIME CONTRACTS.—Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

§ 7103. Decision by contracting officer

(a) CLAIMS GENERALLY.—

(1) SUBMISSION OF CONTRACTOR'S CLAIMS TO CONTRACTING OFFICER.—Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) CONTRACTOR'S CLAIMS IN WRITING.—Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT'S CLAIMS.—Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) TIME FOR SUBMITTING CLAIMS.—

(A) IN GENERAL.—Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) EXCEPTION.—Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) APPLICABILITY.—The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) CERTIFICATION OF CLAIMS.—

(1) REQUIREMENT GENERALLY.—For claims of more than $100,000 made by a contractor, the contractor shall certify that—

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) WHO MAY EXECUTE CERTIFICATION.—The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.—A contracting officer is not obligated to render a final decision on a claim of more than $100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

(c) FRAUDULENT CLAIMS.—

(1) NO AUTHORITY TO SETTLE.—This section does not authorize an agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(2) LIABILITY OF CONTRACTOR.—If a contractor is unable to support any part of the contractor's claim and it is determined that the inability is attributable to a misrepresentation of fact or fraud by the contractor, then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government's costs attributable to reviewing the unsupported part of the claim. Liability under this paragraph shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(d) ISSUANCE OF DECISION.—The contracting officer shall issue a decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor.

(e) CONTENTS OF DECISION.—The contracting officer's decision shall state the reasons for the decision reached and shall inform the contractor of the contractor's rights as provided in this chapter. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.

(f) TIME FOR ISSUANCE OF DECISION.—

(1) CLAIM OF $100,000 OR LESS.—A contracting officer shall issue a decision on any submitted claim of $100,000 or less within 60 days from the contracting officer's receipt of a written request from the contractor that a decision be rendered within that period.

(2) CLAIM OF MORE THAN $100,000.—A contracting officer shall, within 60 days of receipt of a submitted certified claim over $100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) GENERAL REQUIREMENT OF REASONABLENESS.—The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.—A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.—Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in this chapter. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) FINALITY OF DECISION UNLESS APPEALED.—The contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter. This chapter does not prohibit an executive agency from including a clause in a Federal Government contract requiring that, pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(h) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. All provisions of subchapter IV of chapter 5 of title 5 apply to alternative means of dispute resolution under this subsection.

(2) CERTIFICATION OF CLAIM.—The contractor shall certify the claim when required to do so under subsection (b)(1) or other law.

(3) REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION.—

(A) CONTRACTING OFFICER.—A contracting officer who rejects a contractor's request for alternative dispute resolution proceedings shall provide the contractor with a written

explanation, citing one or more of the conditions in section 572(b) of title 5 or other specific reasons that alternative dispute resolution procedures are inappropriate.

(B) CONTRACTOR.—A contractor that rejects an agency's request for alternative dispute resolution proceedings shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

§ 7104. Contractor's right of appeal from decision by contracting officer

(a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the date of receipt of a contracting officer's decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

(1) IN GENERAL.—Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under section 7103 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) TENNESSEE VALLEY AUTHORITY.—In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a district court of the United States pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) TIME FOR FILING.—A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer's decision under section 7103 of this title.

(4) DE NOVO.—An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

§ 7105. Agency boards

(a) ARMED SERVICES BOARD.—

(1) ESTABLISHMENT.—An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least 3 members who shall have no other inconsistent duties. Workload studies will be updated at least once every 3 years and submitted to the Administrator.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Armed Services Board shall be selected and appointed in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years of experience in public contract law. The Secretary of Defense shall designate the chairman and vice chairman of the Armed Services Board from among the appointed members. Compensation for the chairman, vice chairman, and other members shall be determined under section 5372a of title 5.

(b) CIVILIAN BOARD.—

(1) ESTABLISHMENT.—There is established in the General Services Administration the Civilian Board of Contract Appeals.

(2) MEMBERSHIP.—

(A) ELIGIBILITY.—The Civilian Board consists of members appointed by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) from a register of applicants maintained by the Administrator of General Services, in accordance with rules issued by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) for establishing and maintaining a register of eligible applicants and selecting Civilian Board members. The Administrator of General Services shall appoint a member without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Civilian Board member.

(B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Civilian Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years experience in public contract law. Compensation for the members shall be determined under section 5372a of title 5.

(3) REMOVAL.—Members of the Civilian Board are subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5.

(4) FUNCTIONS.—

(A) IN GENERAL.—The Civilian Board has jurisdiction as provided by subsection (e)(1)(B).

(B) ADDITIONAL JURISDICTION.—With the concurrence of the Federal agencies affected, the Civilian Board may assume—

(i) jurisdiction over any additional category of laws or disputes over which an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act exercised jurisdiction before January 6, 2007; and

(ii) any other function the agency board performed before January 6, 2007, on behalf of those agencies.

(c) TENNESSEE VALLEY AUTHORITY BOARD.—

(1) ESTABLISHMENT.—The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals of the Tennessee Valley Authority of an indeterminate number of members.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to the agency board established under paragraph (1), and shall designate a chairman of the agency board. The chairman and other members of the agency board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the agency board.

(d) POSTAL SERVICE BOARD.—

(1) ESTABLISHMENT.—There is established an agency board of contract appeals known as the Postal Service Board of Contract Appeals.

(2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service Board of Contract Appeals consists of judges appointed by the Postmaster General. The judges shall meet the qualifications of and serve in the same manner as members of the Civilian Board.

(3) APPLICATION.—This chapter applies to contract disputes before the Postal Service Board of Contract Appeals in the same manner as it applies to contract disputes before the Civilian Board.

(e) JURISDICTION.—

(1) IN GENERAL.—

(A) ARMED SERVICES BOARD.—The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.

(B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

(C) POSTAL SERVICE BOARD.—The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.

(D) OTHER AGENCY BOARDS.—Each other agency board has jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency.

(2) RELIEF.—In exercising this jurisdiction, an agency board may grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.

(f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General, or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring the person to appear before the agency board or a member of the agency board, to produce evidence or to give testimony, or both. Any failure of the person to obey the order of the court may be punished by the court as contempt of court.

(g) DECISIONS.—An agency board shall—

(1) to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes;

(2) issue a decision in writing or take other appropriate action on each appeal submitted; and

(3) mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

§ 7106. Agency board procedures for accelerated and small claims

(a) ACCELERATED PROCEDURE WHERE $100,000 OR LESS IN DISPUTE.—The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $100,000 or less. The accelerated procedure is applicable at the sole election of the contractor. An appeal under the accelerated procedure shall be resolved, whenever possible, within 180 days from the date the contractor elects to use the procedure.

(b) SMALL CLAIMS PROCEDURE.—

(1) IN GENERAL.—The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), $150,000 or less. The small claims procedure is applicable at the sole election of the contractor.

(2) SIMPLIFIED RULES OF PROCEDURE.—The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. An appeal under the

small claims procedure may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(3) TIME OF DECISION.—An appeal under the small claims procedure shall be resolved, whenever possible, within 120 days from the date the contractor elects to use the procedure.

(4) FINALITY OF DECISION.—A decision against the Federal Government or against the contractor reached under the small claims procedure is final and conclusive and may not be set aside except in cases of fraud.

(5) NO PRECEDENT.—Administrative determinations and final decisions under this subsection have no value as precedent for future cases under this chapter.

(6) REVIEW OF REQUISITE AMOUNT IN CONTROVERSY.—The Administrator, from time to time, may review the dollar amount specified in paragraph (1) and adjust the amount in accordance with economic indexes selected by the Administrator.

§ 7107. Judicial review of agency board decisions

(a) REVIEW.—

(1) IN GENERAL.—The decision of an agency board is final, except that—

(A) a contractor may appeal the decision to the United States Court of Appeals for the Federal Circuit within 120 days from the date the contractor receives a copy of the decision; or

(B) if an agency head determines that an appeal should be taken, the agency head, with the prior approval of the Attorney General, may transmit the decision to the United States Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within 120 days from the date the agency receives a copy of the decision.

(2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph (1), a decision of the board of contract appeals of the Tennessee Valley Authority is final, except that—

(A) a contractor may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date the contractor receives a copy of the decision; or

(B) the Tennessee Valley Authority may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date of the decision.

(3) REVIEW OF ARBITRATION.—An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW AND FACT.—Notwithstanding any contract provision, regulation, or rule of law to the contrary, in an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a)—

(1) the decision of the agency board on a question of law is not final or conclusive; but

(2) the decision of the agency board on a question of fact is final and conclusive and may not be set aside unless the decision is—

(A) fraudulent, arbitrary, or capricious;

(B) so grossly erroneous as to necessarily imply bad faith; or

(C) not supported by substantial evidence.

(c) REMAND.—In an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a), the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with direction the court considers just and proper.

(d) CONSOLIDATION.—If 2 or more actions arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of Federal Claims may order the consolidation of the actions in that court or transfer any actions to or among the agency boards involved.

(e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an action filed pursuant to this chapter involving 2 or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one of the claims can be divided for purposes of decision or judgment, and in any action where multiple parties are involved, the court, whenever appropriate, may enter a judgment as to one or more but fewer than all of the claims or portions of claims or parties.

(f) ADVISORY OPINIONS.—

(1) IN GENERAL.—Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request an agency board to provide the court with an advisory opinion on the matters of contract interpretation under consideration.

(2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this chapter.

(3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district court shall direct a request under paragraph (1) to the agency board having jurisdiction under this chapter to adjudicate appeals of contract claims under the contract being interpreted by the court.

(4) TIMELY RESPONSE.—After receiving a request for an advisory opinion under paragraph (1), an agency board shall provide the advisory opinion in a timely manner to the district court making the request.

§ 7108. Payment of claims

(a) JUDGMENTS.—Any judgment against the Federal Government on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) MONETARY AWARDS.—Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.

(d) TENNESSEE VALLEY AUTHORITY.—

(1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c), any monetary award to a contractor by the board of contract appeals of the Tennessee Valley Authority shall be paid in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

§ 7109. Interest

(a) PERIOD.—

(1) IN GENERAL.—Interest on an amount found due a contractor on a claim shall be paid to the contractor for the period beginning with the date the contracting officer receives the contractor's claim, pursuant to section 7103(a) of this title, until the date of payment of the claim.

(2) DEFECTIVE CERTIFICATION.—On a claim for which the certification under section 7103(b)(1) of this title is found to be defective, any interest due under this section shall be paid for the period beginning with the date the contracting officer initially receives the contractor's claim until the date of payment of the claim.

(b) RATE.—Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years.

Subtitle IV—Miscellaneous

Chapter	Sec.
81. Drug-Free Workplace	**8101**
83. Buy American	**8301**
85. Committee for Purchase From People Who Are Blind or Severely Disabled	**8501**
87. Kickbacks	**8701**

CHAPTER 81—DRUG-FREE WORKPLACE

Sec.
8101. Definitions and construction.
8102. Drug-free workplace requirements for Federal contractors.
8103. Drug-free workplace requirements for Federal grant recipients.
8104. Employee sanctions and remedies.
8105. Waiver.
8106. Regulations.

§ 8101. Definitions and construction

(a) DEFINITIONS.—In this chapter:

(1) CONTRACTOR.—The term ''contractor'' means the department, division, or other unit of a person responsible for the performance under the contract.

(2) CONTROLLED SUBSTANCE.—The term ''controlled substance'' means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

(3) CONVICTION.—The term ''conviction'' means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

(4) CRIMINAL DRUG STATUTE.—The term ''criminal drug statute'' means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

(5) DRUG-FREE WORKPLACE.—The term ''drug-free workplace'' means a site of an entity—

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4181).

(6) EMPLOYEE.—The term ''employee'' means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

(7) FEDERAL AGENCY.—The term ''Federal agency'' means an agency as defined in section 552(f) of title 5.

(8) GRANTEE.—The term ''grantee'' means the department, division, or other unit of a person responsible for the performance under the grant.

(b) CONSTRUCTION.—This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations.

§ 8102. Drug-free workplace requirements for Federal contractors

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal agency, other than a contract for the procurement of commercial items (as defined in section 103 of this title), unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) EFFECT OF DEBARMENT.—A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

§ 8103. Drug-free workplace requirements for Federal grant recipients

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—

(A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) EFFECT OF DEBARMENT.—A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

§ 8104. Employee sanctions and remedies

Within 30 days after receiving notice from an employee of a conviction pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall—

(1) take appropriate personnel action against the employee, up to and including termination; or

(2) require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

§ 8105. Waiver

(a) IN GENERAL.—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

(1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) WAIVER AUTHORITY MAY NOT BE DELEGATED.—The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

CHAPTER 83—BUY AMERICAN

Sec.
8301. Definitions.
8302. American materials required for public use.
8303. Contracts for public works.
8304. Waiver rescission.
8305. Annual report.

§ 8301. Definitions

In this chapter:

(1) PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.—The terms ''public building'', ''public use'', and ''public work'' mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) UNITED STATES.—The term ''United States'' includes any place subject to the jurisdiction of the United States.

§ 8302. American materials required for public use

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and 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, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) EXCEPTIONS.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

§ 8303. Contracts for public works

(a) IN GENERAL.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) 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.

(b) EXCEPTIONS.—

(1) IN GENERAL.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the department or independent establishment making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

(3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned determines their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bureau, agency, or independent establishment that has made a contract containing the provision required by subsection (a) finds that there has been a failure to comply with the provision in the performance of the contract, the head of the department, bureau, agency, or independent establishment shall make the findings public. The findings shall include the name of the contractor obligated under the contract. The contractor, and any subcontractor, material man, or supplier associated or affiliated with the contractor, shall not be awarded another contract for the construction, alteration, or repair of any public building or public work for 3 years after the findings are made public.

§ 8304. Waiver rescission

(a) TYPE OF AGREEMENT.—An agreement referred to in subsection (b) is a reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived this chapter for certain products in that country.

(b) DETERMINATION BY SECRETARY OF DEFENSE.—If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country that is party to an agreement described in subsection (a) has violated the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of this chapter with respect to those types of products produced in that country.

§ 8305. Annual report

Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the amount of purchases by the Department of Defense from foreign entities in that fiscal year. The report shall separately indicate the dollar value of items for which this chapter was waived pursuant to—

(1) a reciprocal defense procurement memorandum of understanding described in section 8304(a) of this title;

(2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

(3) an international agreement to which the United States is a party.

CHAPTER 85—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Sec.
8501. Definitions.
8502. Committee for Purchase From People Who Are Blind or Severely Disabled.
8503. Duties and powers of the Committee.
8504. Procurement requirements for the Federal Government.
8505. Audit.
8506. Authorization of appropriations.

§ 8501. Definitions

In this chapter:

(1) BLIND.—The term ''blind'' refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) COMMITTEE.—The term ''Committee'' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of this title.

(3) DIRECT LABOR.—The term ''direct labor''—

(A) includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but

(B) does not include supervision, administration, inspection, or shipping.

(4) ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.—The terms ''entity of the Federal Government'' and ''Federal Government'' include an entity of the legislative or judicial branch, a military department or executive agency (as defined in sections 102 and 105 of title 5, respectively), the United States Postal Service, and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(5) OTHER SEVERELY DISABLED.—The term ''other severely disabled'' means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.—The term ''qualified nonprofit agency for other severely disabled'' means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of severely disabled individuals who are not blind; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(7) QUALIFIED NONPROFIT AGENCY FOR THE BLIND.—The term ''qualified nonprofit agency for the blind'' means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of blind individuals; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(8) SEVERELY DISABLED INDIVIDUAL.—The term ''severely disabled individual'' means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(9) STATE.—The term ''State'' includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

§ 8502. Committee for Purchase From People Who Are Blind or Severely Disabled

(a) ESTABLISHMENT.—There is a Committee for Purchase From People Who Are Blind or Severely Disabled.

(b) COMPOSITION.—The Committee consists of 15 members appointed by the President as follows:

(1) One officer or employee from each of the following, nominated by the head of the department or agency:

(A) The Department of Agriculture.

(B) The Department of Defense.

(C) The Department of the Army.

(D) The Department of the Navy.

(E) The Department of the Air Force.

(F) The Department of Education.

(G) The Department of Commerce.

(H) The Department of Veterans Affairs.

(I) The Department of Justice.

(J) The Department of Labor.

(K) The General Services Administration.

(2) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of the blind.

(3) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of other severely disabled individuals.

(4) One member from individuals who are not officers or employees of the Federal Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(5) One member from individuals who are not officers or employees of the Federal Government and who represent severely disabled individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely disabled individuals.

(c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3), (4), or (5) of subsection (b) shall be appointed for terms of 5 years and may be reappointed if the member meets the qualifications prescribed by those paragraphs.

(d) CHAIRMAN.—The members of the Committee shall elect one of the members to be Chairman.

(e) VACANCY.—

(1) MANNER IN WHICH FILLED.—A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(2) UNFULFILLED TERM.—A member appointed under paragraph (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term. The member may serve after the expiration of a term until a successor takes office.

(f) PAY AND TRAVEL EXPENSES.—

(1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as provided in paragraph (2), members of the Committee are entitled to receive the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of title 5 for each day (including travel-time) during which they perform services for the Committee. A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5.

(2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members who are officers or employees of the Federal Government may not receive additional pay because of their service on the Committee.

(g) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—Subject to rules the Committee may adopt and to chapters 33 and 51 and subchapter III of chapter 53 of title 5, the Chairman may appoint and fix the pay of personnel the Committee determines are necessary to assist it in carrying out this chapter.

(2) PERSONNEL FROM OTHER ENTITIES.—On request of the Committee, the head of an entity of the Federal Government may detail, on a reimbursable basis, any personnel of the entity to the Committee to assist it in carrying out this chapter.

(h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure directly from an entity of the Federal Government information necessary to enable it to carry out this chapter. On request of the Chairman, the head of the entity shall furnish the information to the Committee.

(i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Committee, on a reimbursable basis, administrative support services the Committee requests.

(j) ANNUAL REPORT.—Not later than December 31 of each year, the Committee shall transmit to the President a report that includes the names of the Committee members serving in the prior fiscal year, the dates of Committee meetings in that year, a description of the activities of the Committee under this chapter in that year, and any recommendations for changes in this chapter which the Committee determines are necessary.

§ 8503. Duties and powers of the Committee

(a) PROCUREMENT LIST.—

(1) MAINTENANCE OF LIST.—The Committee shall maintain and publish in the Federal Register a procurement list. The list shall include the following products and services determined by the Committee to be suitable for the Federal Government to procure pursuant to this chapter:

(A) Products produced by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled.

(B) The services those agencies provide.

(2) CHANGES TO LIST.—The Committee may, by rule made in accordance with the requirements of section 553(b) to (e) of title 5, add to and remove from the procurement list products so produced and services so provided.

(b) FAIR MARKET PRICE.—The Committee shall determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled. The Committee from time to time shall revise its price determinations with respect to those products and services in accordance with changing market conditions.

(c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.

(d) REGULATIONS.—The Committee—

(1) may prescribe regulations regarding specifications for products and services on the procurement list, the time of their delivery, and other matters as necessary to carry out this chapter; and

(2) shall prescribe regulations providing that when the Federal Government purchases products produced and offered for sale by qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled, priority shall be given to products produced and offered for sale by qualified nonprofit agencies for the blind.

(e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall make a continuing study and evaluation of its activities under this chapter to ensure effective and efficient administration of this chapter. The Committee on its own or in cooperation with other public or nonprofit private agencies may study—

(1) problems related to the employment of the blind and other severely disabled individuals; and

(2) the development and adaptation of production methods that would enable a greater utilization of the blind and other severely disabled individuals.

§ 8504. Procurement requirements for the Federal Government

(a) IN GENERAL.—An entity of the Federal Government intending to procure a product or service on the procurement list referred to in section 8503 of this title shall procure the product or service from a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in accordance with regulations of the Committee and at the price the Committee establishes if the product or service is available within the period required by the entity.

(b) EXCEPTION.—This section does not apply to the procurement of a product that is available from an industry established under chapter 307 of title 18 and that is required under section 4124 of title 18 to be procured from that industry.

§ 8505. Audit

For the purpose of audit and examination, the Comptroller General shall have access to the books, documents, papers, and other records of—

(1) the Committee and of each central nonprofit agency the Committee designates under section 8503(c) of this title; and

(2) qualified nonprofit agencies for the blind and qualified nonprofit agencies for other severely disabled that have sold products or services under this chapter to the extent those books, documents, papers, and other records relate to the activities of the agency in a fiscal year in which a sale was made under this chapter.

§ 8506. Authorization of appropriations

Necessary amounts may be appropriated to the Committee to carry out this chapter.

CHAPTER 87—KICKBACKS

Sec.
8701. Definitions.
8702. Prohibited conduct.
8703. Contractor responsibilities.
8704. Inspection authority.
8705. Administrative offsets.
8706. Civil actions.
8707. Criminal penalties.

§ 8701. Definitions

In this chapter:

(1) CONTRACTING AGENCY.—The term ''contracting agency'', when used with respect to a prime contractor, means a department, agency, or establishment of the Federal Government that enters into a prime contract with a prime contractor.

(2) KICKBACK.—The term ''kickback'' means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

(3) PRIME CONTRACT.—The term ''prime contract'' means a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

(4) PRIME CONTRACTOR.—The term ''prime contractor'' means a person that has entered into a prime contract with the Federal Government.

(5) PRIME CONTRACTOR EMPLOYEE.—The term ''prime contractor employee'' means an officer, partner, employee, or agent of a prime contractor.

(6) SUBCONTRACT.—The term ''subcontract'' means a contract or contractual action entered into by a prime contractor or subcontractor to obtain supplies, materials, equipment, or services of any kind under a prime contract.

(7) SUBCONTRACTOR.—The term ''subcontractor''—

(A) means a person, other than the prime contractor, that offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with the prime contract; and

(B) includes a person that offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(8) SUBCONTRACTOR EMPLOYEE.—The term ''subcontractor employee'' means an officer, partner, employee, or agent of a subcontractor.

§ 8702. Prohibited conduct

A person may not—

(1) provide, attempt to provide, or offer to provide a kickback;

(2) solicit, accept, or attempt to accept a kickback; or

(3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price—

(A) a subcontractor charges a prime contractor or a higher tier subcontractor; or

(B) a prime contractor charges the Federal Government.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

(1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and

(2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to believe that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person's responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

(1) that is not greater than $100,000; or

(2) for the acquisition of commercial items (as defined in section 103 of this title).

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial items (as defined in section 103 of this title).

§ 8705. Administrative offsets

(a) DEFINITION.—In this section, the term ''contracting officer'' has the meaning given that term in chapter 71 of this title.

(b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) DUTIES OF PRIME CONTRACTOR.—

(1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

(A) be paid over to the contracting agency; or

(B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) NOTICE.—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

§ 8706. Civil actions

(a) AMOUNT.—The Federal Government in a civil action may recover from a person—

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than $10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) STATUTE OF LIMITATIONS.—A civil action under this section must be brought within 6 years after the later of the date on which—

(1) the prohibited conduct establishing the cause of action occurred; or

(2) the Federal Government first knew or should reasonably have known that the prohibited conduct had occurred.

§ 8707. Criminal penalties

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

SEC. 4. CONFORMING AMENDMENT.

Section 2410i(b)(1) of title 10, United States Code, is amended by striking ''small purchase threshold'' and substituting ''simplified acquisition threshold''.

SEC. 5. CONFORMING CROSS-REFERENCES.

(a) TITLE 5.—Title 5, United States Code, is amended as follows:

(1) In section 504(b)(1)(C)(ii)—

(A) strike ''section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)'' and substitute ''section 7103 of title 41''; and

(B) strike ''section 8 of that Act (41 U.S.C. 607)'' and substitute ''section 7105 of title 41''.

(2) In section 551(1)(H), strike ''chapter 2 of title 41;''.

(3) In section 701(b)(1)(H), strike ''chapter 2 of title 41;''.

(4) In section 3109(b)(3), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(5) In section 3374(c)(2), strike ''section 27 of the Office of Federal Procurement Policy Act'' and substitute ''chapter 21 of title 41''.

(6) In section 3704(b)(2)(G), strike ''section 27 of the Office of Federal Procurement Policy Act'' and substitute ''chapter 21 of title 41''.

(7) In section 4105, strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(8) In section 5102(c)(30), strike ''section 8 of the Contract Disputes Act of 1978'' and substitute ''section 7105(a)(2), (c)(2), or (d)(2) of title 41''.

(9) In section 5372a—

(A) in subsection (a)(1)—

(i) strike ''section 8 of the Contract Disputes Act of 1978'' and substitute ''section 7105(a)(2), (c)(2), or (d)(2) of title 41''; and

(ii) strike ''section 42 of the Office of Federal Procurement Policy Act'' and substitute ''section 7105(b)(2) of title 41''; and

(B) in subsection (a)(2), strike ''section 8 of the Contract Disputes Act of 1978'' and substitute ''section 7105(a)(1), (c)(1), or (d)(1) of title 41''.

(10) In section 7342(e)(1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(11) In section 8709(a), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(12) In section 8714a(a), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(13) In section 8714b(a), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(14) In section 8714c(a), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(15) In section 8902(a), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(16) In section 8953(a)(1), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(17) In section 8983(a)(1), strike ''section 5'' and substitute ''section 6101(b) to (d)''.

(18) In section 9003—

(A) in subsection (a), strike ''section 5'' and substitute ''section 6101(b) to (d)'';

(B) in subsection (c)(3), before subparagraph (A), strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41'';

(C) in subsection (c)(3)(A), strike ''(after appropriate arrangements, as described in section 8(c) of such Act)''; and

(D) in subsection (c)(3)(B), strike ''section 10(a)(1) of such Act'' and substitute ''section 7104(b)(1) of title 41''.

(19) In section 9009, strike ''section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f))'' and substitute ''section 1502(a) and (b) of title 41''.

(b) TITLE 10.—Title 10, United States Code, is amended as follows:

(1) In section 133(c)(1), strike ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' and substitute ''section 1702(c) of title 41''.

(2) In section 2013(a), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b)–(d) of title 41''.

(3) In section 2194(b)(2), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(4) In section 2201—

(A) in subsection (b), strike ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))'' and substitute ''section 6301(a) and (b)(1)–(3) of title 41''; and

(B) in subsection (c), strike ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))'' and substitute ''section 6301(a) and (b)(1)–(3) of title 41''.

(5) In section 2207(b), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))'' and substitute ''section 134 of title 41''.

(6) In section 2225(f)—

(A) in paragraph (1), strike ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' and substitute ''section 1702(c) of title 41''; and

(B) in paragraph (2), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))'' and substitute ''section 134 of title 41''.

(7) In section 2226(b), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))'' and substitute ''section 103 of title 41''.

(8) In section 2302—

(A) in paragraph (3), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''chapter 1 of title 41'';

(B) in paragraph (6), strike ''section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))'' and substitute ''section 1303(a)(1) of title 41''; and

(C) in paragraph (7), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 134 of title 41''.

(9) In section 2302a—

(A) in subsection (a), strike ''section 4(11) of the Office of Federal Procurement Policy Act'' and substitute ''section 134 of title 41''; and

(B) in subsection (b), strike ''section 33 of the Office of Federal Procurement Policy Act'' and substitute ''section 1905 of title 41''.

(10) In section 2302b, strike ''section 31 of the Office of Federal Procurement Policy Act'' and substitute ''section 1901 of title 41''.

(11) In section 2302c—

(A) in subsection (a)(1), strike ''section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426)'' and substitute ''section 2301 of title 41''; and

(B) in subsection (b), strike ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' and substitute ''section 1702(c) of title 41''.

(12) In section 2304—

(A) in subsection (f)(1)(B)(iii), strike ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' and substitute ''section 1702(c) of title 41'';

(B) in subsection (f)(1)(C), strike ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)'' and substitute ''section 1708 of title 41'';

(C) in subsection (f)(2)(D), strike ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)'' and substitute ''chapter 85 of title 41'';

(D) in subsection (g)(4), strike ''section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427)'' and substitute ''section 1901(e) of title 41''; and

(E) in subsection (h)(1), strike ''The Walsh-Healey Act (41 U.S.C. 35 et seq.)'' and substitute ''Chapter 65 of title 41''.

(13) In section 2304b—

(A) in subsection (c), strike ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)'' and substitute ''section 1708 of title 41''; and

(B) in subsection (f)(3), strike ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)'' and substitute ''section 1708 of title 41''.

(14) In section 2304c(a)(1), strike ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)'' and substitute ''section 1708 of title 41''.

(15) In section 2306a(h)(3), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))'' and substitute ''section 103 of title 41''.

(16) In section 2314, strike ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)'' and substitute ''Sections 6101(b)–(d) and 6304 of title 41''.

(17) In section 2318—

(A) in subsection (a)(1), strike ''section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))'' and substitute ''section 1705(a) of title 41''; and

(B) in subsection (a)(2), strike ''sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))'' and substitute ''section 1705(b) and (c) of title 41''.

(18) In section 2321(h), strike ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' and substitute ''chapter 71 of title 41''.

(19) In section 2324—

(A) in subsection (d)(1), strike ''section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)'' and substitute ''section 7103 of title 41'';

(B) in subsection (d)(2), strike ''section 7 of such Act (41 U.S.C. 606)'' and substitute ''section 7104(a) of title 41'';

(C) in subsection (e)(1)(P), strike ''section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435)'' and substitute ''section 1127 of title 41''; and

(D) in subsection (e)(2)(C), strike ''(41 U.S.C. 10b–1)'' and substitute ''(as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988)''.

(20) In section 2343, strike ''section 3741 of the Revised Statutes (41 U.S.C. 22)'' and substitute ''section 6306 of title 41''.

(21) In section 2375(b), strike ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'' and substitute ''section 1906 of title 41''.

(22) In section 2376(1), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''chapter 1 of title 41''.

(23) In section 2384—

(A) in subsection (b)(2), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' and substitute ''section 103 of title 41)''; and

(B) in subsection (b)(3), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and substitute ''section 134 of title 41)''.

(24) In section 2393(d)—

(A) strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and substitute ''section 134 of title 41)''; and

(B) strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' and substitute ''section 103 of title 41)''.

(25) In section 2402—

(A) in subsection (c), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and substitute ''section 134 of title 41)''; and

(B) in subsection (d)(2), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))'' and substitute ''section 103 of title 41''.

(26) In section 2408—

(A) in subsection (a)(4)(A), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and substitute ''section 134 of title 41)''; and

(B) in subsection (a)(4)(B), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' and substitute ''section 103 of title 41)''.

(27) In section 2410(c), strike ''section 4(11) of the Office of Federal Procurement Policy Act'' and substitute ''section 134 of title 41''.

(28) In section 2410b(c), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' and substitute ''section 103 of title 41)''.

(29) In section 2410d—

(A) in subsection (b)(2)(A), strike ''section 5(3) of the Javits-Wagner-O'Day Act (41

U.S.C. 48b(3))'' and substitute ''section 8501(7) of title 41'';

(B) in subsection (b)(2)(B), strike ''handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4))'' and substitute ''disabled, as defined in section 8501(6) of title 41''; and

(C) in subsection (b)(2)(C), strike ''section 2(c) of such Act (41 U.S.C. 47(c))'' and substitute ''section 8503(c) of title 41''.

(30) In section 2410g(d)(1), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' and substitute ''section 103 of title 41)''.

(31) In section 2410i(b)(1), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and substitute ''section 134 of title 41)''.

(32) In section 2410m—

(A) in subsection (a), before paragraph (1), strike ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' and substitute ''chapter 71 of title 41'';

(B) in subsection (a)(2), strike ''section 7 of such Act (41 U.S.C. 606)'' and substitute ''section 7104(a) of title 41''; and

(C) in subsection (b)(1)(A), strike ''section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a))'' and substitute ''section 7104(b) of title 41''.

(33) In section 2457(e), strike ''section 2 of the Buy American Act (41 U.S.C. 10a)'' and substitute ''section 8302 of title 41''.

(34) In section 2461(c)(1), strike ''section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' and substitute ''section 8503 of title 41''.

(35) In section 2485(b)(1), strike ''section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))'' and substitute ''section 107 of title 41''.

(36) In the chapter analysis for subchapter V of chapter 148, in the item for section 2533, strike ''the Buy American Act'' and substitute ''chapter 83 of title 41''.

(37) In section 2533—

(A) in the section catchline, strike ''**the Buy American Act**'' and substitute ''**chapter 83 of title 41**''; and

(B) in subsection (a), strike ''section 2 of the Buy American Act (41 U.S.C. 10a)'' and substitute ''section 8302 of title 41''.

(38) In section 2533a(i), strike ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'' and substitute ''section 1906 of title 41''.

(39) In section 2533b—

(A) in subsection (h), strike ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'' and substitute ''section 1906 of title 41''; and

(B) in subsection (j), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 105 of title 41''.

(40) In section 2534(g)(2), strike ''section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429)'' and substitute ''section 1905 of title 41''.

(41) In section 2562(a)(1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(42) In section 2576(a), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(43) In section 2636(b)(3), strike ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))'' and substitute ''section 134 of title 41''.

(44) In section 2667(f)(1), strike ''Notwithstanding subsection (a)(3) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)'' and substitute ''Notwithstanding subtitle I of title 40 and division C of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section''.

(45) In section 2664(a), strike ''title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(46) In section 2691(b), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(47) In section 2696(a), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(48) In section 2836(g), strike ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' and substitute ''chapter 71 of title 41''.

(49) In section 2854a(d)(1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(50) In section 2878(d)(2), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(51) In the chapter analysis for chapter 633, in the item for section 7299, strike ''Walsh-Healey Act'' and substitute ''chapter 65 of title 41''.

(52) In section 7299—

(A) in the heading, strike ''Walsh-Healey Act'' and substitute ''chapter 65 of title 41''; and

(B) strike ''the Walsh-Healey Act (41 U.S.C. 35 et seq.)'' and substitute ''chapter 65 of title 41''.

(53) In section 7305(d)—

(A) strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''; and

(B) strike ''under subtitle I of title 40 and such title III'' and substitute ''under those provisions''.

(54) In section 9444(b)(1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(55) In section 9781(g), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(c) TITLE 14.—Title 14, United States Code, is amended as follows:

(1) In section 92(d), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(2) In section 93(h), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(3) In section 641(a), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(4) In section 685(c)(1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(d) TITLE 18.—Title 18, United States Code, is amended as follows:

(1) In section 3672, strike ''section 3709 of the Revised Statutes of the United States'' and substitute ''section 6101(b) to (d) of title 41''.

(2) In section 4124(c), strike ''section 6(d)(4) of the Office of Federal Procurement Policy Act'' and substitute ''section 1122(a)(4) of title 41''.

(e) TITLE 23.—Title 23, United States Code, is amended as follows:

(1) In section 140—

(A) in subsection (b), strike ''section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),'' and substitute ''section 6101(b) to (d) of title 41''; and

(B) in subsection (c)—

(i) strike ''section 3709 of the Revised Statutes, as amended (41 U.S.C. 5),'' and substitute ''section 6101(b) to (d) of title 41''; and

(ii) strike ''section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e))'' and substitute ''section 3106 of title 41''.

(2) In section 502(c)(5), strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(f) THE INTERNAL REVENUE CODE OF 1986.—Section 7608(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 7608(c)(1)) is amended—

(1) in subparagraph (A)(i)(II), by striking ''sections 11(a) and 22'' and substituting ''sections 6301(a) and (b)(1)–(3) and 6306'';

(2) in subparagraph (A)(i)(III), by striking ''section 255'' and substituting ''chapter 45''; and

(3) in subparagraph (A)(i)(V), by striking ''section 254(a) and (c)'' and substituting ''section 3901''.

(g) TITLE 28.—Title 28, United States Code, is amended as follows:

(1) In the last sentence of section 524(c)(1), strike ''section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41''.

(2) In section 604(a)(10)(C), strike ''section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(3) In section 624(3), strike ''section 3709 of the Revised Statutes, as amended (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(4) In section 753(g), strike ''section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(5) In section 1295—

(A) in subsection (a)(10), strike ''section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1))'' and substitute ''section 7107(a)(1) of title 41'';

(B) in subsection (b), strike ''section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b))'' and substitute ''section 7107(b) of title 41''; and

(C) in subsection (c), strike ''section 10(b) of the Contract Disputes Act of 1978'' and substitute ''section 7107(b) of title 41''.

(6) In section 1346(a)(2), strike ''sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978'' and substitute ''sections 7104(b)(1) and 7107(a)(1) of title 41''.

(7) In section 1491(a)(2), strike ''section 10(a)(1) of the Contract Disputes Act of 1978'' and substitute ''section 7104(b)(1) of title 41''.

(8) In section 2401(a), strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41''.

(9) In section 2412—

(A) in subsection (d)(2)(E), strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41''; and

(B) in subsection (d)(3), strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41''.

(10) In section 2414, strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41''.

(11) In section 2517(a), strike ''the Contract Disputes Act of 1978'' and substitute ''chapter 71 of title 41''.

(h) TITLE 31.—Title 31, United States Code, is amended as follows:

(1) In section 506, strike ''section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(a))'' and substitute ''section 1101(a) of title 41''.

(2) In section 731(i)(7), strike ''section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)'' and substitute ''chapter 21 of title 41''.

(3) In section 781(c)(1), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(4) Section 1344(h)(2)(A) is amended to read as follows:

''(A) a department—

''(i) including independent establishments, other agencies, and wholly owned Government corporations; but

''(ii) not including the Senate, House of Representatives, or Architect of the Capitol, or the officers or employees thereof;''.

(5) In section 3567, strike ''section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))'' and substitute ''section 133 of title 41''.

(6) In section 3718(b)(1)(A), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following)'' and substitute ''division C of subtitle I of title 41''.

(7) In section 3902(a), strike ''section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)'' and substitute ''section 7109(a)(1) and (b) of title 41''.

(8) In section 3907—

(A) in subsection (a), strike ''section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)'' and substitute ''section 7103 of title 41'';

(B) in subsection (b)(1)(A), strike ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' and substitute ''chapter 71 of title 41'';

(C) in subsection (b)(2)—

(i) strike ''section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)'' and substitute ''section 7109(a)(1) and (b) of title 41''; and

(ii) in the second sentence, strike ''section 12'' and substitute ''section 7109(a)(1) and (b)''; and

(D) in subsection (c), strike ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)'' and substitute ''chapter 71 of title 41''.

(9) In section 6202(c)(2), strike ''section 6(d)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(5))'' and substitute ''section 1122(a)(4) of title 41''.

(10) In section 9703(b)(3), as added by section 638(b)(1) of the Act of October 6, 1992 (Public Law 102–393, 106 Stat. 1779), strike ''section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, section 6101(b) to (d) of title 41''.

(i) TITLE 35.—Title 35, United States Code, is amended as follows:

(1) In section 2(b)(4)(A), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41''.

(2) In section 203(b), strike ''the Contract Disputes Act (41 U.S.C. §601 et seq.)'' and substitute ''chapter 71 of title 41''.

(j) TITLE 38.—Title 38, United States Code, is amended as follows:

(1) In section 1720(c)(2), strike ''section 2(b)(1) of the Service Contract Act of 1965 (41 U.S.C. 351(b)(1))'' and substitute ''section 6704(a) of title 41''.

(2) In section 1966(a), strike ''section 3709 of the Revised Statutes, as amended (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(3) In section 3720(b), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41''.

(4) In section 7317(f), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(5) In section 7802(f), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(6) In section 8122—

(A) in subsection (a)(1), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''; and

(B) in subsection (c)—

(i) strike ''(41 U.S.C. 252(c))''; and

(ii) strike ''section 304 of that Act (41 U.S.C. 254)'' and substitute ''sections 3901 and 3905 of title 41''.

(7) In section 8127—

(A) in subsection (b), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 134 of title 41''; and

(B) in subsection (c)(2), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 134 of title 41''.

(8) In section 8153(a)—

(A) in paragraph (3)(B)(ii), strike ''section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b)'' and substitute ''section 1707 of title 41''; and

(B) in paragraph (3)(D), strike ''section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f))'' and substitute ''section 3304(e) of title 41''.

(9) In section 8201(e), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(k) TITLE 39.—Section 410(b) of title 39, United States Code, is amended by striking paragraph (5) and substituting—

''(5) chapters 65 and 67 of title 41;''.

(*l*) TITLE 40.—Title 40, United States Code, is amended as follows:

(1) In the chapter analysis for chapter 1, in item 111, strike ''Federal Property and Administrative Services Act of 1949'' and substitute ''division C of subtitle I of title 41''.

(2) In section 102, before paragraph (1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except section 3302) of subtitle I of title 41''.

(3) In section 111—

(A) in the section catchline, strike ''**Federal Property and Administrative Services Act of 1949**'' and substitute ''**division C of subtitle I of title 41**''; and

(B) before paragraph (1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41''.

(4) In section 113(b)—

(A) in the heading, strike ''THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT'' and substitute ''DIVISION B OF SUBTITLE I OF TITLE 41''; and

(B) strike ''the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)'' and substitute ''division B of subtitle I of title 41''.

(5) In section 311—

(A) in subsection (a), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''; and

(B) in subsection (b), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(6) In section 501(b)(2)(B), strike ''the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)'' and substitute ''division B of subtitle I of title 41''.

(7) In section 502—

(A) in subsection (b)(1)(A)(i), strike ''section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3))'' and substitute ''section 8501(7) of title 41'';

(B) in subsection (b)(1)(A)(ii), strike ''handicapped (as defined in section 5(4) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(4)))'' and substitute ''disabled (as defined in section 8501(6) of title 41)'';

(C) in subsection (b)(1)(B), strike ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)'' and substitute ''chapter 85 of title 41''; and

(D) in subsection (b)(2), strike ''section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' and substitute ''section 8503 of title 41''.

(8) In section 503(b)—

(A) in paragraph (1), strike ''the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)'' and substitute ''division B of subtitle I of title 41''; and

(B) in paragraph (3)—

(i) in the heading, strike ''SECTION 3709 OF REVISED STATUTES'' and substitute ''SECTION 6101(b) TO (d) OF TITLE 41''; and

(ii) strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(9) In section 506(a)(1)(D), strike ''the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)'' and substitute ''division B of subtitle I of title 41''.

(10) In section 545(f), strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b)–(d) of title 41''.

(11) In section 593(a)(2), strike ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)'' and substitute ''chapter 85 of title 41''.

(12) In section 1305, strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(13) In section 1308, strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(14) In section 3148, strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(15) In section 3304(d)(2), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41''.

(16) In section 3305(a)—

(A) in paragraph (1), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''; and

(B) in paragraph (2), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(17) In section 3308(a), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(18) In section 3310(2), strike ''section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253)'' and substitute ''sections 3105, 3301, and 3303 to 3305 of title 41''.

(19) In section 3701(b)(3)(A)(ii), strike ''the Walsh-Healey Act (41 U.S.C. 35 et seq.)'' and substitute ''chapter 65 of title 41''.

(20) In section 3704(b)(1), strike ''sections 4 and 5 of the Walsh-Healey Act (41 U.S.C. 38, 39)'' and substitute ''sections 6506 and 6507 of title 41''.

(21) In section 3707, strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 103 of title 41''.

(22) In section 6111(b)(2)(D), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(23) In section 8711(d), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(24) In section 11101—

(A) in paragraph (1), strike ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' and substitute ''section 103 of title 41''; and

(B) in paragraph (2), strike ''section 4 of the Act (41 U.S.C. 403)'' and substitute ''section 133 of title 41''.

(m) TITLE 44.—Title 44, United States Code, is amended as follows:

(1) In the chapter analysis for chapter 3, in the item for section 311, strike ''the Federal Property and Administrative Services Act'' and substitute ''subtitle I of title 40 and division C of subtitle I of title 41''.

(2) In section 311—

(A) in the section catchline, strike ''**the Federal Property and Administrative Services Act**'' and substitute ''**subtitle I of title 40 and division C of subtitle I of title 41**'';

(B) in subsection (a), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41''; and

(C) in subsection (c), strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(n) TITLE 46.—Section 51703(b)(2) of title 46, United States Code, is amended by striking ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substituting ''section 6101(b) to (d) of title 41''.

(*o*) TITLE 49.—Title 49, United States Code, is amended as follows:

(1) In section 103(e), strike ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' and substitute ''division C of subtitle I of title 41''.

(2) In section 1113(b)(1)(B) strike ''section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''section 6101(b) to (d) of title 41''.

(3) In section 5334(j)(2), strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(4) In section 10721, strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(5) In section 13712, strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(6) In section 15504, strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

(7) In section 40110—

(A) in subsection (d)(2)(A), strike ''Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252–266)'' and substitute ''Division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'';

(B) in subsection (d)(2)(B), strike ''The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)'' and substitute ''Division B (except sections 1704 and 2303) of subtitle I of title 41'';

(C) in subsection (d)(2)(C), strike '', except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act to the system,'' and substitute ''. However, section 4705 of title 41 shall apply to the new acquisition management system developed and implemented pursuant to paragraph (1). For the purpose of applying section 4705 of title 41 to the system,''; and

(D) in subsection (d)(3)—

(i) in the heading, strike ''THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT'' and substitute ''DIVISION B OF SUBTITLE I OF TITLE 41'';

(ii) before subparagraph (A), strike ''section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)'' and substitute ''chapter 21 of title 41''; and

(iii) in subparagraph (A), strike ''Subsections (f) and (g)'' and substitute ''Sections 2101 and 2106 of title 41''.

(8) In section 40118(f)(2), strike ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))'' and substitute ''section 103 of title 41''.

(9) In section 47305(d), strike ''Section 3709 of the Revised Statutes (41 U.S.C. 5)'' and substitute ''Section 6101(b) to (d) of title 41''.

SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) CUTOFF DATE.—This Act replaces certain provisions of law enacted on or before December 31, 2008. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

(b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

(c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(d) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of law replaced by this Act continues in effect under the corresponding provision enacted by this Act.

(e) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(f) EFFECTIVE DATES FOR CERTAIN ACTIONS.—

(1) ISSUE POLICY.—The requirement in section 2303(b)(1) of title 41, United States Code, to issue a policy shall be done not later than 270 days after October 14, 2008.

(2) REVISIONS IN FEDERAL PROCUREMENT DATA SYSTEM OR SUCCESSOR SYSTEM.—The requirement in section 2311 of title 41, United States Code, to direct appropriate revisions in the Federal Procurement Data System or any successor system shall be done not later than one year after October 14, 2008.

(3) ESTABLISH DATABASE.—The requirement in section 2313(a) of title 41, United States Code, to establish a database shall be done not later than one year after October 14, 2008.

(4) AMEND FEDERAL ACQUISITION REGULATION WITHIN ONE YEAR AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be amended to meet the requirements of sections 2313(f), 3302(b) and (d), 4710(b), and 4711(b) of title 41, United States Code, not later than one year after October 14, 2008.

(5) AMEND FEDERAL ACQUISITION REGULATION WITHIN 270 DAYS AFTER OCTOBER 14, 2008.—The Federal Acquisition Regulation shall be amended to meet the requirements of section 3906(b) of title 41, United States Code, not later than 270 days after October 14, 2008.

SEC. 7. REPEALS.

(a) INFERENCE OF REPEAL.—The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) REPEALER SCHEDULE.—The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act.

SCHEDULE OF LAWS REPEALED

[Statutes at Large]

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1875 Mar. 3	133	2	18	455	10	
1884 July 7	332	(words after ''fifty five thousand dollars'' in 3d par. under heading ''Miscellaneous Objects Under the Treasury Department'').	23	204	24	6308
1920 June 5	240	(last par. under heading ''Purchase of Articles Manufactured at Government Arsenals'').	41	975	23	6307
1921 June 30	33	1 (last proviso on p. 78)	42	78	11a	6302
1922 July 1	259	(1st proviso on p. 812)	42	812	23	6307

SCHEDULE OF LAWS REPEALED—Continued

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Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
1926						
May 13	294	(4th complete par. (related to R.S. §3741) on p. 547)	44	547	16c	
1927						
Jan. 12	27	(2d complete par. (related to R.S. §3741) on p. 936)	44	936	16a	
1933						
Mar. 3	212	title III, §1	47	1520	10c	8301
		title III, §2	47	1520	10a	8302
		title III, §3	47	1520	10b	8303
		title III, §4			10b–1	
June 16	101	5	48	305	24a	
1934						
Jan. 25	5	(related to R.S. §3741)	48	337	22	6306
June 16	553	1–6	48	974	28–33	
1935						
Aug. 29	815		49	990	34	
1936						
June 30	881	1 (matter before subsec. (a) less words related to definition of ''agency of the United States'').	49	2036	35	6502
		1 (matter before subsec. (a) related to definition of ''agency of the United States'').	49	2036	35	6501
		1(a)–(d)	49	2036	35	6502
		2	49	2037	36	6503
		3	49	2037	37	6504
		4	49	2038	38	6506
		5	49	2038	39	6507
		6	49	2038	40	6508
		7	49	2039	41	6501
		8	49	2039	42	6511
		9	49	2039	43	6505
		10(a)			43a	6509
		10(b) (1st sentence)			43a	6507
		10(b) (last sentence), (c)			43a	6509
		11			43b	6510
		12	49	2039	44	
		13	49	2039	45	6502
1938						
June 25	697	1	52	1196	46	8502
		2	52	1196	47	8503
		3	52	1196	48	8504
		4	52	1196	48a	8505
		5	52	1196	48b	8501
		6	52	1196	48c	8506
		7			46 note	
1939						
Aug. 4	418	13 (related to R.S. §3744)	53	1197	16d	
1940						
June 18	396	(last par. (related to R.S. §3709) under heading ''Botanic Garden'').	54	474	6kk	
		(last par. (related to R.S. §3744) under heading ''Botanic Garden'').	54	474	16b	
June 24	412		54	504	6b	6102
Oct. 10	851	2(a)	54	1110	6a	6102
		2(f)	54	1110	6a	6102
		2(h)	54	1110	6a	6102
		2(j)	54	1110	6a	6102
		3(a)	54	1111	6b	
		3(b)	54	1111	6b	
1942						
June 22	432	1	56	375	49	6309
		2	56	376	50	6309
July 2	472	(1st complete par. on p. 493)	56	493	6	
1944						
July 1	358	1, 2(a)	58	649	101, 102	
		3	58	650	103	
		4(b)–13(c)	58	651	104–113	
		13(d)	58	662	113	
		13(e)–15	58	662	113–115	
		17, 18(a)	58	665	117, 118	
		18(c)–(e)	58	666	118	
		19(c)	58	667	119	
		20–25	58	668	120–125	
		26	58	671	101 note	
		27	58	671	101 note	
1946						
Mar. 8	80	1	60	37	51	
		2	60	37	52	8701
		3	60	37	53	8702
		4	60	37	54	8707
		5	60	37	55	8706
		6	60	37	56	8705
		7	60	37	57	8703
		8	60	37	58	8704
Aug. 2	744	9(c)	60	809	5	6101
		18	60	811	5a	6101
1949						
June 30	288	301	63	393	251	
		302(a)	63	393	252	3101
		302(b)	63	393	252	3104

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		302(c)(2)			252	3301
		302A, 302B			252a, 252b	3101
		302C			252c	4709
		303(a)	63	395	253	3301
		303(b)	63	395	253	3303
		303(c)–(f)	63	395	253	3304
		303(g)	63	395	253	3305
		303(h)			253	3301
		303(i)			253	3105
		303(j)			253	3304
		303A			253a	3306
		303B(a), (b)			253b	3701
		303B(c)			253b	3702
		303B(d)			253b	3703
		303B(e)			253b	3704
		303B(f)			253b	3705
		303B(g)			253b	3704, 3705
		303B(h)			253b	3706
		303B(i)			253b	3707
		303B(j)			253b	3308
		303B(k), (*l*)			253b	3708
		303B(m)			253b	4702
		303C			253c	3311
		303D			253d	4703
		303F			253f	3310
		303G			253g	4704
		303H			253h	4103
		303I			253i	4105
		303J			253j	4106
		303K			253k	4101
		303L			253*l*	3902
		303M			253m	3309
		304(a)	63	395	254	3901
		304(b)	63	395	254	3905
		304A(a)			254b	3502
		304A(b)			254b	3503
		304A(c)			254b	3504
		304A(d)			254b	3505
		304A(e)			254b	3506
		304A(f)			254b	3507
		304A(g)			254b	3508
		304A(h)			254b	3501
		304B			254c	3903
		304C			254d	4706
		305(a)	63	396	255	4501
		305(b)			255	4502
		305(c)	63	396	255	4502
		305(d)	63	396	255	4503
		305(e)			255	4504
		305(f)			255	4505
		305(g)			255	4506
		306(a)–(d)			256	4303
		306(e)			256	4304
		306(f)			256	4305
		306(g)			256	4306
		306(h)			256	4307
		306(i)			256	4308
		306(j)			256	4309
		306(k)			256	4310
		306(*l*)(1)			256	4301
		306(*l*)(2)			256	4302
		306(m)			256	4301
		307	63	396	257	4701
		309(a)	63	397	259	151
		309(b)			259	152
		309(c)(1)			259	111
		309(c)(2)			259	112
		309(c)(3)			259	114
		309(c)(4)			259	107
		309(c)(5)			259	113
		309(c)(6)			259	116
		309(c)(7)			259	109
		309(c)(8), (9)			259	108
		309(c)(10)			259	115
		309(c)(11)			259	103
		309(c)(12)			259	110
		309(c)(13)			259	102
		309(c)(14)			259	105
		309(d)			259	153
		309(e)			259	106
		310	63	397	260	3101
		311			261	3102
		312			262	4701
		313			263	3103
		314			264	3307
		314A (''commercial item'')			264a (''commercial item'')	103
		314A (''nondevelopmental item'')			264a (''nondevelopmental item'')	110
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		315			265	4705
		316			266	3105
Oct. 29	787	633	63	1024	10d	8303
1950						
Sept. 5	849	10(a)	64	591	256a	4707
1952						
July 14	739		66	627	113, 113 note	
1954						
May 11	199	1	68	81	321	
		2	68	81	322	
1957						
July 1	85–75	(last par. on p. 251)	71	251	6a	
1961						
Aug. 3	87–125	301	75	279	6b	
1962						
Sept. 5	87–638		76	437	254a	4708
1965						
July 27	89–90	(2d par. on p. 276)	79	276	6a–1	6102
Oct. 22	89–286	1	79	1034	351 note	
		2(a) (words before par. (1) related to applicability)	79	1034	351	6702
		2(a) (words before par. (1) related to required contract terms), (1)–(5).	79	1034	351	6703
		2(b)	79	1034	351	6704
		3	79	1035	352	6705
		4	79	1035	353	6707
		5(a)	79	1035	354	6706
		5(b)	79	1035	354	6705
		6	79	1035	355	6707
		7	79	1035	356	6702
		8	79	1036	357	6701
		9	79	1036	351 note	
		10			358	6707
1974						
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		4(2)	88	797	403	111
		4(3)	88	797	403	112
		4(4)	88	797	403	114
		4(5)			403	132
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		4(7)			403	113
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		4(10) (''item'', ''item of supply'')			403	108
		4(10) (''supplies'')			403	115
		4(11)			403	134
		4(12)			403	103
		4(13)			403	110
		4(14)			403	105
		4(15)			403	102
		4(16)			403	131
		4(17)			403	1301
		5(a)	88	797	404	1101
		5(b)	88	797	404	1102
		6(a)–(c)	88	797	405	1121
		6(d), (e)	88	797	405	1122
		6(f)	88	797	405	1121
		6(g)	88	797	405	1122
		6(h)(1)	88	797	405	1130
		6(h)(2)	88	797	405	2305
		6(i)	88	797	405	1125
		6(j)			405	1126
		6(k)			405	1131
		7	88	798	406	1701
		9	88	799	408	1121
		11	88	799	410	1101
		12	88	799	411	1122
		14(a)	88	800	412	2307
		14(b)	88	800	412	2306
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		16			414	1702
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		16A(d), (e)			414b	1312
		18			416	1708
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		20			418	1705
		21			418a	2302
		22			418b	1707
		23			419	1709
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		26(a)–(e)			422	1501
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		26(i)			422	
		26(j)			422	1504
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		27(g)			423	2106
		27(h)			423	2107
		29			425	1304
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		31			427	1901
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		37			433	1703
		38			434	2308
		39			435	1127
		40			436	2309
		41			437	2310
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		43			439	1710
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1978						
Oct. 24	95–507	222 (1st sentence)	92	1771	405a	1121
		222 (last sentence)	92	1771	405a	1123
Nov. 1	95–563	1	92	2383	601 note	
		2	92	2383	601	7101
		3	92	2383	602	7102
		4	92	2384	603	7102
		5	92	2384	604	7103
		6(a) (1st, 2d sentences)	92	2384	605	7103
		6(a) (3d, 4th sentences)			605	7103
		6(a) (5th–last sentences), (b), (c)(1)–(5)	92	2384	605	7103
		6(c)(6), (7), (d), (e)			605	7103
		7	92	2385	606	7104
		8(a)–(e)	92	2385	607	7105
		8(f)	92	2386	607	7106
		8(g)	92	2387	607	7107
		9	92	2387	608	7106
		10(a)	92	2388	609	7104
		10(b)–(e)	92	2388	609	7107
		10(f)			609	7107
		11	92	2388	610	7105
		12	92	2389	611	7109
		13	92	2389	612	7108
		15	92	2391	613	
		16	92	2391	601 note	
1984						
Oct. 30	98–577	502	98	3085	414a	1706
1988						
Oct. 1	100–463	8141	102	2270–47	405b	2304
Oct. 25	100–533	502	102	2697	417a	1713
Nov. 18	100–690	5151	102	4304	701 note	
		5152	102	4304	701	8102
		5153	102	4306	702	8103
		5154	102	4307	703	8104
		5155	102	4307	704	8105
		5156	102	4308	705	8106
		5157, 5158	102	4308	706, 707	8101
		5160	102	4308	701 note	
1992						
Oct. 29	102–572	907(a)(3)	106	4518	611 note	7109
1993						
Nov. 30	103–160	849(c), (d)	107	1725	10b–2	8304
1994						
Oct. 13	103–355	1054(b)	108	3265	253h note	4102
		8002	108	3386	264 note	3307
1996						
Sept. 23	104–201	827	110	2611	10b–3	8305
1997						
June 12	105–18	7004	111	192	253*l*–1	3904
1999						
Sept. 29	106–57	207	113	423	253*l*–2	3904
Oct. 5	106–65	804	113	704	253h note	4104
2000						
Dec. 21	106–554	1(a)(2) [title I, §101]	114	2763A–100	253*l*–3	3904
		1(a)(2) [title I, §110]	114	2763A–108	253*l*–4	3904
2003						
Feb. 20	108–7	div. H, title I, §5	117	350	253*l*–5	3904
		div. H, title I, §104	117	354	6a–3	6102
		div. H, title I, §1002	117	357	253*l*–6	3904
		div. H, title I, §1102	117	370	6a–4	6102
		div. H, title I, §1202	117	373	253*l*–7	3904
Aug. 15	108–72	4	117	889	253*l*–8	3904
Nov. 24	108–136	1412(a)	117	1664	433 note	1703

SCHEDULE OF LAWS REPEALED—Continued

[Statutes at Large]

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (title 41 unless otherwise specified)	
			Volume	Page	Existing	Proposed
		1413	117	1665	433 note	1703
		1414	117	1666	433 note	1128
		1428	117	1670	253a note	3306
		1431(b)	117	1671	405 note	1129
		1441	117	1673	428a note	1904
2004						
Oct. 28	108–375	807(c)	118	2011	431a note	1908
2006						
Oct. 17	109–364	834(b), (c) (related to (b))	120	2333	253i note	4105
2008						
Jan. 28	110–181	855	122	251	433a	1704
June 30	110–252	6102, 6103	122	2386, 2387	251 note	3509
Oct. 14	110–417	[div. A], title VIII, 841(a)	122	4537	405c(a)	2303
		[div. A], title VIII, 841(c)	122	4539	405c(c)	2303
		[div. A], title VIII, 863(a)–(e)	122	4547	253h note	3302
		[div. A], title VIII, 864(a), (b), (d), (e), (f)(2), (g)	122	4549	254 note	3906
		[div. A], title VIII, 866	122	4551	254b note	4710
		[div. A], title VIII, 867	122	4551	251 note	4711
		[div. A], title VIII, 868	122	4552	254b note	3501
		[div. A], title VIII, 869	122	4553	433a note	1704
		[div. A], title VIII, 872	122	4555	417b	2313
		[div. A], title VIII, 874(a)	122	4558	405 note	2311

Revised Statutes

Revised Statutes Section	United States Code (title 41)	
	Existing	Proposed
3709	5	6101
3710	8	6103
3732	11	6301
3733	12	6303
3735	13	6304
3736	14	6301
3737	15	6305
3741	22	6306

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

GENERAL LEAVE

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

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

There was no objection.

Mr. COHEN. I yield myself such time as I may consume.

H.R. 1107 codifies into positive law as title 41, United States Code, certain general and permanent laws related to public contracts. It is a rather extensive bill, fairly dry bill, that doesn't do much in the way of substance but does many technical corrections.

It was prepared by the Office of Law Revision Counsel in coordination with our Judiciary Committee.

This bill is not intended to make substantive changes in the law, but as is typical with the codification process, a number of nonsubstantive revisions are made, including the reorganization of sections into a more coherent overall structure. But these changes are not intended in any way to have any substantive effect, simply procedural, and make the code more easily used.

The bill has been subject to extensive review in the previous two Congresses, by relevant congressional committees, agencies, and practitioners, as well as the public.

Accordingly, I urge my colleagues to support this legislation.

I reserve the balance of our time.

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

I support H.R. 1107, a bill proposed by the Office of Law Revision Counsel to update, improve, and for clarification of title 41 of the U.S. Code.

Mr. Speaker, this, as the other speaker said, is, in fact, a very technical correction. The minority fully supports it, believes it is necessary.

It passed on March 14 out of the Judiciary Committee unanimously on a voice vote.

I yield back the balance of my time.

Mr. COHEN. Mr. Speaker, I would like to note a question that has come to our attention with respect to a reporting requirement found in 41 U.S.C. 405b(d) of the present law and restated as 41 U.S.C. 2304(c)(2) in the bill. There is a question whether that reporting requirement is still effective.

Section 3003 of the Federal Reports Elimination and the Sunset Act of 1995, 31 U.S.C. 1113 note, stated that each provision of law requiring the submission to Congress of any annual, semiannual, or other regular periodic report specified in a list that had been prepared by the House Clerk would cease to be effective as of May 15, 2000.

The provision in question is listed on page 156 of that document.

In this regard, it should be noted that, as positive law codification bills do not change substantive law, the restatement of a revision does not revive it if it has otherwise become ineffective.

Thus, the reporting requirement, as restated, is effective to the extent, and only to the extent, that it was effective under the underlying source law on the day before the restatement was enacted.

That is a matter for the agency and the committee of substantive jurisdiction to work out. If legislation removing that requirement from the text of the underlying law is enacted before final enrollment of this bill, that change can be reflected at that time, if and when it occurs.

Mr. Speaker, this is a bill that shows bipartisanship. Mr. ISSA has done a wonderful job representing his side of the aisle. I am proud to represent mine. Republicans and Democrats have come together on this bill. I would ask for a positive, unanimous vote on this important legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong support of H.R. 1107, to enact certain laws relating to public contracts as Title 41, United States Code, H.R. 1107. This important legislation was introduced jointly by Chairman CONYERS and Ranking Member SMITH.

H.R. 1107 is not intended to make any substantive changes in the law. H.R. 1107 is a simple codification. There are a myriad of non-

substantive revisions are made, including the reorganization of sections into a more coherent overall structure.

Simply put, all H.R. 1107 does is codifies into positive law as title 41, United States Code, certain general and permanent laws related to public contracts. This bill was prepared by the Office of Law Revision Counsel, as part of its functions under 2 U.S.C. Sec. 285(b).

Lawyers run into public contract law in limited circumstances. Lawyers who represent firms that operate primarily in the commercial sector, but are tangentially active in the contracting community, often find that their clients have conflicts with the federal government.

Additionally, lawyers may run into public contract issues when they represent subcontractors to large Department of Defense (DOD) contractors, who have potential or ongoing disputes with the prime contractor that they want to avoid or resolve.

H.R. 1107 simplifies, codifies, and streamlines public contract law. H.R. 1107 has already been subject to extensive agency and public review in the last Congress, and the Congress before last. Given the extensive agency and public review and the simplicity of the bill, I urge my colleagues to support this bill and vote for it in the affirmative.

Mr. COHEN. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and pass the bill, H.R. 1107.

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

A motion to reconsider was laid on the table.

RECOGNIZING THE BORDER PATROL'S FIGHT AGAINST HUMAN SMUGGLING

Mr. COHEN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 14) recognizing the importance of the Border Patrol in combating human smuggling and commending the Department of Justice for increasing the rate of human smuggler prosecutions, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 14

Whereas human smuggling and trafficking in persons continue to threaten the United States as well as individuals in transport;

Whereas human smuggling and trafficking rings introduce numerous violent criminals to neighborhoods and communities in the United States;

Whereas human smuggling and trafficking rings expose the United States to further acts of terrorism by subverting the authority of, and safety provided by, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement;

Whereas individuals voluntarily being smuggled are exposed to tragic and dangerous conditions, many times resulting in their injury or death;

Whereas countless individuals are abducted and trafficked against their will, continuing the grotesque practice of human slavery;

Whereas human smuggling and trafficking in persons are often conducted by organized crime rings, which expose Federal agents to increased danger in their enforcement efforts;

Whereas Department of Homeland Security personnel have, in the past, arrested many human smugglers and traffickers in persons, only to see them freed without prosecution;

Whereas many of these same human smugglers and traffickers in persons have been repeatedly arrested;

Whereas such repeated encounters have been extremely demoralizing to U.S. Customs and Border Protection at a time when the American public has been putting tremendous pressure on the agencies to do more to stop illegal border crossings;

Whereas Federal prosecutions of human smugglers and traffickers in persons have increased in recent months, resulting in decreased repeat offenses and arrests and improved morale;

Whereas U.S. Immigration and Customs Enforcement uses a global enforcement strategy to disrupt and dismantle domestic and international human smuggling and trafficking organizations;

Whereas U.S. Customs and Border Protection have worked cooperatively with U.S. Immigration and Customs Enforcement, the Federal Bureau of Investigation, and local nonprofit service providers to identify and rescue victims of human trafficking and modern slavery and to ensure their safety and continued presence in the United States pursuant to the Trafficking Victims Protection Act of 2000; and

Whereas the 110th Congress of the United States unanimously adopted the bipartisan William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, providing U.S. Customs and Border Protection and its law enforcement partners with new tools to bring human traffickers to justice and new responsibilities to identify and protect victims of modern slavery and at-risk unaccompanied alien children: Now, therefore, be it

Resolved, That the House of Representatives—

(1) reaffirms its support for the role and importance of the Department of Homeland Security, including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, in combating human smuggling and trafficking in persons;

(2) commends the Department of Justice for increasing the rate of prosecutions against human smugglers and traffickers in persons; and

(3) urges the Department of Justice to continue prosecuting smugglers and traffickers at a rate that will help eliminate the trade in human beings.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

GENERAL LEAVE

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

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

There was no objection.

Mr. COHEN. I yield myself such time as I may consume.

Mr. Speaker, this legislation, sponsored by the Honorable DARRELL ISSA of California, a member of our Judiciary Committee, and a most valuable one, recognizes the recent important steps taken by the Department of Justice and several agencies within the Department of Homeland Security, including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, to fight human smuggling in all its forms, including human trafficking and slavery.

I am proud to say that last year the 110th Congress took decisive actions to renew the Nation's efforts against human trafficking and modern slavery. We also went so far as to issue an apology in this House for the slavery that this country condoned before 1865.

Both Houses of Congress unanimously adopted the bipartisan William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. It bears repeating that this bill, this substantial bill of 129 pages that provides a myriad of tools to protect trafficking victims and to combat human trafficking at home and around the world, passed both Houses unanimously, once again, a bipartisan effort Mr. ISSA led.

This is a strong indication that we are really serious about eradicating human smuggling in all its forms.

Building on our efforts in Congress, the Department of Justice and the Department of Homeland Security, including Customs and Border Protection and Immigration and Customs Enforcement, have also renewed their efforts against smuggling and human trafficking. Recently, we have seen a substantial increase in the prosecutions of smugglers and traffickers.

We have seen the adoption of a global enforcement strategy to disrupt and dismantle domestic and international human smuggling and trafficking organizations. And we have seen strong interagency cooperation of identifying rescue victims of human trafficking and modern slavery. These agencies should be commended for their renewed commitment in these areas.

I further commend DARRELL ISSA for his leadership on this bill. And I commend my chairman, JOHN CONYERS, and I commend him on everything he has done. He has been a wonderful member and a mentor to me; and Ranking Member LAMAR SMITH, also a great mentor to me of the Judiciary Committee; and Chairman BENNIE THOMPSON and Ranking Member PETER KING of the Homeland Security Committee for their work in improving the bill and making it a consensus, bipartisan measure.

I urge my colleagues to support this important legislation.

I reserve the balance of my time.

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

Mr. Speaker, I concur with everything the gentleman from Tennessee just said. Mr. COHEN and I do enjoy

working together on a bipartisan basis on a great many issues.

Today this bill, H. Res. 14, attempts to begin, if you will, a downpayment on thanking the men and women of the Border Patrol and of ICE and other portions of Homeland Security for their tireless efforts to defend America, and particularly on an issue that I find very personal, that of human smuggling.

Mr. Speaker, 5 years ago I wrote the U.S. Attorney for the Southern District of California expressing my concern after learning from a reporter that U.S. attorneys had refused to prosecute an alien smuggler apprehended while transporting a car loaded with undocumented immigrants.

The smuggler, Mr. Antonio Amparo-Lopez, had attempted to escape the arresting Border Patrol agents and, upon his recapture, the Border Patrol learned that this smuggler had 21 known aliases, had been arrested and deported more than 20 times without ever having been prosecuted once.

Mr. Speaker, this is what the Border Patrol once faced, is something that the Border Patrol no longer faces, and we would hope, on a bipartisan basis, would no longer face.

As I dug deeper into this, I learned that this was, in fact, at that time a common problem, and that Border Patrol agents had been forced to accept the reality that no matter how many times they did their job, often with people with large amounts of drugs, often with people who they knew were guilty of more heinous crimes, and, in fact, sometimes when they knew that people who perhaps had abandoned the human beings they were trafficking in to die in the desert, they could not take action.

On a bipartisan basis, I want to recognize the men and women of the Border Patrol for their willingness to do this job with personal danger, having had rocks pummeled at them, having been shot at.

□ 1415

The men and women of the Border Patrol and their allied agencies do what we ask them to do even when we do not fully support them.

The San Diego Border Patrol sector chief even told the House subcommittee in a hearing how the failure to prosecute the foot soldiers in alien smuggling organizations had created an opportunity in which ''what would happen then, we would apprehend people that were guiding people across the country, many times at risk. And without meeting prosecution guidelines, they were simply voluntarily return back to Mexico where they could continue to conduct their illicit activity. There is no level of consequences.''

Mr. Speaker, I'm glad to say that is no longer the case. I join with my colleagues on a bipartisan basis to say, human smuggling, whether illegal immigrants or in fact victims of kidnapping around the world for purposes of prostitution, cannot be tolerated. We must have a zero-tolerance policy, and we must support the men and women that protect our borders and our interior.

I reserve the balance of my time.

Mr. COHEN. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Arizona, a valuable new Member, Mrs. ANN KIRKPATRICK.

Mrs. KIRKPATRICK of Arizona. Mr. Speaker, I rise today in support of House Resolution 14, which recognizes the critical contributions that the Border Patrol and the Justice Department are making in the fight against human smuggling. Human smuggling is a serious threat to greater Arizona where country roads are targeted by cartels and smugglers. Smuggling cannot be separated from the trafficking of drugs, guns, and money across our borders.

The people controlling the human smuggling trade are the same gangs and drug cartels who are spreading violence throughout northern Mexico and are now openly threatening our law enforcement. The increased efforts to target human smugglers by Border Patrol and the Justice Department are an important part of the plan to address violence along our border, and they should be praised for this crackdown. The department, along with the entire Federal Government, needs to commit to a sustained, comprehensive effort to secure our borders and keep our communities safe. And this is one valuable step in the right direction.

Mr. ISSA. Mr. Speaker, I would now yield 3 minutes to the gentleman from Texas (Mr. POE).

Mr. POE of Texas. Mr. Speaker, I appreciate my friend from California bringing this to the House floor.

The Border Patrol that patrols our borders on the north and the south are many times in isolated areas. The vastness of the land makes it lonely. And for much of the time, all they are able to do is seek and find out those who wish to sneak into the United States at the hands of a human smuggler. We call those people ''coyotes.'' I think that insults the coyote population of south Texas.

The deadliest human smuggling attempt took place in my home State of Texas not far from Houston when a coyote bringing 70 immigrants into the United States abandoned the tractor-trailer that they were in at a truck-stop, and 19 of the people in that vehicle died from dehydration and suffocation. And now we are learning that the drug cartels are working hand-in-hand with the human smugglers, and they are both making a profit off of these humans that wish to come into the United States.

This is a multibillion-dollar-a-year industry. And that money goes to criminals, coyotes and the drug cartels.

Last week in the Senate hearing, Arizona Attorney General Terry Goddard noted that in Arizona just last year, the cartels grossed $2 billion from human smuggling alone. This billion-dollar industry is being stopped by the Border Patrol. And we need to applaud their work and their efforts in trying to keep the dignity and sovereignty of the United States intact and keeping out the drug cartels, the human smugglers and the outlaws that make a profit off of people who come into the United States.

Mr. COHEN. Mr. Speaker, may I inquire how many more speakers Mr. ISSA has.

Mr. ISSA. I have one more at this time.

Mr. COHEN. I reserve my time.

Mr. ISSA. At this time, I yield myself such time as I may consume.

I want to close on my side by thanking the gentleman from Tennessee. Memphis is a long way from the southern or the northern border, and yet he has helped us in moving this piece of legislation along because, in fact, our borders ultimately, once somebody is over our border in America, they can go anywhere virtually without ever being stopped. And so I thank all the Members who, whether they are a border district like myself or far inland, have seen that human trafficking is something we need to end.

And I again ask all of us to support this bipartisan legislation.

And I yield back the balance of my time.

Mr. COHEN. Mr. Speaker, I would just again like to thank Mr. ISSA for his work on this issue. And this is a very important issue. It is important for our security. But it is also important for the concept that people ought to have freedom. And they ought to have freedom in all ways. Many types of enslavement, unfortunately, have gone on in this world for a long time, and still it goes on today. And it is not just commercial slavery, there is slavery in other parts of the world where it is still something that has not been eliminated. It was only 200 years ago that we said we wouldn't import any more slaves, and 144 years ago that we ended the practice in this Nation. It was a long time that people used their power over others.

So this is an important concept and an important, substantive bill, and I thank Mr. ISSA. I ask everybody to vote for the bill.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H. Res. 14, "Recognizing the importance of the Border Patrol in combating human smuggling and commending the Department of Justice for increasing the rate of human smuggler prosecutions".

I have long been an advocate of human smuggler prosecutions. I have also worked on human trafficking. These issues particularly affect border States and Texas is no exception. I urge my colleagues to support this bill.

There are few, if any, crimes that are both more corrosive to our Nation's security and offensive to the fundamental moral impulses of its people, than the kidnapping and exploitation—whether it is for forced physical labor, for the sexual degradation, or anything else—

of our fellow human beings. It is a practice formerly, and still largely, known as slavery; in recent years, it has reemerged in a world more interconnected than ever, under the title of "human trafficking".

Human smuggling is a terrible crime. This activity attracts and creates the worst sorts of criminal—it is often conducted by organized crime and exposes Federal agents to increased danger in their enforcement efforts. Despite this, United States Customs and Border Protection has in the past, repeatedly arrested many human smugglers only to see them freed by the Federal Government without prosecution. These repeated encounters are extremely demoralizing to the Border Patrol, especially when under great pressure to do more to stop illegal border crossings.

But we are seeing signs of hope. Federal prosecutions of human smugglers have increased in recent months resulting in decreased repeat offenses and arrests and uplifted Border Patrol morale. Furthermore, the United States is one of the leaders in the fight against human trafficking, and this is reflected in a number of acts by this body that define and expand the U.S. Government's role in the war against human trafficking—laws like the Trafficking Victims Protection Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005.

The interagency Human Smuggling and Trafficking Center, HSTC, brings together Federal agency representatives from policy, law enforcement, intelligence, and diplomatic sectors, so they can work together on a full-time basis to achieve increased effectiveness and to convert intelligence into effective law enforcement and other action. This includes the Department of State, DOS, the Department of Homeland Security, DHS, and the Department of Justice, DOJ. The HSTC also serves as a clearinghouse for trafficking information.

A week ago yesterday, in my city of Houston, a U.S. District judge passed the last sentence on one of eight defendants—a man by the name of Maximino Mondragon—in a case that illustrates much of what we condemn and commend here today. Mondragon and his conspirators lured the women to the United States with false promises of legitimate jobs. Once here, traffickers charged the women huge fees for their trip and expenses and held them as prisoners until they could work off what, for many, seemed to be impossible debts. The women were forced to wear skimpy clothes and sell high-priced drinks to men at local cantinas who were then allowed to touch them. And now many of them are beginning prison terms to last 13 or 15 years, and have been made to pay $1.7 million in restitution, a small consolation for their ordeal.

I support this bill—praising the Department of Justice for increasing the rate of human smuggler prosecutions, urging the Department of Justice to continue to hunt down and prosecute men like Mondragon.

Mr. COHEN. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and agree to the resolution, H. Res. 14, as amended.

The question was taken.

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

Mr. COHEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 386) to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes, as amended.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 386

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fraud Enforcement and Recovery Act of 2009" or "FERA".

SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURITIES, COMMODITIES, AND FINANCIAL FRAUD RECOVERY AND ENFORCEMENT.

(a) DEFINITION OF FINANCIAL INSTITUTION AMENDED TO INCLUDE MORTGAGE LENDING BUSINESS.—Section 20 of title 18, United States Code, is amended—

(1) in paragraph (8), by striking "or" after the semicolon;

(2) in paragraph (9), by striking the period and inserting "; or"; and

(3) by inserting at the end the following:

"(10) a mortgage lending business (as defined in section 27 of this title) or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974.".

(b) MORTGAGE LENDING BUSINESS DEFINED.—

(1) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by inserting after section 26 the following:

"§ 27. Mortgage lending business defined

"In this title, the term 'mortgage lending business' means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.".

(2) CHAPTER ANALYSIS.—The chapter analysis for chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"27. Mortgage lending business defined.".

(c) FALSE STATEMENTS IN MORTGAGE APPLICATIONS AMENDED TO INCLUDE FALSE STATEMENTS BY MORTGAGE BROKERS AND AGENTS OF MORTGAGE LENDING BUSINESSES.—Section 1014 of title 18, United States Code, is amended by—

(1) striking "or" after "the International Banking Act of 1978),"; and

(2) inserting after "section 25(a) of the Federal Reserve Act" the following: ", or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974".

(d) MAJOR FRAUD AGAINST THE GOVERNMENT AMENDED TO INCLUDE ECONOMIC RELIEF AND TROUBLED ASSET RELIEF PROGRAM FUNDS.—Section 1031(a) of title 18, United States Code, is amended by—

(1) inserting after "or promises, in" the following: "any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government's purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in";

(2) striking "the contract, subcontract" and inserting "such grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance"; and

(3) striking "for such property or services".

(e) SECURITIES FRAUD AMENDED TO INCLUDE FRAUD INVOLVING OPTIONS AND FUTURES IN COMMODITIES.—

(1) IN GENERAL.—Section 1348 of title 18, United States Code, is amended—

(A) in the caption, by inserting "**AND COMMODITIES**" after "**SECURITIES**";

(B) in paragraph (1), by inserting "any commodity for future delivery, or any option on a commodity for future delivery, or" after "any person in connection with"; and

(C) in paragraph (2), by inserting "any commodity for future delivery, or any option on a commodity for future delivery, or" after "in connection with the purchase or sale of".

(2) CHAPTER ANALYSIS.—The item for section 1348 in the chapter analysis for chapter 63 of title 18, United States Code, is amended by inserting "and commodities" after "Securities".

(f) MONEY LAUNDERING AMENDED TO DEFINE PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.—

(1) MONEY LAUNDERING.—Section 1956(c) of title 18, United States Code, is amended—

(A) in paragraph (8), by striking the period and inserting "; and"; and

(B) by inserting at the end the following:

"(9) the term 'proceeds' means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.".

(2) MONETARY TRANSACTIONS.—Section 1957(f) of title 18, United States Code, is amended by striking paragraph (3) and inserting the following:

"(3) the terms 'specified unlawful activity' and 'proceeds' shall have the meaning given those terms in section 1956 of this title.".

(g) SENSE OF THE CONGRESS AND REPORT CONCERNING REQUIRED APPROVAL FOR MERGER CASES.—

(1) SENSE OF CONGRESS.—It is the sense of the Congress that no prosecution of an offense under section 1956 or 1957 of title 18, United States Code, should be undertaken in combination with the prosecution of any other offense, without prior approval of the Attorney General, the Deputy Attorney General, the Assistant Attorney General in charge of the Criminal Division, a Deputy Assistant Attorney General in the Criminal Division, or the relevant United States Attorney, if the conduct to be charged as "specified unlawful activity" in connection with the offense under section 1956 or 1957 is so closely connected with the conduct to be charged as the other offense that there is no clear delineation between the two offenses.

(2) REPORT.—One year after the date of the enactment of this Act, and at the end of each of the four succeeding one-year periods, the Attorney General shall report to the House and Senate Committees on the Judiciary on efforts undertaken by the Department of Justice to ensure that the review and approval described in paragraph (1) takes place in all appropriate cases. The report shall include the following:

(A) The number of prosecutions described in paragraph (1) that were undertaken during the previous one-year period after prior approval by an official described in paragraph (1), classified by type of offense and by the approving official.

(B) The number of prosecutions described in paragraph (1) that were undertaken during the previous one-year period without such prior approval, classified by type of offense, and the reasons why such prior approval was not obtained.

(C) The number of times during the previous year in which an approval described in paragraph (1) was denied.

SEC. 3. AUTHORIZATION OF ADDITIONAL FUNDING TO COMBAT MORTGAGE FRAUD, SECURITIES AND COMMODITIES FRAUD, AND OTHER FRAUDS INVOLVING FEDERAL ECONOMIC ASSISTANCE.

(a) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—There is authorized to be appropriated to the Attorney General, $165,000,000 for each of the fiscal years 2010 and 2011, for the purposes of investigations and prosecutions and civil and administrative proceedings involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) ALLOCATIONS.—With respect to fiscal years 2010 and 2011, the amounts authorized to be appropriated under paragraph (1) shall be allocated as follows:

(A) Federal Bureau of Investigation: $75,000,000 for fiscal year 2010 and $65,000,000 for fiscal year 2011, an appropriate percentage of which amounts shall be used to investigate mortgage fraud.

(B) The offices of the United States Attorneys: $50,000,000 for each fiscal year.

(C) The criminal division of the Department of Justice: $20,000,000 for each fiscal year.

(D) The civil division of the Department of Justice: $15,000,000 for each fiscal year.

(E) The tax division of the Department of Justice: $5,000,000 for each fiscal year.

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE POSTAL INSPECTION SERVICE.—There is authorized to be appropriated to the Postal Inspection Service of the United States Postal Service, $30,000,000 for each of the fiscal years 2010 and 2011 for investigations involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(c) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE INSPECTOR GENERAL FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—There is authorized to be appropriated to the Inspector General of the Department of Housing and Urban Development, $30,000,000 for each of the fiscal years 2010 and 2011 for investigations involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(d) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES SECRET SERVICE.—There is authorized to be appropriated to the United States Secret Service of the Department of Homeland Security, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(e) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations and enforcement proceedings involving financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) INSPECTOR GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $1,000,000 for each of the fiscal years 2010 and 2011 for the salaries and expenses of the Office of the Inspector General of the Securities and Exchange Commission.

(f) USE OF FUNDS.—

(1) IN GENERAL.—The funds appropriated pursuant to authorization under this section shall be limited to covering the costs of each listed agency or department for investigating possible criminal, civil, or administrative violations and for criminal, civil, or administrative proceedings involving financial crimes and crimes against Federal assistance programs, including mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs.

(2) FUNDS FOR TRAINING AND RESEARCH.—Funds authorized to be appropriated under this section may be used and expended for programs for improving the detection, investigation, and prosecution of economic crime including financial fraud and mortgage fraud. Funds allocated under this section may be allocated to programs which assist State and local criminal justice agencies to develop, establish, and maintain intelligence-focused policing strategies and related information sharing; provide training and investigative support services to State and local criminal justice agencies to provide such agencies with skills and resources needed to investigate and prosecute such criminal activities and related criminal activities; provide research support, establish partnerships, and provide other resources to aid State and local criminal justice agencies to prevent, investigate, and prosecute such criminal activities and related problems; provide information and research to the general public to facilitate the prevention of such criminal activities; and any other programs specified by the Attorney General as furthering the purposes of this Act.

(g) ADDITIONAL NATURE OF AUTHORIZATIONS; AVAILABILITY.—The amounts authorized under this section are in addition to amounts otherwise authorized in other Acts and shall remain available until expended.

(h) REPORT TO CONGRESS.—Following the final expenditure of all funds appropriated pursuant to authorization under this section, the Attorney General, in consultation with the United States Postal Inspection Service, the Inspector General for the Department of Housing and Urban Development, the Secretary of Homeland Security, and the Commissioner of the Securities and Exchange Commission, shall submit a report to Congress identifying—

(1) the amounts expended under each of subsections (a), (b), (c), (d), and (e) and a certification of compliance with the requirements listed in subsection (f); and

(2) the amounts recovered as a result of criminal or civil restitution, fines, penalties, and other monetary recoveries resulting from criminal, civil, or administrative proceedings and settlements undertaken with funds authorized by this Act.

SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO REFLECT THE ORIGINAL INTENT OF THE LAW.

(a) CLARIFICATION OF THE FALSE CLAIMS ACT.—Section 3729 of title 31, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

''(a) LIABILITY FOR CERTAIN ACTS.—

''(1) IN GENERAL.—Subject to paragraph (2), any person who—

''(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

''(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

''(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

''(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

''(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

''(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

''(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

''(2) REDUCED DAMAGES.—If the court finds that—

''(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

''(B) such person fully cooperated with any Government investigation of such violation; and

''(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

''(3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.'';

(2) by striking subsections (b) and (c) and inserting the following:

''(b) DEFINITIONS.—For purposes of this section—

''(1) the terms 'knowing' and 'knowingly'—

''(A) mean that a person, with respect to information—

''(i) has actual knowledge of the information;

''(ii) acts in deliberate ignorance of the truth or falsity of the information; or

''(iii) acts in reckless disregard of the truth or falsity of the information; and

''(B) require no proof of specific intent to defraud;

''(2) the term 'claim'—

''(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

''(i) is presented to an officer, employee, or agent of the United States; or

''(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

''(I) provides or has provided any portion of the money or property requested or demanded; or

''(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

''(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

''(3) the term 'obligation' means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

''(4) the term 'material' means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.'';

(3) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(4) in subsection (c), as redesignated, by striking ''subparagraphs (A) through (C) of subsection (a)'' and inserting ''subsection (a)(2)''.

(b) INTERVENTION BY THE GOVERNMENT.—Section 3731(b) of title 31, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting the new subsection (c):

''(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.''.

(c) CIVIL INVESTIGATIVE DEMANDS.—Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by inserting '', or a designee (for purposes of this section),'' after ''Whenever the Attorney General''; and

(II) by striking ''the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law,'' and inserting ''the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b),''; and

(ii) in the matter following subparagraph (D)—

(I) by striking ''may not delegate'' and inserting ''may delegate''; and

(II) by adding at the end the following: ''Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.''; and

(B) in paragraph (2)(G), by striking the second sentence;

(2) in subsection (i)(2)—

(A) in subparagraph (B), by striking '', who is authorized for such use under regulations which the Attorney General shall issue''; and

(B) in subparagraph (C), by striking ''Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.''; and

(3) in subsection (l)—

(A) in paragraph (6), by striking ''and'' after the semicolon;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) the term 'official use' means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.''.

(d) RELIEF FROM RETALIATORY ACTIONS.—Section 3730(h) of title 31, United States Code, is amended to read as follows:

''(h) RELIEF FROM RETALIATORY ACTIONS.—

''(1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

''(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.''.

(e) FALSE CLAIMS JURISDICTION.—Section 3732 of title 31, United States Code, is amended by adding at the end the following new subsection:

''(c) SERVICE ON STATE OR LOCAL AUTHORITIES.—With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.''.

(f) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to conduct on or after the date of enactment, except that—

(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) that are pending on or after that date; and

(2) section 3731(b) of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to cases pending on the date of enactment.

SEC. 5. FINANCIAL CRISIS INQUIRY COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—There is established in the legislative branch the Financial Crisis Inquiry Commission (in this section referred to as the ''Commission'') to examine the causes, domestic and global, of the current financial and economic crisis in the United States.

(b) COMPOSITION OF THE COMMISSION.—

(1) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(A) 3 members shall be appointed by the majority leader of the Senate, in consultation with relevant Committees;

(B) 3 members shall be appointed by the Speaker of the House of Representatives, in consultation with relevant Committees;

(C) 2 members shall be appointed by the minority leader of the Senate, in consultation with relevant Committees; and

(D) 2 members shall be appointed by the minority leader of the House of Representatives, in consultation with relevant Committees.

(2) QUALIFICATIONS; LIMITATION.—

(A) IN GENERAL.—It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens with national recognition and significant depth of experience in such fields as banking, regulation of markets, taxation, finance, economics, consumer protection, and housing.

(B) LIMITATION.—No person who is a member of Congress or an officer or employee of the Federal Government or any State or local government may serve as a member of the Commission.

(3) CHAIRPERSON; VICE CHAIRPERSON.—

(A) IN GENERAL.—Subject to the requirements of subparagraph (B), the Chairperson of the Commission shall be selected jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives, and the Vice Chairperson shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

(B) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson of the Commission may not be from the same political party.

(4) MEETINGS, QUORUM; VACANCIES.—

(A) MEETINGS.—

(i) INITIAL MEETING.—The initial meeting of the Commission shall be as soon as possible after a quorum of members have been appointed.

(ii) SUBSEQUENT MEETINGS.—After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of its members.

(B) QUORUM.—6 members of the Commission shall constitute a quorum.

(C) VACANCIES.—Any vacancy on the Commission shall—

(i) not affect the powers of the Commission; and

(ii) be filled in the same manner in which the original appointment was made.

(c) FUNCTIONS OF THE COMMISSION.—The functions of the Commission are—

(1) to examine the causes of the current financial and economic crisis in the United States, specifically the role of—

(A) fraud and abuse in the financial sector, including fraud and abuse towards consumers in the mortgage sector;

(B) Federal and State financial regulators, including the extent to which they enforced, or failed to enforce statutory, regulatory, or supervisory requirements;

(C) the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;

(D) monetary policy and the availability and terms of credit;

(E) accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles;

(F) tax treatment of financial products and investments;

(G) capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;

(H) credit rating agencies in the financial system, including, reliance on credit ratings by financial institutions and Federal financial regulators, the use of credit ratings in financial regulation, and the use of credit ratings in the securitization markets;

(I) lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;

(J) affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies;

(K) the concept that certain institutions are ''too-big-to-fail'' and its impact on market expectations;

(L) corporate governance, including the impact of company conversions from partnerships to corporations;

(M) compensation structures;

(N) changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;

(O) the legal and regulatory structure of the United States housing market;

(P) derivatives and unregulated financial products and practices, including credit default swaps;

(Q) short-selling;

(R) financial institution reliance on numerical models, including risk models and credit ratings;

(S) the legal and regulatory structure governing financial institutions, including the extent to which the structure creates the opportunity for financial institutions to engage in regulatory arbitrage;

(T) the legal and regulatory structure governing investor and mortrgagor protection;

(U) financial institutions and government-sponsored enterprises; and

(V) the quality of due diligence undertaken by financial institutions;

(2) to examine the causes of the collapse of each major financial institution that failed (including institutions that were acquired to prevent their failure) or was likely to have failed if not for the receipt of exceptional Government assistance from the Secretary of the Treasury during the period beginning in August 2007 through April 2009;

(3) to submit a report under subsection (h);

(4) to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis; and

(5) to build upon the work of other entities, and avoid unnecessary duplication, by reviewing the record of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other congressional committees, the Government Accountability Office, other legislative panels, and any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States (to the fullest extent permitted by law) with respect to the current financial and economic crisis.

(d) POWERS OF THE COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission may, for purposes of carrying out this section—

(A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(2) SUBPOENAS.—

(A) SERVICE.—Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section.

(iii) ISSUANCE.—A subpoena may be issued under this subsection only—

(I) by the agreement of the Chairperson and the Vice Chairperson; or

(II) by the affirmative vote of a majority of the Commission, a majority being present.

(3) CONTRACTING.—The Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES AND OTHER ENTITIES.—

(A) IN GENERAL.—The Commission may secure directly from any department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, including information of a confidential nature (which the Commission shall maintain in a secure manner). Each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information directly to the Commission upon request.

(B) OTHER ENTITIES.—It is the sense of the Congress that the Commission should seek testimony or information from principals and other representatives of government agencies and private entities that were significant participants in the United States and global financial and housing markets during the time period examined by the Commission.

(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission—

(A) the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act; and

(B) other Federal departments and agencies may provide to the Commission any administrative support services as may be determined by the head of such department or agency to be advisable and authorized by law.

(6) DONATIONS OF GOODS AND SERVICES.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(8) POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS.—Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(e) STAFF OF THE COMMISSION.—

(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly.

(2) STAFF.—The Chairperson and the Vice Chairperson may jointly appoint additional personnel, as may be necessary, to enable the Commission to carry out its functions.

(3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under paragraph (1) or (2) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(4) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(5) CONSULTANT SERVICES.—The Commission is authorized to procure the services of

experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) REPORT OF THE COMMISSION; APPEARANCE BEFORE AND CONSULTATIONS WITH CONGRESS.—

(1) REPORT.—On December 15, 2010, the Commission shall submit to the President and to the Congress a report containing the findings and conclusions of the Commission on the causes of the current financial and economic crisis in the United States.

(2) INSTITUTION-SPECIFIC REPORTS AUTHORIZED.—At the discretion of the chairperson of the Commission, the report under paragraph (1) may include reports or specific findings on any financial institution examined by the Commission under subsection (c)(2).

(3) APPEARANCE BEFORE THE CONGRESS.—The chairperson of the Commission shall, not later than 120 days after the date of submission of the final reports under paragraph (1), appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding such reports and the findings of the Commission.

(4) CONSULTATIONS WITH THE CONGRESS.—The Commission shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and other relevant committees of the Congress, for purposes of informing the Congress on the work of the Commission.

(i) TERMINATION OF COMMISSION.—

(1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (h).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding the activities of the Commission, including providing testimony to committees of the Congress concerning reports of the Commission and disseminating the final report submitted under subsection (h).

(j) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission.

Amend the title so as to read: ''An Act to improve enforcement of mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

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

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

There was no objection.

Mr. SCOTT of Virginia. I yield myself such time as I may consume.

The Fraud Enforcement and Recovery Act of 2009 is crafted to combat financial fraud that contributed to causing and worsening our Nation's current economic crisis. We are bringing to the floor a bill that represents a consensus of efforts for the House and Senate, each acting on a bipartisan basis, blending the Senate-passed bill with H.R. 1748, the Fight Fraud Act of 2009, which the House Judiciary Committee reported last week.

This bill amends the Federal criminal fraud statutes to reach the full range of fraud and other financial crimes that have come to light as the financial crisis has unfolded. The bill amends the definition of ''financial institution'' and fraud statutes to make it clear that financial institutions include mortgage lending businesses. It amends the securities fraud statute to make it clear that securities fraud includes commodities fraud. It makes it clear that it is a felony for a mortgage broker to knowingly make a materially false statement on a loan application or fraudulently overvalue property in order to influence any action by a mortgage lending business. Of course, that is already a crime, and the bill clearly states this fact just in case anybody thought it was okay to cheat and defraud a mortgage lending business during the mortgage process.

It amends Federal money laundering statutes to make them more effective in the context of fraud prosecutions and to ensure their appropriate use. It also seeks to deter fraud from undermining the TARP and economic stimulus package efforts recently passed by explicitly making fraud in those cases a felony.

In addition to amending criminal statutes, S–386 clarifies key provisions of the False Claims Act in order to more effectively enlist private citizens in helping root out fraud against the government and bring its perpetrators to justice.

Now, Mr. Speaker, I think the most important part of the bill, in my judgment, is not the clarification of various fraud sections in the criminal code, but its authorization of resources to investigate and prosecute fraudulent activities. Additional authorization for the FBI, for example, would enable it to nearly double the size of its mortgage and financial fraud program. The U.S. Attorneys offices and other components of the Justice Department and other Federal agencies involved in investigating fraud would also receive increased authorizations. Additional funds provided pursuant to the new authorizations can be used not only for Federal investigations and enforcement, but also to support State and local law enforcement efforts in this area, including training, technical assistance, expertise and other support provided through programs such as the National White Collar Crime Center.

Mr. Speaker, many financial crimes today go unpunished because law enforcement agencies simply lack the resources to investigate and prosecute financial crimes such as ID theft, mortgage fraud or organized retail theft. This bill will empower Federal law enforcement officials to hold criminals accountable for their crimes.

And finally, Mr. Speaker, the bill incorporates legislation by the gentleman from Connecticut (Mr. LARSON) which will create an independent, bipartisan commission with subpoena power to examine more broadly the circumstances giving rise to the current financial crisis.

I would like to commend the Judiciary Committee's chairman, the gentleman from Michigan (Mr. CONYERS), the ranking member, the gentleman from Texas (Mr. SMITH), the ranking member of the subcommittee, the gentleman from Texas (Mr. GOHMERT) and others on the committee, as well as the gentlelady from Illinois (Mrs. BIGGERT) and our colleagues from the other body for their help in making this such a strong bipartisan bill. I urge my colleagues to support it.

I reserve the balance of my time.

Mr. ISSA. At this time, I would like to yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT) for her statement.

Mrs. BIGGERT. I thank the gentleman for yielding and thank him for managing the bill. I would also like to thank Chairman CONYERS, Ranking Member SMITH and their staffs, in particular Caroline Lynch, Allison Hallataei, Zachary Somers, Rob Reed, and my designee for the Financial Services, Nicole Austin, for their work on this bill, Senate 386, the Fraud Enforcement and Recovery Act.

I urge my colleagues to support this amended version.

I was pleased to be an original cosponsor of the House version of this bill, H.R. 1748, the Fight Fraud Act, which is the substitute language to the underlying bill. I am also pleased that the bill includes language from my bill, H.R. 78, the Stop Mortgage Fraud Act, to provide additional funds to the FBI and Department of Justice to investigate and prosecute mortgage fraud.

A couple of years ago, the Chicago Tribune published a series that revealed that gangs in the Chicago area

were increasingly turning toward mortgage fraud. They found it more lucrative than selling drugs. It turns out the gangs were not alone. Everyone, it seems, was in on the act.

In March, the U.S. Attorney in Chicago, Patrick Fitzgerald, brought mortgage fraud indictments against two dozen players. They are brokers, accountants, loan officers and processors and attorneys.

Mortgage fraud comes in all shapes and sizes. Scam artists inflated appraisals, flipped properties and lied about information, including income and identity, on loan applications. Some used the identity of deceased people to obtain mortgages. And other desperate thieves bilked out of their homes and home equity the most vulnerable homeowners and seniors in dire financial straits.

Let's face it: This is just the tip of the iceberg, which is why H.R. 1728, the mortgage reform bill, also under consideration today, is an important bill. And as we in Congress work to get the economy back on track and credit flowing again, we have to address what was the root of the mortgage meltdown in the first place, mortgage fraud.

□ 1430

Mortgage fraud continues to rise in record numbers. The FBI has reported that in 5 years, the mortgage fraud caseload increased 237 percent, and investigations more than doubled in 3 years, reaching over 63,000 reports in 2008. For the fifth year in a row, Illinois secured a spot, number three this year, on the top 10 list of States with the most severe and prevalent incidents of mortgage fraud.

As a former real estate attorney and member of the House Financial Services Committee, I have seen firsthand the devastating effect of mortgage fraud. It has plagued our financial system and economy. Most tragically, it has cost millions of Americans families their homes and required taxpayers to commit trillions of their hard-earned dollars to prop up the financial industry. It is not fair to the good actors in the industry and the 90 percent of homeowners who are paying their mortgages on time.

Congress can help to inject certainty and fairness into the mortgage system—to restore investor, homeowner, and public confidence in the American Dream and our financial system.

As we work to modernize financial laws and regulations, it is our duty to supply Federal law enforcement with the tools and resources it needs to rapidly tackle fraud, particularly mortgage fraud. Fighting fraud must play a central role in solving the underlying problems that have undermined economic recovery.

With that, I urge my colleagues to support this amended version of Senate 386.

Mr. SCOTT of Virginia. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut, the chairman of the majority caucus, Mr. LARSON.

Mr. LARSON of Connecticut. I want to start by thanking Speaker PELOSI, Congressman FRANK, and Senator DODD for their tireless work on this effort, as well as Congressman CONYERS, and also thank and point out the work of Congressman ISSA and his staff in working in conjunction on this.

The American people have been demanding answers about the collapse of our financial system. Today, this House votes on legislation to finally get to those answers. Shortly after our financial system began to show signs of collapse back in September, like many Members here, I went home to my district. I stopped by Augie and Ray's, which for me is where it begins and ends in my hometown in East Hartford. People simply have one question: How did this happen?

The questions I heard were no doubt similar to what my colleagues heard all across this Nation. Unfortunately, the answer is not so simple. Most Americans do not know what a credit default swap is, what derivatives are, or what naked short selling is all about. I could go on.

But they do know that their savings are dwindling. They have lost their jobs, their homes, and in many cases their health care as well. And they rightly want and demand an explanation as to why. I knew then that we needed a commission to provide answers and a narrative for the American people, and one, frankly, for the Congress as we move ahead with commonsense reforms to make sure this doesn't happen again.

Our economy has suffered through the bursting of three major economic bubbles: the savings and loan debacle of the 1980s, the dot.com bubble of the 1990s, and now the real estate bubble. It is time we learned something from these crises.

Our Nation faced a similar challenge after the stock market crash of 1929. Congress formed a panel, the Pecora Commission, that uncovered the fraudulent and unscrupulous activities that brought about the Great Depression and laid the groundwork for the regulation that has served this Nation for decades.

It is time in this century for a new commission to help develop the framework of a modern regulatory structure for the 21st-century global economy.

Americans have lost their homes, their jobs, their life savings. We owe them not only an explanation of how this happened, but a path forward that corrects the circumstances that created the crisis.

We have got to do this by looking back not just conveniently over the last 8 years, but at the last 28 years. And as Pecora said, ''We must shed the fierce light of public scrutiny'' on the dark markets, on the schemes and negligence, and the unintended consequences that have been perpetrated on our financial system. Why? So we can build a regulatory framework for this century that protects the American worker and that protects the American investor.

Mr. ISSA. Mr. Speaker, as I recognize the former chairman of the full Committee on the Judiciary, I would like to thank the gentleman from Connecticut for his bipartisan work on coming to an agreement between our two bills that I believe led to the suspension today on the Senate bill.

With that, I yield 3 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentleman from California for yielding to me.

I rise in support today of S. 386, the Fraud Enforcement Recovery Act of 2009. I am particularly pleased that the bill amends certain provisions of the False Claims Act, which allows private individuals with knowledge of past or present fraud committed against the government to file claims against Federal contractors. We need the False Claims Act, as it is the principal tool of law enforcement to combat fraud against Federal programs.

The False Claims Act was originally passed at the behest of President Lincoln during the Civil War to combat fraud against the Union Army. The act has been amended several times since then, with President Reagan signing the most recent bill in 1986, and an update is overdue.

The False Claims Act has been successful for the Federal Government. It has returned more than $20 billion in settlements and judgments to the U.S. Treasury over the past 20 years.

Although the False Claims Act has been successful, there is always room for improvement. Several Federal courts have applied and interpreted provisions of the FCA in ways that have substantially weakened the law. This bill changes that.

Congress recently approved a $787 billion stimulus package. As many of us know, the Federal Government itself will not dole out all of this money, but will rely on government contractors, grantees, and other third parties to distribute a large portion of these funds.

With the U.S. Government relying on private contractors to disburse funds for everything from our Medicare prescription drug program to our war efforts in Iraq to the stimulus money, billions of Federal dollars are now in jeopardy. The bailouts that Congress is approving left and right, without proper transparency or accountability, only adds to the amount of government funds in jeopardy from the fraudsters.

It is my hope that the House passes additional false claims provisions this year so that fraudsters will no longer be able to hide behind judicially created qualifications and evade liability. Especially in these challenging times, there is no patience for individuals making false claims and benefiting from them.

Although all of the provisions of the False Claims Corrections Act, which I

introduced with the gentleman from California (Mr. BERMAN), were not included in this legislation, I am pleased that some were added. This is a good start, and I look forward to working with my colleagues to enact the rest of those provisions.

Mr. SCOTT of Virginia. Mr. Speaker, I now yield such time as she may consume to a member of the Judiciary Committee, the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished chairman and I thank the Speaker.

Mr. Speaker, whenever we attended to matters in our district over the last year, when many of our constituents are facing the most catastrophic time in their life, it may be a catastrophic illness or a personal matter that changes or skews their whole life-style. We are seeing the financial markets and the structure of financial calamity alter the lives of Americans.

I think it is important to note that this Congress, this new Congress, has made an effort step by step to respond to the needs of Americans. I thank Mr. ISSA for his work and that of our full committee and the leadership of the Senate to bring us S. 386 which amends the Federal criminal fraud statutes to reach the full range of fraud and other financial crimes that have come to light as the financial crisis has unfolded.

It is important for America to know that we will hold those accountable for the malfeasance and the criminal acts that they have engaged in; for example, the Bernie Madoff issue, with so many people losing not only their sole possessions and resources, but in essence some would say losing their lives.

This amends the security fraud statute to include commodities fraud. It clarifies that it is a felony for a mortgage banker to knowingly make materially false statements on a loan application or overvalue property. We can attest to the fact that this has happened.

And in keeping with that, I am also supportive of H.R. 1728, that is, the Mortgage Reform and Anti-Predatory Lending Act.

For those of us at town hall meetings and who have listened to any number of those who are in foreclosure, they told us that they would see papers that they had signed come back with the altering of their rates, with the altering of their income, with the altering of certain vital points that would then, in essence, put this fraudulent document in a position for the individual to receive a loan on false premises. Therein lies the underpinnings, if you will, of this collapse; the overexerting, if you will, of the market by lending to people who could not afford the homes, by miswriting on the documents. All of this came about.

In the mortgage bill that we will be discussing over the next 24 hours, I was glad to argue on the point of language dealing with predatory lending which is also covered in S. 386, as we have indicated, and as well to provide an amendment that provides for an individual knowing how much their mortgage and interest would cost over a period of time. It is all right to be able to go in and fill out papers that indicate that you have a down payment of $2,000, but it is another thing to know that you are buying a house for a million dollars or $5 million, or more over a period of your lifetime, and whether or not that individual, that particular purchaser, understands the facts in the documents before them.

The bill that we have before us amends Federal money laundering statutes to make them more effective in the context of fraud, prosecutions and ensures their appropriate use, and explicitly made fraud against the TARP and economic stimulus programs also a felony.

There is a lot of money out there, Mr. Speaker, and there is certainly the possibility that all of those moneys can be used in a fraudulent manner.

I believe it is important for the Members of this body but also the American people to know that we are working. And I also add in conclusion, Mr. Speaker, we are doing a lot of good work today. I also support the legislation, H. Res. 14, that acknowledges the importance of the Border Patrol in combating human trafficking. I am working to ensure that they have extra language to help them with additional Border Patrol agents and also to fight the guns and drugs that have a lot to do with human smuggling. The American people need to know the work that we are doing.

I am in support of S. 386 because it puts a pin in the balloon of fraud that has hurt so many people. I would ask my colleagues to support this legislation.

Mr. Speaker, I rise in strong support of S. 386, Fraud Enforcement and Recovery Act that was introduced in this Congress by the Chairman of the Judiciary Committee, Representative JOHN CONYERS from Michigan. This timely legislative initiative is aimed at fighting fraud and protecting taxpayers. If passed, this bill will help Americans recover from the present economic crisis. I urge my colleagues to support this bill.

This legislation is designed to combat fraud by increasing vigilance and accountability concerning the manner how American tax dollars are spent. The types of fraud covered by this legislation include financial fraud, corporate fraud, contracting fraud, and mortgage fraud.

Because recent history has demonstrated that large government outlays of money has attracted persons attempting to create fraud, this legislation provides the Congress with the opportunity to identify viable solutions to fraud and misuse.

Current federal law enforcement uses a number of criminal statutes to prosecute fraud. The criminal penalties for fraud are found in Title 18 of the United States Code. This bill extend the application of these penalties to new areas.

Specifically, this bill will increase accountability for corporate and mortgage fraud and will safeguard against future fraud on those programs that Congress recently developed to restore America's economy. This bill provides increased funding for the expanded role of the Department of Justice. Financial institutions, mortgage lenders, and other private entities are held accountable. This bill will target face statements made to financial institutions and false statements made by financial institutions, i.e. in the overvaluation of property.

H.R. 1292, To amend Title I of the Omnibus Crime Control and Safe Streets Act of 1968, establishes a grant program to authorize funds to states to work with information sharing and training programs focused upon the prevention, investigation, and prosecution of terrorism, economic and high-tech crimes and will aid in the creation and maintenance of intelligence led police and information sharing.

The bill provides the FBI with additional funding to combat financial fraud and identity theft. This additional provision of funding is responsive to the role that fraud has played in the housing crisis. This bill provides the FBI with greater funding to combat fraud. Its purpose is to address the corrupt and fraudulent practices of "flippers", "scam artists", and "mortgage fraud rings."

President Obama has signaled that he will freeze releasing additional TARP funds to AIG because of its mismanagement (i.e., AIG was using TARP funds to pay for employees bonuses). The TARP bill proscribed the use of the TARP funds and specified that there would be repercussions if the TARP funds were used wrongly. There are many companies that used these funds inappropriately.

The fist sign of the crisis that America presently finds itself in occurred in March 2008 when investment bank Bear Stearns turned to the federal government and competitor JP Morgan Chase for assistance in addressing a sudden liquidity crisis. At that time, the Federal Reserve provided JP Morgan with funds to complete the merger. Later, in July 2008, the Federal Deposit Insurance Company seized control of IndyMac, the nation's largest home lender.

In September, the federal government put Fannie Mae and Freddie Mac into conservatorship. Since August 2008, the federal government has invested billions of dollars into financial institutions. Much of this money was given directly to large banking institutions. Other money was distributed through the Troubled Asset Relief Program. This program was supposed to increase liquidity in the credit and lending markets. Some of this money, it was later found was mismanaged and was used to buy other banks.

On October 3, 2008, under the TARP, Congress authorized $700 billion for the Treasury to buy troubled assets to prevent further disruption in the economy. After the Act was passed, the Administration decided to use a portion of the $700 billion to recapitalize some of the nation's leading banks by buying their shares. Despite this purchase by the government, many banks had no intention of making new loans. In allocating the TARP fund, Treasury made a determination about which banks would survive and receive funds and which banks, usually smaller, would not. By the end of 2008, nine of the largest banks were participating in the TARP program. AIG, Bank of America, Citigroup all benefitted.

For some aspects of the present crisis, I believe that there were a number of conscious decisions undertaken by bankers, financial institutions, and other lenders that have had a direct and adverse effect on borrower.

I also understand that some Mr. and Mrs. Main Street Americans played a role. Many made false statements or exaggerated their income or engaged in other types of fraud in an effort to secure a mortgage that they could not afford. This bill is designed to take an even-handed approach and to stamp out fraud, mismanagement, and false statements whether they occur on Main Street or Wall Street. I urge my colleagues to support it.

Mr. ISSA. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. I thank the gentleman for yielding.

Mr. Speaker, I am generally not in favor of commissions. I think Congress gives up too much of its power to commissions in my brief experience here. But this is one point that I think does call out for a commission. Certainly just as egregious as what happened to this country on 9/11 was what happened to this country in September 2008 when we experienced a financial meltdown. And to date, we have not looked back into the causes of the crisis and held anyone accountable.

In fact, Congressman BRADY from Texas and myself introduced a bill earlier this year for just such a commission, H.R. 2111, that differs substantially from the bill under consideration today.

The bill that we are considering today creates a 10-member commission with subpoena power. It is going to be composed of six Democrats and four Republicans. When we did the 9/11 Commission, was that not a 50/50 split with some members being named by agreement amongst the commissioners who were already selected? Why would we unbalance this commission when, quite frankly, Mr. Speaker, there is just as much guilt on one side of the aisle as there is on the other.

Senate 386 allows the chairman of the Senate Banking Committee to select a commissioner. The chairman of the Senate Banking Committee may have been part of the problem.

The bill allows the chairman of the House Financial Services Committee to appoint a representative to the commission. Mr. Speaker, the chairman of the House Financial Services Committee may have been part of the problem.

Senate 386 creates an accountability commission focused on protecting the government. H.R. 2111 creates an accountability commission focused on protecting taxpayers and restoring public confidence, something that is critical at this juncture.

□ 1445

Importantly, Mr. Speaker, we do things like this all the time. We bring up an important concept and we pass it under suspension of the rules. This is an important commission that should be created with all due care and caution by this Congress, and then empowered to go out and do the work that we want it to do, not slipped in in the middle of a very quiet legislative day when Members don't even have any idea what they're coming to the floor to vote on.

I just want to end by quoting from the Investors Business Daily, an article entitled, Probe Yourselves, from April 16, 2009. The article says, ''Regulators also deserve blame for lowering lending standards that then contributed to riskier home ownership and the housing bubble.' Exactly correct.''

Continuing to quote, ''As such, Pelosi's proposed commission will be little more than a fig leaf to cover Congress' own multitude of sins—letting its Members, the true creators of this financial mess, bash business leaders as they pose as populist saviors of Main Street from Wall Street.''

Continuing to quote, ''On NPR Thursday, a reporter confronted Representative Frank, chairman of the Financial Services Committee, with the fact that his $300 billion 'Hope for Homeowners' program''——

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

Mr. ISSA. I yield the gentleman 1 additional minute.

Mr. BURGESS. ''Chairman Frank was asked about his $300 billion 'Hope for Homeowners' program, passed with much fanfare a year ago that had so far helped one homeowner. One. Frank's response: 'It was the fault of the right.'''

Continuing to quote, ''The truth is, Mr. Frank's party has been in charge since 2006. And during that time, Democrats have presided over one of the most disgraceful and least accomplished Congresses in history. This financial mess began on their watch, yet they pretend otherwise.''

Further quoting from the Investors Business Daily, the commission that is outlined ''won't get to the bottom of our financial crisis; it will carefully select scapegoats to be ritually shamed by the liberal media, stripped of their wealth, and exiled. The new rules will be imposed that will no doubt make things worse. And the cycle will begin again.

''Wall Street didn't create this subprime mess, Congress, through repeated interventions, did. When the whole thing failed, it was Congress' fault.''

They conclude by saying, ''We'd be happy to support a 9/11-style commission to look into the causes of the financial meltdown. But only if Congress agrees to put itself under the microscope. Anything less would be a sham.''

[From Investor's Business Daily, Apr. 16, 2009]

PROBE YOURSELVES

Named for its chief counsel, Ferdinand Pecora, the 1932 congressional commission dragged influential bankers and stockbrokers before its members for rough questioning—both of their business practices and private lives.

The Pecora Commission led directly to the Securities Act of 1933, the Securities Exchange Act of 1934 and the creation of the Securities Exchange Commission in 1935 to oversee Wall Street.

Now Pelosi's calling for an encore. ''People are very unhappy with these bailouts,'' she noted, especially the bonuses that went to executives. ''Seventy five percent of the American people, at least, want an investigation of what happened on Wall Street.''

No doubt, that's true. The problem is, what ''happened on Wall Street'' was a direct result of what happened on Capitol Hill. And we're not the only ones who believe that, by the way.

''Government policies, especially the Community Reinvestment Act, and the affordable housing mission that Fannie Mae and Freddie Mac were charged with fulfilling, are to blame for the financial crisis,'' wrote economist Peter Wallison, a fellow at the American Enterprise Institute, recently.

''Regulators also deserve blame for lowering lending standards that then contributed to riskier homeownership and the housing bubble.'' Exactly correct.

As such, Pelosi's proposed commission will be little more than a fig leaf to cover Congress' own multitude of sins—letting its members, the true creators of this financial mess, bash business leaders as they pose as populist saviors of Main Street from Wall Street predators.

Why do this now? Pelosi and her Democrat colleagues are feeling the heat from Tea Party demonstrations and growing voter anger over the massive waste entailed in the $4 trillion (and rising) stimulus-bailout bonanza. Again, the Democrats created all this spending. Now, as it proves unpopular, they just walk away from it.

On NPR Thursday, a reporter confronted Rep. Barney Frank, chairman of the Financial Services Committee, with the fact that his $300 billion ''Hope for Homeowners'' program, passed with much fanfare last fall, had so far helped just one homeowner. One.

Frank's response: It was the fault of the ''right.'' And Bush.

Truth is, Frank's party has been in charge since 2006. And during that time, Democrats have presided over one of the most disgraceful and least accomplished Congresses in history. This financial mess began on their watch, yet they pretend otherwise.

What better way to take the heat off yourself than by pointing accusing fingers at those most unlikable of people—Wall Street bankers? That's what the Pelosi-Pecora Commission will do.

It won't get to the bottom of our financial crisis; it will carefully select scapegoats to be ritually shamed by the liberal media, stripped of their wealth, and exiled. Then new rules will be imposed that will no doubt make things worse. And the cycle will begin again.

We're not saying Wall Street has no blame for the financial meltdown. But Wall Street didn't create the subprime mess. Congress, through repeated interventions in healthy markets, did. And when the whole thing failed, it was Congress' fault.

We'd be happy to support a 9/11-style commission to look into the causes of the financial meltdown. But only if Congress agrees to put itself in the dock. Anything less would be a sham.

Mr. SCOTT of Virginia. I yield 4 minutes to a member of the Judiciary Committee, the gentleman from New York (Mr. MAFFEI).

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

Mr. MAFFEI. The Fraud Enforcement Recovery Act of 2009 gives the

Department of Justice the resources it needs to better combat and prevent the kind of financial fraud that has put our economy on its heels.

As I discussed with the bill's sponsors on this legislation in the House, however, I do have concerns about amendments like those included in this package that expand the reach of an already powerful weapon—the civil False Claims Act. Often enforced by whistleblowers and their private counsel when the Department of Justice steps aside, the civil False Claims Act reaches beyond traditional fraud to impose treble damages and per claim penalties of $5,500 to $11,000 on individuals, corporations, and other legal entities who submit false claims for government program funds, knowing or recklessly disregarding the falsity of those claims.

The power of the False Claims Act comes from its broad terms, low burden of proof, enabling the government to impose penalties and recoup funds lost not only to frauds, but to less culpable schemes that abuse government moneys.

But there's also a danger in this. Not all whistleblowers and their lawyers have the same view of the statute as the Department of Justice and the risk of penalties, treble damages, and attorney fees. In many cases, the defense costs can cost some defendants to settle charges they would otherwise be able to defend.

One of the things this legislation does is expend that powerful weapon to reach schemes that defraud the government of money it pays by mistake—of ''overpayments'' that come into the possession of an entity, like a university or a research institution, through no fault of its own, that the entity keeps and maybe hides rather than notifying the government or returning it to the government.

Drafting language to pursue unlawful retention of an overpayment proved difficult, however. When we considered similar legislation in committee, I learned that hospitals, universities, and other research institutions are among various entities that function in government programs where the program rules do require those entities to account for overpayments.

They do so in the form of periodic reports prepared according to agency rules that account costs incurred and payments received. This allows them to reconcile overpayments and underpayments and, when appropriate, repay those overpayments.

But the drafting problem we faced was avoiding language that would impose liability on research institutions or hospitals for holding on to overpayments at a time when the applicable rules would allow them to do so pending repayment through the normal process.

This would include reconciliation processes established under statutes, regulations, and rules that govern Medicare, Medicaid, and all sorts of other various research grants and programs.

So, as a courtesy to my colleagues, I withdrew an amendment that addressed these issues and commenced negotiations to see that any amendments to the False Claims Act-protected entities that rely on those processes in good faith in handling their accounting, protecting them from unwarranted investigations and litigation concerning overpayments, they were, in effect, entitled to keep for at least a small period of time.

As reflected in the committee report, the Senate version of this bill was amended to afford that protection. A new subsection of the False Claims Act will not impose liability for the mere retention of an overpayment over the course of the reconciliation period. Rather, the new subsection would require proof of a knowing false record or statement, of knowing concealment, or of knowing and improper acts to avoid or decrease an obligation to pay money to the government.

So, if a person or entity receives an overpayment from the United States and fails to return it immediately and instead takes steps to return the overpayment through an applicable reconciliation process, then liability would not attach. However, if a person falsifies information during a reconciliation period or otherwise acts knowingly and improperly to avoid the payment, liability would attach.

So it's vitally important that we pass this legislation to fight financial fraud. But it's also important that we not punish universities, hospitals, and other important research institutions when they're doing everything that they are supposed to do. We must have enforcement and also fairness.

Mr. ISSA. Mr. Speaker. It's now my privilege to yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. I appreciate my friend yielding, and I appreciate all the good work that has gone into this bill. I do have concerns about a commission that would look into something as important as our financial situation, where it ends up being a political commission, 6–4, instead of, like, the 9/11 Commission, which was 5–5. That was a bipartisan commission that made those findings and were largely supported around the country.

If we're going to make this another political commission, 6–4, then aren't we going to get right back into the mess of: Can we trust this? Or is this another political report that we're going to spend millions and millions of dollars for?

There are many of us, I think, that can be objective about this. But when you have a commission that's 6–4, it's going to get political. There's no way around it.

There's nobody more upset, for example, with the bailout that the Republican administration proposed last September. It sure seemed to me that AIG should have gone to bankruptcy because they were bankrupt and we wouldn't have had the issue of bonuses. We should have let the car manufacturers, if they're bankrupt, then we have bankruptcy court.

And so I was not happy with our administration. I think it would be easy to have a commission that would be fair. But when it's 6–4, it's unavoidably going to end up political instead of giving us the fair analysis that this country really needs.

Mr. SCOTT of Virginia. I yield 2 minutes to the gentleman from Florida (Mr. KLEIN).

Mr. KLEIN of Florida. I thank the gentleman. There are serious problems with the way some mortgages were sold over this past decade. I have heard from constituents who were fully taken advantage of by lenders who used a variety of different techniques. Florida, my home State, was particularly hard hit by fraud and unscrupulous lenders, unfortunately. There's plenty of blame to go around.

However, on a going-forward basis, we must ensure that these problems never happen again, and it's essential that we reform the current mortgage underwriting legislation.

Senator LEAHY's legislation and my colleagues in the House here have put together an excellent bill, the Fraud Enforcement and Recovery Act, which is part of a comprehensive effort to reform mortgage underwriting standards and, most importantly, restore consumer and investor confidence in the system by expanding criminal penalties for fraudulent activity by mortgage brokers and lenders.

In addition, this bill expands the scope of securities fraud provisions and extends the prohibition against defrauding the Federal Government to the TARP program and to the stimulus bill.

The bill also authorizes additional appropriations to investigate and prosecute fraud, and creates a Senate Select Committee to examine the causes of our current economic crisis.

All these measures, when taken together, will help restore confidence in the American economy, and I urge my colleagues to support this legislation so we can get on with business.

Mr. ISSA. Mr. Speaker, can I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentleman from California has 9 minutes remaining.

Mr. ISSA. I yield myself such time as I may consume.

Mr. Speaker, in closing, this legislation is a combination of two well thought-out compromises. First of all, the Fraud Enforcement and Recovery Act, in fact, is going to take the place of a piece of legislation that is far more reaching and, in my opinion, overreaching, that passed out of Judiciary just this past week. In fact, by making this narrower, what we do is help the whistleblowers and those who would support them, while not going too far as to cripple the legitimate enforcement by cities and States and the right for them to discover waste, fraud

and abuse themselves, make those in corrections without seeing both punitive fines and perhaps 30 percent going to plaintiffs' trial lawyers.

The fact is, Mr. Speaker, this narrowing is a good compromise coming from the Senate, and I want to thank all of those in both parties who worked on this. I think it makes moot the legislation that was passed under Judiciary.

Secondly, another compromise, and one that I want to speak to, this 9/11-style commission, something that, as you can see, many people on both sides of the aisle—on both sides of the Capitol—thought was necessary. Over the last period of months, we have seen the Speaker of the House going from not supporting, and supporting only that her committee chairmen do the work, to supporting the concept of a House committee, to then a House-Senate committee, and, finally, I believe today, support for something that gets it almost right.

Mr. Speaker, I believe that, on nearing the third anniversary of the 9/11 Commission, we should begin looking at what we did in the 9/11 Commission.

In 2007, on the third anniversary, Speaker PELOSI praised the bipartisan, independent commission for its work, calling the recommendations made by the commission earned and achievable, and, in fact, speaking to its bipartisan nature.

This year, as we pass legislation to make a similar-type commission to deal with the meltdown last year in our markets, I would call on Speaker PELOSI to help make the balance right.

As was previously stated, based on the current nominating system in the ordinary course, this would end up being a 6–4 split and be questioned by the American people as to whether or not it was Democratically led and Democratically dominated.

The Speaker has the ability, with her three appointments, to make this right, either by appointing one Republican and one Democrat, or, in this case, two; or I might suggest that even if she cannot find a Republican appropriate to be appointed from her allocation, that she could look to an independent or somebody independent of party politics.

I have previously supported, when asked, Sandra Day O'Connor, a retired Justice, or somebody of her stature who rises well above party politics, who may be considered to have some Republican background but who, clearly, in the eyes of the American people, would be a consensus-builder, able to look for the truth and look for compromise so as to reach the consensus, not a majority decision, but a consensus of this commission, as in almost every case—I believe in every case—the 9/11 Commission did.

□ 1500

I understand that this bill is the best bill we can get here today and I intend to vote for it, support it, and urge my colleagues to support it; not because I don't believe it should be above party politics and should be a 5–5 split, but because this is so much better than nothing at all and because I believe that the Speaker has it within her appointment powers to make this a perfectly good commission, one that we can all be proud of, and one that lives up to exactly what Speaker PELOSI asked for when the shoe was on the other foot after September 11, when we were looking at the need to get above party politics and we were looking to find people of stature to appoint.

Mr. Speaker, I hope my suggestions over and above my support for this legislation will be heeded.

Mr. Speaker, S. 386, the Fraud Enforcement and Recovery Act of 2009, improves current criminal and civil fraud statutes to help the federal government bring predatory lenders and unscrupulous financial institutions to justice.

Judiciary Chairman CONYERS and Ranking Member SMITH sponsored the companion legislation in the House, H.R. 1748, the Fight Fraud Act of 2009. The bill before the House today is a true example of bipartisan, bicameral cooperation.

S. 386, as amended, merges these two important pieces of legislation together to provide comprehensive and effective solutions to combating mortgage fraud, securities fraud, and other financial crimes.

In times of crisis, crime often flourishes. Following the 9/11 terrorist attacks and Hurricane Katrina, unscrupulous people chose to exploit these tragedies to pad their pockets with money intended to help the victims.

The country's housing crisis is no exception. America's economic downturn, brought on by the housing crisis and other factors, exposed a significant amount of fraud and corruption within the mortgage, banking, and securities industries.

The drive for expanded homeownership along with unchecked lending practices and inflated property values, encouraged mortgage fraud, predatory lending, and institutional corruption.

Mortgage fraud comes in many forms, including deceptive practices by borrowers, predatory lending and institutional fraud.

And now, the fraud is spreading to schemes targeting homeowners who are facing foreclosure as a result of the plummeting housing market. Foreclosure scams are targeting cash-strapped consumers on the verge of losing their homes. Victims are lured into the fraud scheme with promises of financial assistance that never materializes.

S. 386 amends federal fraud statutes to specifically prohibit false statements by mortgage brokers and agents of mortgage lending businesses.

The bill also expands the major fraud statutes to include fraud against the Troubled Assets Relief Program, economic stimulus funds, or other federal rescue or recovery plans.

The Fight Fraud Act authorizes additional funds for federal law enforcement agencies, the Departments of Justice and Housing and Urban Development, and the Securities and Exchange Commission.

This legislation promotes the ongoing investigative partnerships between federal, state and local law enforcement agencies.

The bill also supports programs that provide critical training and investigative support services, intelligence services, research support and other resources necessary to investigating these financial crimes.

Additionally, this legislation will strengthen the liability provisions of the False Claims Act as well as make some necessary technical changes to the Act.

The False Claims Act provisions in this bill will undoubtedly enhance the Federal government's ability to recover government money and property that would otherwise be lost to waste, fraud, or abuse.

What's more, these provisions do so in a responsible manner that will not encourage the filing of frivolous or unfounded False Claims Act cases.

Simply put, the False Claims Act provisions in this bill go the proper distance in ensuring that the Act remains a viable tool in the government's continuing fight to protect taxpayer dollars from fraud.

(COMMISSION)

The Fraud Enforcement and Recovery Act also contains provisions to create a bipartisan, independent "Financial Markets Commission."

This Commission will examine the questions of "Why?" and "How?" the current financial and economic crisis occurred.

We have seen the success of past blue-ribbon panels, such as the 9/11 Commission.

In 2007, on the 3rd anniversary of the 9/11 Commission report, Speaker PELOSI praised the bipartisan, independent Commission for its work—calling the recommendations made by the Commission "urgent and achievable" making the country more "unified" and "effective."

Speaker PELOSI is right. A bipartisan, independent commission can produce valuable results.

Which is why I proposed a similar bill last fall and again this Congress, H.R. 74.

I view the effort to create this commission as a vehicle for this Congress to demonstrate a willingness to set aside partisanship and put the interests of our country first.

As with the 9/11 Commission, the Financial Markets Commission report should be free of accusations of political showmanship and a partisan slant that have tainted current investigations.

This Commission is not the place for partisanship OR Congressional meddling.

It is a place for the American people to get answers.

Ideally, in today's bill, the composition of this Commission would have been bipartisan down the line, with a 5–5 split like the 9/11 Commission that was adopted by a Republican Congress instead of the 6–4 divide that has come to the floor today at the direction of the Democratic Leadership.

Speaker PELOSI said in 2005, when discussing a possible Commission to review Hurricane Katrina events, a "real commission" is bipartisan and independent.

The decision to depart from the 5–5 model of the 9/11 commission in favor of a commission whose composition has a partisan slant is disappointing.

But I believe the credibility of this commission's report will still depend on its ability to deliver conclusions and recommendations that all the members of the commission will embrace.

I am hopeful that the members of Congress who will be responsible for appointments to

this Commission will ensure that the panel's composition is bipartisan, independent, and focused on producing a nonpartisan report—not scoring political points.

In closing, The Fraud Enforcement and Recovery Act of 2009 is a good government bill.

I urge my colleagues to support this legislation.

I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, finally, in closing, I would remind the body that this is a bipartisan, bicameral consensus. We have worked together on a bipartisan basis in the House and the Senate.

The bill will prevent fraud by clarifying the fraud statutes and strengthen the False Claims Act. It will, I think very importantly, provide significant resources for fighting the fraud.

Finally, the value of the commission will be judged by its product, and we would all assume that the appointments would be people whose reputation is beyond reproach and we will get a good product from the commission.

With that, Mr. Speaker, I urge my colleagues to support the bill.

Mr. AL GREEN of Texas. Mr. Speaker, I am proud to support S. 386, the Fraud Enforcement and Recovery Act of 2009.

The bursting of the housing bubble and the subsequent deterioration of the economy revealed fundamental weaknesses in our mortgage and financial industries. Predatory lending and discriminatory practices coupled with a lack of regulation and oversight resulted in many people being steered towards loans that they could not afford, or being given higher cost loans than they qualified for.

Fraud, by definition, is the crime or offense of deliberately deceiving another in order to damage them—usually to obtain property or services unjustly. The practices that I just discussed certainly fit this definition.

Mr. Speaker, during the height of the housing bubble, many were blinded by greed, and their actions played a large role in bringing about the economic hardships that we hear about on a daily basis. We must never allow such practices to happen again, and those guilty of mortgage fraud should be sought out and prosecuted.

This bill would do precisely that. It would expand the definition of "financial institution" to include mortgage lending businesses or any person who makes federally related mortgage loans. It also extends the prohibition of providing false information for mortgage documents to employees and agents of the mortgage lending business.

This bill also takes a comprehensive approach to investigating and enforcing mortgage fraud. It authorizes monies for a wide swath of government agencies to strengthen their individual efforts and therefore strengthening their collective efforts.

Mr. Speaker, much work remains to be done as we move forward, and while this piece of legislation is not the be-all-end-all solution, it is a meaningful first step, and I support it in full.

I thank my friend and colleague Representative JOHN CONYERS Jr. for introducing this legislation.

Mr. VAN HOLLEN. Mr. Speaker, today, I rise to support S. 386, the Fraud Enforcement and Recovery Act of 2009.

As the country continues to recover from the current economic crisis, we need to do everything possible to understand all the factors that caused the financial meltdown and ensure that the appropriate laws and resources are in place to prevent a similar crisis in the future. We have also made an unprecedented investment of taxpayer dollars as part of our economic recovery effort, and we must ensure that this investment is spent wisely and efficiently.

We know that lax supervision of the financial industry contributed to the current economic conditions, and we must do everything we can to learn from these mistakes and prevent future economic meltdowns. This bill will help us understand the causes of the economic crisis by establishing a bipartisan commission to study the conditions that triggered the economic collapse. The Commission will also provide Congress with recommendations to prevent future economic problems.

The legislation also includes a clear commitment to fighting waste, fraud and abuse. It strengthens current law and increases funding to hire investigators and prosecutors so law enforcement agencies can effectively combat these issues. It will also help protect taxpayer dollars by amending current law to protect funds expended under the Troubled Asset Relief Program (TARP) and the economic stimulus package.

The Fraud Enforcement and Recovery Act of 2009 will help the government increase its understanding of the factors that caused the economic collapse, and provide the resources necessary to help prevent this from happening again. I urge my colleagues to join me in supporting this important legislation.

Mr. SCOTT of Virginia. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the Senate bill, S. 386, as amended.

The question was taken.

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed. Votes will be taken in the following order:

H. Res. 367, by the yeas and nays;

S. 386, by the yeas and nays.

H. Res. 348, de novo.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

SUPPORTING NATIONAL TRAIN DAY

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the resolution, H. Res. 367, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. CORRINE BROWN) that the House suspend the rules and agree to the resolution, H. Res. 367.

The vote was taken by electronic device, and there were—yeas 426, nays 0, not voting 7, as follows:

[Roll No. 234]

YEAS—426

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Becerra
Berkley
Berman
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones

Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Myrick
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—7

Berry
Blumenauer
Fortenberry
Skelton
Speier
Stark
Wamp

□ 1530

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the Senate bill, S. 386, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the Senate bill, S. 386, as amended.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 367, nays 59, answered ''present'' 1, not voting 6, as follows:

[Roll No. 235]

YEAS—367

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachus
Baird
Baldwin
Barrow
Bartlett
Barton (TX)
Bean
Becerra
Berkley
Berman
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Blunt
Boccieri
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Butterfield
Buyer
Calvert
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Cassidy
Castle
Castor (FL)
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Fleming
Forbes
Foster
Frank (MA)
Frelinghuysen
Fudge
Gallegly
Gerlach
Giffords
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Graves
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Heinrich
Heller
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (NY)
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Luetkemeyer
Luján
Lungren, Daniel E.
Lynch
Maffei
Maloney
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nunes
Nye
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paulsen
Payne
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Polis (CO)
Pomeroy
Posey
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sestak
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Spratt
Stearns
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (FL)

NAYS—59

Akin
Bachmann
Barrett (SC)
Bishop (UT)
Blackburn
Boehner
Boustany
Brady (TX)
Broun (GA)
Burgess
Burton (IN)
Camp
Campbell
Carter
Chaffetz
Cole
Conaway
Culberson
Davis (KY)
Deal (GA)
Dreier
Duncan
Ehlers
Flake
Foxx
Franks (AZ)
Garrett (NJ)
Gingrey (GA)
Granger
Hastings (WA)
Hensarling
Johnson, Sam
Jordan (OH)
King (IA)
Kingston
Kline (MN)
Lamborn
Latta
Linder
Lucas
Lummis
Mack
Manzullo
McHenry
Miller (FL)
Myrick
Neugebauer
Olson
Paul
Pence
Poe (TX)
Price (GA)
Sessions
Shadegg
Smith (NE)
Sullivan
Thornberry
Westmoreland
Young (AK)

ANSWERED ''PRESENT''—1

Grayson

NOT VOTING—6

Berry
Fortenberry
Skelton
Speier
Stark
Wamp

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1539

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

Mr. GRAYSON changed his vote from ''yea'' to ''present.''

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

The result of the vote was announced as above recorded.

The title of the Senate bill was amended so as to read:

A motion to reconsider was laid on the table.

CONGRATULATING THE NATIONAL CHAMPION UNIVERSITY OF NORTH CAROLINA MEN'S BASKETBALL TEAM

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 348.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. POLIS) that the House suspend the rules and agree to the resolution, H. Res. 348.

The question was taken.

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

RECORDED VOTE

Mr. ISRAEL. Mr. 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 423, noes 0, not voting 10, as follows:

[Roll No. 236]

AYES—423

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Becerra
Berkley
Berman
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Hill
Himes
Hinchey
Hinojosa
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kanjorski
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Myrick
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—10

Berry
Fortenberry
Higgins
Hirono
Kaptur
Sánchez, Linda T.
Skelton
Speier
Stark
Wamp

□ 1547

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HONORING TIM EVANS OF THE SOCIAL SECURITY ADMINISTRATION

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

Mr. SARBANES. Mr. Speaker, I just wanted to get up here for 1 minute and congratulate a gentleman named Tim Evans, who is from Owings Mills, Maryland. He is a constituent of mine and today he was recognized by the Partnership for Public Service for his public service.

This is the week we celebrate public service across the country and, obviously, in the State of Maryland. Tim Evans is a policy analyst at the Social Security Administration who has figured out ways to upgrade the customer-friendly dimension of the Social Security Web site so that it can respond to inquiries from current beneficiaries and potential beneficiaries, and he has won awards for this.

I want to salute him for his work, for his innovation and creativity, which reflects the kind of energy and enterprise that we have inside of our Federal workforce. So, Tim Evans, congratulations to you for the work you do. We thank you for it.

CONGRATULATING STEVEN P. JOHNSON

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

Mr. THOMPSON of Pennsylvania. Mr. Speaker, I rise today to congratulate a health care leader, Steven P. Johnson, President and CEO of the Susquehanna Health Systems in Williamsport, Pennsylvania, for winning a prestigious award and recognition.

The American Hospital Association named Mr. Johnson this year's recipient of the Grassroots Champion Award for the State of Pennsylvania. Mr. Johnson was nominated for this honor by the Hospital & Healthsystem Association of Pennsylvania because of his demonstrated leadership in generating grassroots support for the hospital community. There is no greater proponent for improved community health care than Steven Johnson.

Mr. Speaker, Mr. Johnson's leadership in health care is based on a commitment to caring for those who both

deliver and those that receive health care services. I know firsthand the work and the care that Steven P. Johnson puts in to broadening the base of community support for the hospital and health care needs of the community, and this is a well-deserved award and recognition.

ENCOURAGE SMALL BUSINESS TO REINVEST

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

Mr. PAULSEN. Mr. Speaker, last week I held a small business roundtable discussion in my district. I heard from a dozen small business owners about the various challenges they are facing when it comes to growing jobs and investing in their business. During that discussion, one clear theme emerged, small businesses need help.

Unfortunately, the recently passed budget pours salt in the wound by raising taxes by over $1 trillion, largely on the backs of small business. Rather than tax them, I believe that we should encourage them to reinvest in their business and create more jobs.

That's why I am introducing legislation that will allow small businesses to defer any income tax on any money that is reinvested in their business. This will provide additional incentives and resources for small businesses to grow and maintain their companies during these difficult economic times.

Small businesses have created two out of every three jobs in the United States since the 1970s. Let's help them do it again.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

POLITICALLY CORRECT JUSTICE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE of Texas. Mr. Speaker, the President has made it clear that his pick for Justice of the Supreme Court will be different than all others who have previously served. He has said that the new Justice ''will have empathy and understanding for people,'' ''that the person realizes justice isn't about some abstract law theory,'' but how decisions ''will affect the daily reality of people's lives.''

He has also seemed to indicate he wants someone that isn't so indoctrinated with constitutional thought or beholding to the technicalities of the Declaration of Independence.

The new President has said he wants a Justice with the ''heart to recognize what it's like to be a young teenager mom, empathy to understand what it's like to be poor or a minority, gay or disabled or old.''

Then he also said this week, ''The quality of empathy of understanding and identifying with people's hopes and struggles is an essential ingredient for arriving at just doctrines and outcomes.''

Sounds like, to me, a good career move for Dr. Phil or someone like him that deals only with emotions.

And why is this comment about outcome so important? Does the President think the new Justice should reach certain social activist decisions by any means necessary, regardless of the law and the evidence? Seems like the President wants a Justice that will treat people differently, depending on who they are, rather than treat them all equally.

I thought judges were to make judgments based on facts and the law; at least that's what I thought and did for 22 years as a judge in Texas. Judges are not to make decisions based on their own personal, social or political agenda for the masses.

Also, I haven't heard the President mention that it's an important requirement for him that the new Justice follow the spirit and the letter of the Constitution.

And, of course, rumors abound that the new pick will be a woman, someone from the President's hometown of Chicago, a minority, a liberal, or one with political loyalty to the President. Only the President knows this answer.

Also, does the President only want a politically correct judge or Justice that correctly judges the Constitution? It appears to me that the new Justice should be qualified as a constitutional scholar that believes in upholding the sanctity of the words of the Constitution, rather than someone that just has empathy or a social or political agenda they want impose on the whole Nation.

The new Justice should seek justice first and foremost, because justice is what we do in this country. After all, here is the oath the Supreme Court Justice will take: ''I solemnly swear that I will administer justice without respect to persons and do equal right to poor and rich and I will faithfully and impartially discharge and perform all the duties incumbent upon me as a Justice of the Supreme Court—under the Constitution and laws of the United States. So help me God.''

Sounds like the Justice takes an oath to uphold the Constitution and the law of the land. Hopefully the change in the Supreme Court will bring in a Justice that follows this oath and not someone who is a political operative that will use their position to impose outcome-based justice.

After all, the words of the Constitution still should mean something, even to Members of the Supreme Court, but we shall see.

And that's just the way it is.

□ 1600

The SPEAKER pro tempore (Mr. KRATOVIL). Under a previous order of the House, the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ) is recognized for 5 minutes.

(Ms. WASSERMAN SCHULTZ addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THE SMART PLATFORM FOR THE 21ST CENTURY

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, between September 11, 2001, and January, 2009, the United States relied on military force as the primary tool of foreign policy. Now we see the tragic results of this tragedy. We remain bogged down in Iraq, Afghanistan is in turmoil, Pakistan is on the brink of chaos, and the threat of nuclear weapons continues to haunt the world.

It is very clear, Mr. Speaker, that the military option hasn't worked. That is why I believe it is time for a new and better approach to our foreign policy. This new approach must focus on diplomacy, international cooperation, conflict prevention and ending the threat of nuclear weapons.

I have sponsored a comprehensive plan to achieve all of these goals. It is called the ''Smart Security Platform For the 21st Century.'' I invite all of my colleagues to consider House Resolution 363, which describes this plan in detail.

The Smart Security Platform would help to eliminate the root causes of instability and violent conflict in the world by increasing development aid and debt relief to the poorest countries. It would further address the root causes of violence by supporting programs that promote conflict resolution, human rights and democracy building. It would also support educational opportunities for the girls and women who hardly ever see the inside of a classroom.

The Smart Security Platform, Mr. Speaker, also calls for the United States to work with the U.N. and NATO and other multilateral institutions to strengthen international institutions and international law. It calls for reducing the threat of weapons of mass destruction and conventional weapons by supporting the Comprehensive Test Ban Treaty, the Nonproliferation Treaty and the Biological and Chemical Weapons Convention. It calls for the adequate funding of the Cooperative Threat Reduction program to secure nuclear materials in Russia and to secure nuclear materials and other materials in other countries as well and to reduce nuclear stockpiles.

It calls upon the United States to set an example for the rest of the world by renouncing the development of new nuclear weapons and working towards achieving Ronald Reagan's vision of a world free of nuclear weapons. It would reduce our dependence on foreign oil by

investing in renewable energy alternatives, thereby stopping the flow of hundreds of billions of American dollars to irresponsible regimes. It includes strategies to strengthen international intelligence and law enforcement operations to bring individuals involved in violent acts to justice, while respecting human and civil rights. And it supports civil organizations and programs in the developing world because they play a critically important role in preventing or resolving conflicts.

I want to thank the cosponsors of H. Res. 363, Chairman JOHN CONYERS, Chairman ED MARKEY, Congresswomen BARBARA LEE and MAXINE WATERS, cofounders of the Out of Iraq Caucus, and Congresswoman GWEN MOORE, a member of the Out of Iraq Caucus.

Mr. Speaker, the Smart Security Platform For the 21st Century is ambitious, wide-ranging and tough. It uses the many national security tools that we have. It would make us safer here at home. It would cost less than what we are spending now on national security. And it isn't ''soft'' power, Mr. Speaker. It is real power. It is smart power. It is the kind of power we need to make America and the world more secure for ourselves and for our children.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

BENJAMIN FRANKLIN'S REQUEST FOR PRAYERS AT THE CONSTITUTIONAL CONVENTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, on July 28, 1787, there was a real problem with the Constitutional Convention. They couldn't reach agreement on a Constitution. So Benjamin Franklin stood up in Constitution Hall and he said this. Let me read what was going on. I want to draw you a picture first.

The Constitutional Convention was on the verge of breaking apart completely over the issue of representation, a stalemate created by the concern of smaller States that they would be overpowered by the larger States, and the concern of larger States that smaller States would be given representation out of proportion to their relative size.

Tempers were short, and the ship of state seemed headed for the rocks before its maiden voyage had barely begun, when Benjamin Franklin rose and said these immortal words:

''In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of applying to the Father of lights to illuminate our understanding?

''In the beginning of the Contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for Divine protection. Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in a struggle must have observed instances of superintending Providence in our favor.

''To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful Friend? Or do we imagine that we no longer need his assistance?''

And this is the part that I think every American remembers, when he said, ''I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?''

Tomorrow is National Prayer Day. And I hope that everybody in this country during these perilous times with our economy and the problems around the world will join together, regardless of their faith, and pray that we solve these problems and that there is peace and prosperity in America and around the world. The President of the United States, President Obama, will be signing a proclamation tomorrow observing National Prayer Day. And we appreciate that he is going to do this. And if he has time tomorrow, I hope the President will manifest his support for this great day by showing publicly his support by praying with a number of his members at the White House. I think it would be a great example.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

OBSERVING PUBLIC SERVICE RECOGNITION WEEK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. SARBANES) is recognized for 5 minutes.

Mr. SARBANES. Mr. Speaker, I rise today to salute Public Service Recognition Week. This is a wonderful opportunity for us to recognize the contributions that so many who have gone into public service make. Whether it be government service or whether it be volunteering for nonprofits, serving in the Service Corps, working for a 501(c)(3) organization, there are so many ways that people across this country can commit themselves to public service. And it is important that we take a few moments out of the hectic demands of our day and our year to recognize the people that make these contributions.

I had a unique opportunity before I came to Congress to serve in the public sector and the private sector at the same time. I worked as a lawyer representing health care providers in my private sector position. But I also had the chance for 8 years to work with the State Department of Education in Maryland. And I did this simultaneously. So every day, I had the opportunity to go between the private sector and the public sector and to come to understand the perceptions and perspectives that each has of the other.

One of the things I was glad to be able to report to my colleagues in the private sector was that I had come to see the dedication, the hard work, the experience and the know-how, and just the pure smarts of people that serve in the public sector, who commit themselves to public service. It was a true inspiration for me to see that day in and day out. Then I came here to the Congress and had the opportunity in the first couple of years to serve on the Oversight and Government Reform Committee and on the subcommittee that deals with the Federal workforce. So every time we had a hearing, we would have panels of witnesses, of people, yes, the higher-up folks in these Federal agencies, but often the rank-and-file, who could testify as to what they were doing, their commitment and their dedication. And I want to salute the members of the Federal workforce for what they do day in and day out.

We couldn't be living in a more important time, a more exciting time, when it comes to public service. And President Obama has issued a call for public service, and people are responding to that across the country. The most immediate opportunity that we have seen was with the passage last week of a new Service Corps bill, Serve America. Senator KENNEDY on the Senate side was very involved with this, GEORGE MILLER here in the House and many others. It upgrades the capacity of AmeriCorps and other Service Corps programs, increases the number of opportunities that are going to exist, and it creates new dedicated Service Corps programs. So on this week of recognizing public service, we ought to salute Members of this House and Members of the Senate and the President of the United States for putting that bill into place and for providing those opportunities.

It is so critical right now to encourage the next generation to come into public service. And there are many ways that we can do this. One is to talk about the very good benefits and opportunities that exist, particularly in the Federal workforce. And I tell that story every day to try to encourage people to make that decision. Secondly, we have strengthened the loan

forgiveness opportunities that are available to people. I was pleased to be able to author, in the last session, the Education for Public Service Act, which now says that if you commit 10 years to public service, defined as government service or nonprofit service, during that 10-year period, you get reduced monthly payments on your Federal loans or federally guaranteed loan, and at the end of 10 years of public service, you get whatever is still owed forgiven. What a tremendous opportunity for people who want to go into public service and want to stay in public service. So that is another thing we can do to bring people in. A third thing is to increase flexibility in the workplace. I'm glad to have worked with many in the House to lead an effort on promoting telework within our Federal agencies to signal to people that we are willing to be flexible and work with those who are looking for these kinds of kind of job opportunities. That is another way to pull people in.

But the most important way is to emphasize the cutting-edge opportunities that exist in public service. I went to the Partnership For Public Service luncheon today, and the people they saluted and gave awards to, including Tim Evans from my district, from Owings Mills in Maryland, who works at the Social Security Administration and has helped to upgrade the capacity of the Web site that serves beneficiaries, these are people who are on the cutting edge and providing cutting-edge services. And they are an example of the innovation that you can bring into the public service workplace. And so I want to salute all of those people that make that contribution every day and celebrate with others in this Chamber Public Service Recognition Week.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. ROYBAL-ALLARD) is recognized for 5 minutes.

(Ms. ROYBAL-ALLARD addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

RECOGNIZING CHRIS ECONOMAKI AND THE 75TH ANNIVERSARY OF ''NATIONAL SPEED SPORT NEWS''

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. POSEY) is recognized for 5 minutes.

Mr. POSEY. Mr. Speaker, I would just like to take a few moments today to recognize the 75th anniversary of ''National Speed Sport News'' and the man whose commitment to auto racing, journalism and broadcasting has not only kept this publication alive and thriving throughout all these years, but has kept racing fans glued to their seats during some of the biggest moments in motorsports history, Chris Economaki.

Born October 15, 1920, in Brooklyn, New York, Chris was the son of a very successful businessman whose family lived a very good life until the unfortunate crash of 1929, when they lost everything and were forced to move into his grandparents' home in New Jersey. As a kid he could hear the roar of the race car engines from a nearby track, and he often found himself sneaking in under the fence to watch the races.

At the age of 14, Chris started selling copies of ''National Speed Sport News'' on weekends to fans during races, and he wrote a regular column while he was still in high school. But he quickly noticed that the success of his paper depended largely on the event's announcer. So he started announcing at races and found that he had a real talent for that. Suddenly, Chris began getting requests to announce from all over and to deliver the commentary at the races. He became one of the most competent and respected announcers in the history of motorsports. Chris was later made editor and publisher of the paper he sold and wrote for as a kid.

On July 4, 1961, Chris did his first live telecast on ABC's ''Wide World of Sports'' for their Firecracker 250 at the new Daytona International Speedway. Since then he has announced for CBS, ESPN and the Indianapolis 500 to name just a few.

In 1993, Chris Economaki was inducted into the National Sprint Car Hall of Fame. In 1994, he was inducted into the Motorsports Hall of Fame of America.

□ 1615

He received both the NASCAR Award of Excellence and the NASCAR Lifetime Achievement Award, and he has come to be known as the dean of American motorsports.

Truly, Chris is one of the most influential journalists in the history of motorsports, and is the greatest ambassador for motorsports that has ever lived. His level of institutional knowledge is unparalleled. Not only is Chris most knowledgeable, he imparts or articulates his vast knowledge better than anyone else in the business ever has. And he does it with integrity, he does it with kindness, he does it with poise, he does it with aplomb, is a word that he has often used to describe people with a lot of class, and he has it.

In Florida, we recognize the day of the Daytona 500 every single year as Chris Economaki Day since the governor first declared it in 2005.

As a stock car racing fan and a participant, it is a great privilege to stand here and offer this salute to Chris Economaki, a man so many admire and who has done so much for a sport that has pushed the envelope in the advancement of automotive technology, brought families and friends together on weekends, and kept the American competitive spirit alive for decades, Chris Economaki.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Nevada (Ms. BERKLEY) is recognized for 5 minutes.

(Ms. BERKLEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

TWO-STATE SOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. ENGEL) is recognized for 5 minutes.

Mr. ENGEL. Mr. Speaker, I want to talk about the events in the Middle East, particularly the Israeli-Palestinian conflict.

We all know what the end game should be: two states, two states living side by side in peace and security, a Palestinian Arab state and an Israeli Jewish state. But there is a problem. There is a problem because the Palestinians have a divided government. And in the West Bank, Mahmoud Abbas and his party runs the government. But in Gaza, the government is run by the terrorist group Hamas.

Hamas believes that terrorism will get them where they want to be. Hamas refuses to recognize Israel's right to exist. Now we are apparently going to appropriate $900 million in funding for the West Bank in Gaza. I am glad that Secretary of State Clinton has confirmed that the United States will not provide funds to any Palestinian government that includes Hamas members who do not accept the three internationally backed principles of recognizing Israel's right to exist, number one; renouncing terrorism, number two; and committing to all of the agreements, previous agreements, signed by Palestinian leadership, number three.

Our chairwoman of the Foreign Ops Subcommittee, Congresswoman LOWEY, has said that in the future potential coalition government between Gaza and the West Bank, that any Hamas ministers would have to pledge that they support those three internationally recognized principles. But until that happens, Mr. Speaker, I have serious problems with the $300 million we are apparently appropriating for Gaza.

The war in Gaza, and it is very interesting that Palestinians in Gaza talk about occupation, but there is no Israeli occupation in Gaza. Israel left Gaza several years ago without any preconditions. And instead of the Palestinians taking the land that Israel left and building on it and helping their people, they have decided instead to turn it into a terrorist camp raining rockets upon rockets in Israel, particularly upon the town of Sderot in the south of Israel. I have been there. Israel finally retaliated, and that is how the Gaza war began again.

There has been some criticism of Israel for retaliating. But imagine if we in the United States had terrorists launching missiles at us on U.S. territory from either Mexico or Canada, and then went across the border. Would we just sit there and take it? Israel took it

for years and years and years and then finally retaliated. No, we would go over the border and we would try to destroy the terrorist cells.

So I am very concerned that $300 million of aid is to go to Gaza while Hamas, a terrorist organization, runs that place. We don't want the people of Gaza to think that it is Hamas that got them the aid, that it is Hamas that goes on its terrorist ways and that terrorism brings some rewards.

So Ms. BERKLEY and I have written a letter to President Obama laying out these concerns. Hamas needs to recognize Israel's right to exist; and hopefully then one day we can have peace in the Middle East with two states side by side living in peace, a Palestinian Arab state and Israel, a Jewish state.

IN GOD WE TRUST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. FORBES) is recognized for 5 minutes.

Mr. FORBES. Mr. Speaker, on April 6 of this year the President of the United States traveled halfway around the globe, and in the nation of Turkey essentially proclaimed that the United States was not a Judeo-Christian nation.

Now, I don't challenge his right to do that, nor do I dispute the fact that is what he believes. But I wished that he had asked and answered two questions when he did that. The first question was whether or not we ever considered ourselves a Judeo-Christian nation; and the second one is if we did, what was that moment in time where we ceased to be so?

If you ask the first question, you find that the very first act of the first Congress in the United States was to bring in a minister and have Congress led in prayer and afterwards read four chapters out of the Bible.

A few years later when we unanimously declared our independence, we made certain that the rights in there were given to us by our creator.

When the Treaty of Paris was signed in 1783 that ended the Revolutionary War and birthed this Nation, the signers of that document made clear that it began with this phrase: ''In the name of the Most Holy and undivided Trinity.''

When our Constitution was signed, the signers made sure that they punctuated the end of it by saying ''in the year of our Lord, 1787.''

And 100 years later in the Supreme Court case of Holy Trinity Church v. The United States, the Supreme Court indicated, after recounting the long history of faith in this country, that we were even a Christian nation.

President George Washington, John Adams, Thomas Jefferson, Andrew Jackson, Abraham Lincoln, William McKinley, Teddy Roosevelt, Woodrow Wilson, Herbert Hoover, Franklin Roosevelt, Harry Truman, Dwight Eisenhower, John Kennedy, and Ronald Reagan all disagreed with the President's comments and indicated how the Bible and Judeo-Christian principles were so important in this Nation. And Franklin Roosevelt even led this Nation in a 6-minute prayer before the invasion of perhaps the greatest battle in history, the Invasion of Normandy and asked for God's protection. After that war when Congress came together and said where are we going to put our trust, it wasn't in our weapon systems, or our economy or our great decisions here, but it was ''In God We Trust'' which is emboldened directly behind you.

So if in fact we were a Nation that was birthed on those Judeo-Christian principles, what was that moment in time when we ceased to so be? It wasn't when a small group of people succeeded in taking prayer out of our schools, or when they tried to cover up the word referencing God on the Washington Monument, or they tried to stop our veterans from having flag-folding ceremonies at their funerals on a voluntary basis because they mentioned God, or even when they tried in the new visitor center to change that national motto and to refuse to put ''In God We Trust'' in there. No, it wasn't any of those times because they can rip that word off of all of our buildings, and still, those Judeo-Christian principles are so interwoven in a tapestry of freedom and liberty that to begin to unravel one is to unravel the other.

That's why we have filed the Spiritual Heritage resolution to help reaffirm that great history of faith that we have in this Nation and to say to those individuals who have yielded to the temptation of concluding that we are no longer a Judeo-Christian Nation to come back, to come back and look at those great principles that birthed this Nation and sustain us today because we believe if they do they will conclude, as President Eisenhower did and later Gerald Ford repeated, that without God, there could be no American form of government, nor an American way of life.

Recognition of the Supreme Being is the first, the most basic expression of Americanism. Thus, the Founding Fathers of America saw it, and thus with God's help it will continue to be.

BANKSTERS CAUSE ECONOMIC MELTDOWN

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, one can sure ask: Is it more than coincidence that the very Wall Street banksters who are holding up our Republic are also causing the economic meltdown affecting community after community and millions upon millions of our fellow citizens? Is it any coincidence that these banksters are also the ones who are still being rewarded day after day by their acolytes in Washington?

In today's Huffington Post, filmmaker Michael Moore in a piece entitled ''Bernie Madoff, Scapegoat'' writes: ''Why did we allow those same banks to create the scam of a subprime mortgage? Instead of putting the people responsible in the cell block in Lower Manhattan, where Bernie now resides, why did we give them huge sums of our hard-earned tax dollars to bail them out of their self-inflicted troubles? Bernie Madoff is nothing more than a scab on the wound. He's also a continental distraction. Where's the photo on the list of the ex-chairman of AIG, Merrill Lynch, Citigroup, JP Morgan Chase, Goldman Sachs, Bank of America, and the list goes on.''

Michael Moore is exactly right.

Now the Center for Public Integrity reports the very list of the ''Who's Who'' of these exalted top bankster lenders responsible for the subprime loan fraud and our economic crisis.

Let me place their names into the RECORD tonight, and what we know so far of the extent of their damage. These 25 lenders are responsible for almost $1 trillion of subprime loans, more than $7.2 million high-interest loans made just from 2005 to 2007.

Together, these companies account for about 72 percent of the high-priced loans reported to the government at the peak of the subprime market.

But their Ponzi scheme had been cleverly set in place during the 1990s. We need to follow their tracks back to the start of this trail of tears. Mr. Speaker, we need to go back to the roots of the subprime scam that, once established, just kept getting juiced more and more with each passing years. Securities created from these subprime loans have been blamed for the economic collapse from which the world's economies have yet to recover.

My question is this: When will these Wall Street wrong-doers be brought to justice rather than rewarded?

A couple of names on the list you'll probably recognize. Everyone has heard of Countrywide. Well, they floated about $97.2 billion of subprime loans.

Chase Home Financial, JP Morgan Chase, they floated about $30 billion.

Citi Financial, Citigroup, they floated $26.3 billion that we know of.

American General Finance, AIG, at least $21.8 billion and counting.

And Aegis Mortgage Corporation, they are number 25 on the list, at least $11.5 billion.

Meanwhile, the special inspector general for oversight on the Wall Street bailouts being paid out by our Treasury through our taxpayers has now reported that the major institutions receiving tax dollars to cover their losses are none other than the very same group.

I wish to place their names on the RECORD tonight as just one part of the Treasury's report.

TABLE 1.1—TOTAL FUNDS SUBJECT TO SIGTARP OVERSIGHT, AS OF MARCH 31, 2009

[$ Billions]

Program	Brief description or participant	Total projected funding	Projected TARP funding
Capital Purchase Program (''CPP'')	Investments in 532 banks to date; 8 institutions total $125 billion	$218.0	$218.0
Automotive Industry Financing Program (''AIFP'')	GM, Chrysler, GMAC, Chrysler Financial	$25.0	$25.0
Auto Supplier Support Program (''ASSP'')	Government-backed protection for auto parts suppliers	$5.0	$5.0
Unlocking Credit for Small Businesses (''UCSB'')	Purchase of securities backed by SBA loans	$15.0	$15.0
Systemically Significant Failing Institutions (''SSFI'')	AIG Investment	$70.0	$70.0
Targeted Investment Program (''TIP'')	Citigroup, Bank of America Investments	$40.0	$40.0
Asset Guarantee Program (''AGP'')	Citigroup, Bank of America, Ring-Fence Asset Guarantee	$419.0	$12.5
Term Asset-Backed Securities Loan Facility (''TALF'')	FRBNY non-recourse loans for purchase of asset-backed securities	$1,000.0	$80.0
Making Home Affordable (''MHA'') Program	Modification of mortgage loans	$75.0	$50.0
Public-Private Investment Program (''PPIP'')	Disposition of legacy assets; Legacy Loans Program, Legacy Securities Program (expansion of TALF)	$500.0–$1,000.0	$75.0
Capital Assistance Program (''CAP'')	Capital to qualified financial institutions; includes stress test	TBD	TBD
New Programs, or Funds Remaining for Existing Programs	Potential additional funding related to CAP; AIFP; Auto Warranty Commitment Program; other	$109.5	$109.5
Total		$2,476.5–$2,976.5	$700.0

Note: See Table 2.1 in Section 2 for notes and sources related to the information contained in this table.

TABLE 2.2—EXPENDITURE LEVELS BY PROGRAM, AS OF MARCH 31, 2008

[$ BILLIONS]

	Amount	Percent (%)	Section Reference
Authorized Under EESA	$700.0		
Released Immediately	$250.0	35.7%	
Released Under Presidential Certificate of Need	$100.0	14.3%	
Released Under Presidential Certificate of Need & Resolution to Disapprove Failed	$350.0	50.0%	
TOTAL RELEASED	$700.0	100.0%	
Less:			
Expenditures by Treasury Under TARP [a]			
Capital Purchase Program (''CPP''):			
Bank of America Corporation [b]	$25.0	3.6%	
Citigroup, Inc.	$25.0	3.6%	
JP Morgan Chase & Co.	$25.0	3.6%	
Wells Fargo and Company	$25.0	3.6%	''Capital Investment Programs''
The Goldman Sachs Group Inc.	$10.0	1.4%	
Morgan Stanley	$10.0	1.4%	
Other Qualifying Financial Institutions [c]	$78.8	11.3%	
CPP TOTAL	$198.8	28.4%	
Systemically Significant Failing Institutions Program (''SSFI''):			
American International Group, Inc. (''AIG'')	$40.0	5.7%	''Institution-Specific Assistance''
SSFI TOTAL	$40.0	5.7%	
Targeted Investment Program (''TIP''):			
Bank of America Corporation	$20.0	2.9%	''Institution-Specific Assistance''
Citigroup, Inc.	$20.0	2.9%	
TIP TOTAL	$40.0	5.7%	
Asset Guarantee Program (''AGP''):			
Citigroup, Inc.[d]	$5.0	0.7%	''Institution-Specific Assistance''
AGP TOTAL	$5.0	0.7%	
Automotive Industry Financing Program (''AIFP''):			
General Motors Corporation (''GM'')	$14.3	2.0%	''Automotive Industry Financing Program''
General Motors Acceptance Corporation LLC (''GMAC'')	$5.0	0.7%	
Chrysler Holding LLC	$4.0	0.6%	
Chrysler Financial Services Americas LLC [e] *	$1.5	0.2%	
AIFP TOTAL	$24.8	3.5%	
Term Asset-Backed Securities Loan (''TALF''):			
TALF LLC	$20.	2.9%	''Term Asset-Backed Securities Loan Facility''
TALF TOTAL	$20.0	2.9%	
SUBTOTAL—TARP EXPENDITURES	$328.6	47.0%	
TARP REPAYMENTS [f]	$(0.4)	(0.1)%	
BALANCE REMAINING OF TOTAL FUNDS MADE AVAILABLE AS OF MARCH 31, 2009	$371.8	53.1%	

Note: Numbers affected by rounding.

[a] From a budgetary perspective, what Treasury has committed to spend (e.g., signed agreements with TARP fund recipients).

[b] Bank of America's share is equal to two CPP investments totaling $25 billion, which is the sum $15 billion received on 10/28/2008 and $10 billion received on 1/9/2009.

[c] Other Qualifying Financial Institutions (''QFIs'') include all QFIs that have received less than $10 billion through CPP.

[d] Treasury committed $5 billion to Citigroup under AGP; however, this funding is conditional based on losses realized and may potentially never be expended.

[e] Treasury's $1.5 billion loan to Chrysler financial represents the maximum loan amount. This $1.5 billion has not been expended because the loan will be funded incrementally at $100 million per week. As of 3/31/2009, $1,175 million out of the $1.5 billion has been funded.

[f] As of 3/31/2009, CPP repayments total $353.0 million and AFP loan principal payments (Chrysler Financial) total $3.5 million.

Sources: EESA, P.L. 110–343. 10/3/2008; Library of Congress, ''A joint resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008,'' 1/15/2009, wwww.thomas.loc.gov, accessed 1/26/2009; Treasury, Transactions Report, 4/2/2009; Treasury, responses to SIGTARP data call, 4/6/2009 and 4/8/2009.

So far, Bank of America has gotten $25 billion from our taxpayers.

Citigroup got $25 billion.

JP Morgan Chase got $25 billion.

Wells Fargo and company got $25 billion.

Goldman Sachs got a minimum of $10 billion but probably more with their related interest in AIG which sat on their board, but of course they are not telling us about that. They got, AIG, over $70 billion. The amounts are staggering.

Morgan Stanley got $10 billion. And other financial institutions thus far have gotten $78 billion as of the first quarter of this year. And what have our taxpayers gotten? We have gotten the bills, and we have gotten unemployment, home foreclosures, depleted 401(k)s.

And now let me ask a question, pretty please: Can Bank of America or Goldman Sachs or JP Morgan or Citigroup or Wells Fargo or Morgan Stanley tell us what they have spent the money on, because it is sure not shaking out to communities. In fact, our Realtors tell us that JP Morgan is the worst at trying to do loan workouts.

□ 1630

Just Ohio needs $20 billion to refinance and restore neighborhoods struggling under the weight of this financial crisis.

So far, it's trillions for Wall Street and zero for Ohio. What is fair about that? What is just about that? It's truly a crying shame.

Mr. Speaker, I will place into the RECORD this report from the Special Inspector General, as well as the information from the Center for Public Integrity on these 25 institutions, and I will try to read in my remaining time: Countrywide Financial Corporation,

Ameriquest Mortgage Company/ACC Capital Holdings Corporation, New Century Financial Corporation, and the list goes on, through Aegis Mortgage Corporation/Cerberus Capital Management, to the tune of $11.5 billion of subprime loans, and still counting.

These top 25 lenders were responsible for nearly $1 trillion of subprime loans, according to a Center for Public Integrity analysis of 7.2 million ''high interest'' loans made from 2005 through 2007. Together, the companies account for about 72 percent of high-priced loans reported to the government at the peak of the subprime market. Securities created from subprime loans have been blamed for the economic collapse from which the world's economies have yet to recover.

1. Countrywide Financial Corp.; Amount of Subprime Loans: At least $97.2 billion.
2. Ameriquest Mortgage Co./ACC Capital Holdings Corp.; Amount of Subprime Loans: At least $80.6 billion.
3. New Century Financial Corp.; Amount of Subprime Loans: At least $75.9 billion.
4. First Franklin Corp./National City Corp./Merrill Lynch & Co.; Amount of Subprime Loans: At least $68 billion.
5. Long Beach Mortgage Co./Washington Mutual; Amount of Subprime Loans: At least $65.2 billion.
6. Option One Mortgage Corp./H&R Block Inc.; Amount of Subprime Loans: At least $64.7 billion.
7. Fremont Investment & Loan/Fremont General Corp.; Amount of Subprime Loans: At least $61.7 billion.
8. Wells Fargo Financial/Wells Fargo & Co.; Amount of Subprime Loans: At least $51.8 billion.
9. HSBC Finance Corp./HSBC Holdings plc; Amount of Subprime Loans: At least $50.3 billion.***
10. WMC Mortgage Corp./General Electric Co.; Amount of Subprime Loans: At least $49.6 billion.
11. BNC Mortgage Inc./Lehman Brothers; Amount of Subprime Loans: At least $47.6 billion.***
12. Chase Home Finance/JPMorgan Chase & Co.; Amount of Subprime Loans: At least $30 billion.
13. Accredited Home Lenders Inc./Lone Star Funds V; Amount of Subprime Loans: At least $29.0 billion.
14. IndyMac Bancorp, Inc.; Amount of Subprime Loans: At least $26.4 billion.
15. CitiFinancial/Citigroup Inc.; Amount of Subprime Loans: At least $26.3 billion.
16. EquiFirst Corp./Regions Financial Corp./Barclays Bank plc; Amount of Subprime Loans: At least $24.4 billion.
17. Encore Credit Corp./ ECC Capital Corp./Bear Stearns Cos. Inc.; Amount of Subprime Loans: At least $22.3 billion.
18. American General Finance Inc./American International Group Inc. (AIG); Amount of Subprime Loans: At least $21.8 billion.***
19. Wachovia Corp.; Amount of Subprime Loans: At least $17.6 billion.
20. GMAC LLC/Cerberus Capital Management; Amount of Subprime Loans: At least $17.2 billion.***
21. NovaStar Financial Inc.; Amount of Subprime Loans: At least $16 billion.
22. American Home Mortgage Investment Corp.; Amount of Subprime Loans: At least $15.3 billion.
23. GreenPoint Mortgage Funding Inc./Capital One Financial Corp.; Amount of Subprime Loans: At least $13.1 billion.
24. ResMAE Mortgage Corp./Citadel Investment Group; Amount of Subprime Loans: At least $13 billion.
25. Aegis Mortgage Corp./Cerberus Capital Management; Amount of Subprime Loans: At least $11.5 billion.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

(Mr. MORAN of Kansas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. MCHENRY) is recognized for 5 minutes.

(Mr. MCHENRY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. BRALEY) is recognized for 5 minutes.

(Mr. BRALEY of Iowa addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

NATIONAL DAY OF PRAYER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. JORDAN) is recognized for 5 minutes.

Mr. JORDAN of Ohio. Mr. Speaker, I rise today in support of the National Day of Prayer, which will be observed tomorrow, which has been celebrated every year in this country since 1952. On this day, we give thanks and prayer to the blessings that God has bestowed on America. We take comfort in knowing that throughout American history, our Creator has not been neutral in our struggles.

For centuries, since America's earliest settlement, prayer and a vigorous faith have marked our national journey. Our Founding Fathers sought His guidance during the early days of our young Republic. Other than Scripture, perhaps the greatest words ever written are from our 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.''

Founded on these trusts, our Nation's reliance on God and Judeo-Christian principles have allowed us to become the greatest force for good in history. Faith in God is the cornerstone of us being a good people and will continue to keep us a great Nation.

Tomorrow, millions of Americans will take time out of their day to celebrate the National Day of Prayer. As Americans, we have much to be thankful for. It is appropriate that we have set aside a day for public recognition that is not by our own hands, but by our Creator's, that our Nation has prospered and our people are free.

When we stray from our founding principles based on timeless Judeo-Christian truths and informed by centuries of Western thought, we become a Nation adrift, without purpose and without destination.

Tomorrow, we will affirm the importance of prayer in our national life. We will recognize that the institutions of family and marriage are foundational, and that God and prayer most certainly have a place in the public square.

It is a disappointment, then, that President Obama is choosing not to participate in the National Day of Prayer as his predecessors before him have done. This action sends the wrong message to the American people. Instead of publicly joining millions of Americans in praying for our Nation, President Obama has chosen to distance himself from this important event by merely issuing a proclamation from the White House. It is my hope that in the future, President Obama will take a more active role in the National Day of Prayer.

In conclusion, Mr. Speaker, I would like to thank the many people who make this event possible each year. I invite all of my colleagues to use this day to reflect on the need of prayer in their own lives and, just as importantly, the continuing need for prayers for our Nation.

Ronald Reagan said it best when he remarked that when we stop being one Nation under God, we will be a Nation gone under.

I pray that God will always continue to bless America.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Oklahoma (Ms. FALLIN) is recognized for 5 minutes.

(Ms. FALLIN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THANK YOU TO OFFICER KEITH LEWIS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Mrs. SCHMIDT) is recognized for 5 minutes.

Mrs. SCHMIDT. Mr. Speaker, for 11 straight years, my city, the city of Cincinnati, has hosted the Cincinnati Flying Pig Marathon, and it's truly a great event. As a runner who has participated in all 11, I can tell you it's one of the finest in the Nation.

The brainchild of Bob Coughlin, this marathon hosts over 23,000 participants, including special events on Saturday that actually include young children and the disabled. There's 3,000-plus volunteers that make this effort happen, and hundreds of thousands of people along the sidelines watching us run. It's a great party. It's a great time.

On Sunday, something happened that I think merits some distinction in this great body, and that's the actions of a police officer, Officer Keith Lewis of the Mariemont Police Department.

You see, on Sunday, May 3, as we were running through the streets of Cincinnati, Officer Keith Lewis was on

duty to control the traffic. It was in Mariemont. He saw a car with a woman slumped over the wheel, and he pulled into action.

He put his body over the top of the car, rolled onto the passenger door. An unknown bystander stood there, helped him get into the car, and pulled up the emergency brake. He dumped the woman over and drove the car away from the crowd of participants and the crowd of runners.

I have no idea how many potential lives Officer Lewis saved. It could have been me, it could have been my husband and my brother-in-law standing there cheering me on at that spot, or my dear friends that were there. Who knows?

It's interesting because, in a local news broadcast back in Cincinnati, Officer Keith Lewis refused to be called a hero—he is a hero in my book—because he said he was doing just what he was trained to do.

Mr. Speaker, I must respectfully disagree with Officer Lewis. That man is a hero, and the bystander that helped him is a hero, too. Their selfless actions possibly saved countless lives and injuries. Who knows?

I am honored, Mr. Speaker, and privileged to represent folks like Officer Lewis and that bystander in Cincinnati. Thank you, Officer Lewis, for your dedication and your outstanding commitment to public service. Thank you for protecting us, the runners, the bystanders, and the volunteers. You helped make the Cincinnati Flying Pig, once again, a great, great marathon. Thank you.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

(Ms. ROS-LEHTINEN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

ETHICS AND NO-BID CONTRACTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FLAKE) is recognized for 5 minutes.

Mr. FLAKE. Tomorrow, I plan to offer a privileged resolution regarding earmarks and campaign contributions. This will be the eighth such resolution that has been offered.

The House leadership maintains that this privileged resolution is a blunt instrument and that the Ethics Committee is not designed to deal with issues of this magnitude. Let me be the first to concede the point. These resolutions are a blunt instrument, and the House Ethics Committee is not designed to deal with issues of this magnitude. But it's the only instrument we've got.

Here's the problem. Many of the earmarks that have been recently approved by the House represent no-bid contracts to private companies. In many cases, executives at the private companies and the lobbyists who represent them have turned around, have made large campaign contributions to the Members who secured these no-bid contracts for them.

It would seem to me that overly burdening the House Ethics Committee should be the least of our worries here.

We're informed that with the PMA investigation, the Justice Department is looking into the relationship between earmarks and campaign contributions. The Justice Department just indicted former Governor Blagojevich, in part, based on allegations of official acts promised in exchange for campaign contributions. And we're worried about overburdening the House Ethics Committee?

Let me repeat. The House just awarded hundreds of millions of dollars in the form of no-bid contracts to companies whose executives and their lobbyists turned around and contributed tens of thousands of dollars to Members of Congress who secured those no-bid contracts. It seems to me that concerns about overly burdening the Ethics Committee are misplaced.

I want to applaud members of the Democratic freshman class who have now been subjected to intense pressure from their leadership. These freshmen came to this body with the bright and untarnished respect for the institution. The curtain has now been pulled back and my guess is they don't like what they see. I know just how they feel.

I think that they know that the ability of Members of Congress to award no-bid contracts to private companies whose executives and lobbyists turn around and give them campaign contributions cannot be explained, let alone justified.

I think that these freshmen and other supporters of this resolution fully understand that these privileged resolutions are an unwieldy instrument, but that the process these resolutions are attempting to expose is not being addressed in any other substantive fashion.

As for myself, I have been asked why I don't just file an ethics complaint against an individual. This is not about any one individual. This is not about any one party. The practice of awarding no-bid contracts to private companies whose executives turn around and make contributions to those Members who secured the no-bid contract or earmark goes on in both political parties. Consequently, the ethical cloud that hangs over this body rains on Republicans and Democrats alike.

This is not about retribution. I feel much the same about this issue as the President feels about enhanced interrogations or torture. Let's move on. But let's move on into a world in which we understand that awarding no-bid contracts to private companies whose executives and lobbyists turn around and make campaign contributions to the Member of Congress who secured the no-bid contract is neither right nor proper.

Now, some may say that these concerns are addressed in the earmark reforms that have already been adopted. This is simply untrue. Among the tens of thousands of earmark requests that have been made for the coming fiscal year are thousands of no-bid contracts for private companies.

I'm planning to give notice, as I mentioned, of another privileged resolution tomorrow, but I'm prepared to hold off asking for a vote on the resolution next week if the House leadership is willing to put a stop to the practice of awarding no-bid contracts for private companies.

The ball is in the court of the House leadership. If they want to continue to defend the practice of giving no-bid contracts to private companies whose executives and their lobbyists turn around and make campaign contributions to those Members who secure the no-bid contracts, then I suppose we'll have to continue to use this blunt instrument.

Mr. Speaker, we owe this institution far better than we're giving it. Let's treat this Congress with the same respect and reverence that it deserves.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 1728, MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Mr. ARCURI, from the Committee on Rules, submitted a privileged report (Rept. No. 111–98) on the resolution (H. Res. 406) providing for further consideration of the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes, which was referred to the House Calendar and ordered to be printed.

MISSILE DEFENSE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Missouri (Mr. AKIN) is recognized for 60 minutes as the designee of the minority leader.

Mr. AKIN. It's a pleasure to be able to join you this nice spring afternoon. On a somewhat different subject than we have talked about in the last several weeks, the subject we're going to be dealing with for the next hour is the subject of missile defense.

It's a rather interesting story. It involves some history. It also involves some very interesting sort of political wheeling and dealing between various nations, and it is of particular interest to us because it is the subject of defending our homeland and our lives.

The story starts, at least as my memory allows, going back some years, back to a thing called the Antiballistic Missile, the ABM Treaty of 1972. That was an agreement between a number of

different nations not to develop a missile defense.

Now what does that mean exactly? What it means is different nations were putting together two pieces of technology. The first was the ability to make missiles. That was started at my old alma mater, actually, by a guy by the name of Robert Goddard, who was an experimenter, and he was doing experiments like you might see kids do to make model rockets and things.

So people started to realize that you could put a weapon on the end of a missile and could shoot it at your enemy.

□ 1645

That idea had been done with skyrockets before that with just black powder. The Chinese did that, to some degree, and they even used them on Fort McHenry. But this was a new development, and this was coupled with the idea of these nuclear warheads.

The nuclear warhead put a whole new different meaning on things, because it was such a powerful weapon that if you could put a nuclear warhead onto a missile and then shoot that at your enemy, you didn't even have to be too accurate, even, and it would cause tremendous damage.

So as I was just graduating from engineering school, what was going on was that we had negotiated a treaty with the Soviet Union called the ABM treaty in 1972, and what it said was that we were not going to defend ourselves from nuclear missiles.

Now, that is kind of a crazy idea in a way, because the job of a nation is to defend their own populace. The main job that we have in Congress, if you were to say, what is your main job? One of the main things needs to be to defend America, to defend our homeland. Yet this treaty said: We agree that we are not going to defend ourselves. In fact, the whole thing was called MAD, and indeed it was mad, Mutually Assured Destruction. If you shoot a nuclear weapon at us, we'll shoot one back at you. Everybody melts down and everybody loses.

So the theory is that that will create stability. Well, it was not so clear it was going to create stability, because if one guy could shoot first and take the other guy down, then it was not such a good thing not to be able to defend yourself.

And so it was that we went through a number of decades from the early seventies with this philosophy of mutually assured destruction. And it was really challenged in 1983 by Ronald Reagan. Ronald Reagan started doing some thinking and saying there has got to be a better way to do this thing than to have the Soviets and the Chinese aiming all these missiles at us, and they could melt down our different cities. So he came up with the idea of what was called SDI, Strategic Defense Initiative. He spoke at some length and did a very good job selling the idea that America should be looking at defending ourselves from these weapons.

One of the things that most people didn't know and that he educated the American public on was the fact that a foreign nation could shoot a missile from one continent to the other. We could see it on the radar coming in. We would say: New York City, you have half an hour before you're turned into dust, into a nuclear cinder, and there wasn't a thing we could do about it.

So Ronald Reagan said, there has got to be a better way to skin the cat than that and so he came up with the Strategic Defense Initiative. His detractors called it Star Wars, which actually didn't hurt from a marketing point of view. So Ronald Reagan talked about the different technologies that could be deployed in order to try to stop one of these incoming missiles.

That became kind of a hallmark of one of the things that Republicans stood for was missile defense, and it was one of the things that the Democrats decided they were against. They didn't like missile defense. Well, why was it they didn't like it? They had two reasons: One, it wouldn't work. And, two, it was too expensive. Also, they said it would destabilize relations between the countries, as though they were so stable during the Cold War period.

So that is what happened in 1983. Ronald Reagan made that proposal. It wasn't until actually many years later when I got to Congress, in 2002, that President Bush decided that it was time to move forward on this thing and protect our country. So he proposed and actually initiated the changes to give notice to the different countries that were involved in the Anti-Ballistic Missile Treaty and said: You've got your 6 months' notice. We're going to start developing missile defense.

Now, that gives us a little bit of the background. I am joined here today and I am greatly honored to be able to have one of the outstanding experts in the U.S. Congress here on missile defense joining me on the floor, and that is my good friend, TRENT FRANKS from Arizona.

We are going to hear what TRENT has to say and kind of get into this subject. We are going to be joined by other Congressmen talking about something that is so fundamentally simple that it is very hard for me to understand how anybody could be opposed to our government defending our citizens from nuclear weapons.

I would now yield time to my friend from Arizona, Congressman FRANKS. Thank you for joining us.

Mr. FRANKS of Arizona. It is my honor to join you, Congressman AKIN. I thank my friend from Missouri for the work that you do not only on this area but so many others. You are a man committed to doing what is right for America and making sure that future generations have a little more time to walk in the sunlight of freedom. I have a great deal of respect and appreciation for all that you do and for who you are. It is my honor to be here with you.

I think that you stated so many things so effectively that it is hard for me to add to the fundamental premise. But as you said, there was once a time not so many years ago when America and the free world faced a Soviet Union that was armed with massive stockpiles of weapons that are the most dangerous weapons that have ever really entered the arsenal of mankind, ballistic missiles that can travel several thousand miles an hour and can deliver warheads that can decimate an entire city or even potentially interrupt the electrical systems of entire nations.

It is a very daunting challenge indeed. And you again laid out so well that we adopted this strategy of mutually assured destruction not because we really wanted to, but because we didn't have much alternative. We really embraced this grim equation that if the Soviet Union launched their missiles and killed our men, women, and children across our cities, that we could launch a counterstrike almost simultaneously, even before their missiles landed, that would do the same thing to their nation. And that was something that was so repugnant and so horrifying to all of us that it created this grim kind of an understanding between us that we wouldn't shoot each other because we knew that it meant sudden and horrifying death to both of our nations.

I suppose one could say, given the fact that we didn't blow each other to atoms, that there was some efficacy to the strategy. And, ironically, it still is the centerpiece of our own strategy to deter aggression on our homeland. A nation that knows that if they attack the United States with nuclear missiles, that we can calculate that trajectory. We know where they live and that we have a response capability second to none, and that we can respond in ways that are totally unacceptable to them. It is such an important subject.

Mr. AKIN. Let me just interrupt a second because you've brought up a couple of really interesting points.

The first one, I remember starting to have some interest in politics, and I was really skeptical of the idea of even negotiating that treaty, because what we found was the Soviet Union cheated on all of their treaties. As we look now, as the Soviet Union has collapsed, we find they were busy cheating on this thing all the way along. So we were kind of really out there, weren't we, with this ABM treaty not having any defensive capability.

The second thing I would just mention is, now, the equation has changed, hasn't it? It is not just one or two nations. Now we are starting to look at a different scenario, aren't we?

Mr. FRANKS of Arizona. We really are. What has changed it so dramatically the fundamental aspect that Ronald Reagan put forward, that it is much better to defend our citizens than to avenge them. But what has changed so much, Congressman AKIN, is that now

we are in a world where the coincidence of Jihadist terrorism and nuclear proliferation could change the concept of our freedom and of every calculation that we have made for homeland security, because they can no longer be deterred.

When we were dealing with the Soviet Union, we placed our security to some degree in their sanity. We recognized that they wanted to live, they wanted their nation to continue. And that was a tremendous impetus on their part to try to work with us, to try to keep it safe.

Mr. AKIN. Reclaiming my time, they had a nation-state; and they knew that if they launched at us, the thing was, we might launch back at them.

But now you're talking about a terrorist that may not have a nation-state. That is a different formula. Isn't it?

Mr. FRANKS of Arizona. It is absolutely a different formula. Not only do we have rogue states and, really, non-state players, as you say, that don't have that risk that a nation-state does, but we have a different mindset. That is the part that frightens me the most. A terrorist that will cut someone's head off, while they are tied down in front of a television camera while the victim screams for mercy, with a hacksaw blade, we had better be very thankful that that hacksaw blade is not a nuclear capability. Because that kind of intent, that kind of a mindset that literally has been demonstrated to be willing to kill their own children in order to kill our children is the thing that frightens me the most, that intent.

Mr. AKIN. So what you are talking about is we are not only dealing with something that is not a nation-state, but we are also dealing with a different frame of mind, a different calculus on the value of life. You are talking about, if nuclear weapons fall into the hands of people that have this mindset, this whole thing is really a game changer.

Mr. FRANKS of Arizona. It really is, Congressman, because the reality is that this mindset cannot be deterred. This whole notion of mutually assured destruction was a deterrence strategy, and I am not sure that Jihad can be deterred.

There are really two factors to every threat to individuals or to nations, and that is the intent of your enemy and the capacity of your enemy. In this case, the Soviet Union had tremendous capacity, but their intent was tempered by their desire to survive themselves. You could even say that many of the Soviet people had a desire to see people live and let live. Their government wasn't quite of that mindset. But now we face an enemy that is committed to the destruction of the western world. And if they gain the capacity to proceed, I am afraid that my children and yours will potentially see the day of nuclear terrorism.

Mr. AKIN. Then is the only threat sort of the radical Islamic threat? Because it seems to me that North Korea also poses a threat.

Am I mistaken on that?

Mr. FRANKS of Arizona. North Korea, in my judgment, is the least free nation on Earth. This is a nation that has just a completely inhumane mindset in their government, and I am not sure that we recognize just how dangerous that country is.

Ironically, the Soviets—well, not the Soviets now. The Russians—I have to be careful; a lot has changed—the Soviet Union collapsed on itself. But there is still some remnants of that Cold War mentality. They assured America that it would be 20 years before Iran could launch an ICBM capability, and they assured us many years ago that North Korea was far from being able to produce a nuclear capability. But that happened much more quickly than we realized. And, as you know, North Korea just launched an additional test that went twice as far as their first one did. They have nuclear warheads now.

Mr. AKIN. You are giving us a lot of valuable information. You are saying North Korea now has conducted missile tests. The missile, of course, is a delivery system. And the most recent test that they shot just a couple weeks ago went all the way over Japan and went some considerable distance, twice as far as their previous test. So the range of their missiles is going farther. Not only that, they are equipping the missile, or they can equip the missile, with a nuclear warhead, and our understanding is that they are busy developing that nuclear capability. Is that correct, to the best of our intelligence?

Mr. FRANKS of Arizona. You have got it exactly correct. One of the key technical challenges of an ICBM is the ability to keep the missile stable during staging, where one stage drops off, and the missile can become unstable in that situation. In this last test, North Korea demonstrated that capability, and that to me from a technical perspective was the most frightening aspect of it.

I will say this on the floor of the House of Representatives. I believe that North Korea represents a potential threat to the homeland of the United States and that when the next missile from North Korea gets over international waters, that the United States and its allies should do what they can to shoot that missile down for a couple of reasons: To demonstrate our resolve. But, more importantly, to keep them from being able to demonstrate to their potential customers that they now have perfected missile technology that they can sell to potential nations or even rogue states or just groups like al Qaeda that could use this in a way that would be very devastating to the country.

I am very concerned about that. We must not let them demonstrate to the world that kind of capacity. They have already shown that they are willing to sell this technology. They were the ones primarily who gave Iran their missile technology. Iran now has surpassed North Korea in missile capability, and yet they probably would not have been anywhere close to where they are had it not been for North Korea.

Mr. AKIN. So North Korea sold some of the technology to Iran. But Iran has then been able to develop it more rapidly even than North Korea, perhaps because they have more money to put into the project. I don't know.

So now you have got North Korea and Iran both that we consider that the leadership is highly unstable in those countries, and they have the capability, or are rapidly developing the capability, of projecting a missile either into Europe or even potentially onto the continental United States with a nuclear warhead on it.

□ 1700

Mr. FRANKS of Arizona. Well, that is correct. I believe that there is no greater danger to the peace of the human family today than a nuclear Iran—I think they are even more dangerous than North Korea. And ironically, if North Korea was able to give Iran missile technology, how is it that we would forget that they could certainly give them warhead technology if they need it, or even a warhead?

So I am really concerned that the world in general must recognize the danger that we face, both with a nuclear North Korea—which is already de facto now, this has happened—and with an Iran that is working with missile technology that, before long, they are working with solid propellants. And I believe that they can range parts of the United States even now. And I believe that an Iranian missile poses a profound threat to the country and to the world.

But even more so, probably the point I would make most strenuously is that an Iranian nuclear program means that an Islamist nation now has their finger on the nuclear button. And they have that technology in their hands where they could pass it along to terrorist groups where they don't even need a missile, where all they need is a Volkswagen to carry it across our border, or a small aircraft, anything. There is a lot of danger there.

Mr. AKIN. That is a scary thought. Thank you. And we will get back to the Congressman, as the expert.

We are also joined by some other wonderful patriots and people who have been paying some attention to this subject as well.

Congressman COFFMAN from Colorado, I would be happy to yield you some time. What is your thought on this? I want you to be part of our conversation here this afternoon.

Mr. COFFMAN of Colorado. Thank you, Congressman AKIN.

I was just in a discussion with the Armed Services Committee, which we both sit on. And it is interesting that the discussion today was on missile defense, and that those who were opposed

to saying that missile defense is a strategy, wish to rely on the Cold War strategy of mutually assured destruction.

I think the problem with that strategy——

Mr. AKIN. Reclaiming my time, I want to be very direct here. This has really been a very partisan debate, hasn't it?

Mr. COFFMAN of Colorado. Yes. And it surprises me. I am not sure why or the origins of the partisanship.

Mr. AKIN. I think it was a Ronald Reagan thing. But this has been a straight Democrats one way, Republicans the other for many, many years. But that is starting to change some, isn't it?

Mr. COFFMAN of Colorado. Well, there is some thawing of that, some signals of change. But certainly the majority still fall, unfortunately, on the other side of this issue. And the thinking is that nation states will behave rationally and that they will not attack the United States because the United States could in fact retaliate in kind, and that their nation would be destroyed.

The difficulty, I think, with that is if we look at a nation state like Iran gaining nuclear weapons capability, if we look at Pakistan, should the government be destabilized and fall into radical Islamist hands, will those nation states behave in a rational way? Will North Korea continue to behave in a rational way?

Mr. AKIN. It is hard to understand that mindset for me after September 11 to say that somebody is going to behave rationally, that you are going to assume, you are going to bet your city that somebody is going to behave rationally. And that is an interesting question.

We are also joined by a good friend of mine, Congressman BISHOP, who wants to be part of the conversation as well, from Utah. And I want to include you in the conversation, too.

Thank you for your good work on these questions and willingness to take on some areas that some people don't want to think about or debate or discuss, just want to say it won't work and these people will never be mean to us, they will never go after one of our cities. I yield time.

Mr. BISHOP of Utah. I thank the gentleman from Missouri for allowing me to be part of this.

I am probably the oldest guy here right now; I've got the white hair. I grew up in the era when our missile defense was ''duck and cover.'' I was one of those elementary kids that had to hide under the desk, except I only lived a block and a half away from the school, so I got to run home as long as I could run home soon enough. And I was dumb enough to realize I should have just filled out my time so I could go play, but I didn't, I actually ran home.

Somehow, I think we have moved past the idea that our defense of this country is merely hiding under a desk. This is the defense of this country, as has been mentioned by my good friends from Colorado and Arizona, who know a whole lot more about this. And you have probably said some of the things I am going to say, so if I am repeating it, just nod your head and I will move on, but just know I am reinforcing and agreeing with the comments that happen to be here.

It is significant that the commission with former Defense Secretary Schlesinger and Perry both said the same thing, we still need a strong military defense for what North Korea can do. If Iran is already testing the ability of exploding something at the apex of the trajectory, we know we need some kind of defense system against that. It is common sense that we have. And for us to really talk about cutting $1.4 billion from this defense system is a frightening concept.

Let me just go into the weeds with one last area. In my area, we do the solid rocket motors for the ICBM. This is the last year for the Minuteman III propulsion system that they will make any more solid rocket motors. There will still be some maintenance to it, but it is the last time we do anything that is associated with that large-scale fleet.

This becomes a very specialized manufacturing line. Now, one of the problems is, as soon as you let go of that line, we no longer have the expertise if we wanted to bring it back. And the biggest problem we face in this country, especially with defense, is in our manufacturing base. In the sixties, when we started doing the F–16s and these missiles, and a whole bunch of other things, and our NASA space program, we had some exciting new things this country was doing that brought the best and the brightest into our manufacturing sector that thought these things through. If we only build one airplane every 20 years, if we decide not to try and improve on our system and simply maintain what we have, where are the best and the brightest going to go and where will that expertise and creativity when we need it take place? Because what we are doing is not for today. If the North Koreans attacked us, we have a defense today. I am talking about 15 years from now and 20 years from now. You don't just restart up again. Twenty years from now, our defense and our diplomacy options will be defined by the decisions we make today, this year in this bill with this particular area.

Mr. AKIN. Reclaiming my time, you are talking about the fact that we are going to be cutting missile defense. There are going to be cuts to this program. And the question is, is that a good strategy given the light of what's going on? Now, if the only people you are dealing with is the Soviet Union or the former Soviet Union, that is, Russia and China, that is one thing. But we are not dealing with that anymore.

I appreciate your perspective. I hope you will stick with us a little bit.

What I would like to do is get back to our technical expert here, Congressman FRANKS. And I would like to get into the weeds just a little bit further because people need to understand that every missile is not a missile, they have different ranges and they require a different response. And so when we start taking a look at our modern missile defense system, it basically is done in pieces and layers.

I would like to turn to my good friend from Arizona, and let's talk a little bit about the first way we break things down, which is the boost phase; the midcourse is that the missile is actually at times up in space; and then the reentry as it is coming down. And we treat those differently because there are different vulnerabilities. And we have actually started to build weapons that work—even though people said you can't do it and it won't work, we have these two missiles that have the capability now, which we have tested, where they are coming together, going 15,000 miles an hour closing velocity. And we don't just have one missile hitting another missile, we have one missile hitting a spot on another missile.

One of those missiles is pictured here to my left. This is called the ground-based missile. This is our longest, most powerful missile. And it can stop a missile launch from another continent from more than 10,000 miles away. It can see it coming—not this missile, but the system that goes with it—see the missile coming, has time to casually get up to speed, go out across the ocean, and intercept that missile with no explosion whatsoever, closing velocities of 15,000 miles an hour. Now, some of you might consider what it's like to have a car accident; two cars going 100 miles an hour coming down a highway and hitting head to head. Now, that's a nasty car wreck. But that is just one-twentieth or less than what we are talking about here.

I would like to call my friend from Arizona to give us the logic of how these things work.

Mr. JOHNSON of Georgia. Would the gentleman yield?

Mr. AKIN. I would yield to the gentleman.

Mr. JOHNSON of Georgia. Thank you.

I couldn't help but overhear some of the comments that have been made here. And I am compelled to respond in support of the strength that we must continue to have in the air, on the ground, our ground troops, our naval, our cyberspace efforts, which have, by the way, not been as—we continue to have our systems penetrated by folks who are not authorized to do so. And so that is going to be a fight that we have to continue.

And lastly, but not least, the Star Wars issue, missile defense. I hear folks often mention that there is no need for certain things because the Cold War is over. A lot of folks really want that to be the case, but unfortunately in the

annals of human history thus far, we have always had to prepare for Attila the Hun or someone who wants to take over the whole world and do it by force. America cannot assume that there will never be another Cold War or another situation like December 7, 1941, sneak attack that we weren't quite ready for.

And so I fully support our efforts to continue to engage in research and development because we have got to continue to be, for our freedom, as a Nation—we would be shirking our responsibilities.

Mr. AKIN. Well, reclaiming my time, I appreciate that common sense. We have just seen people who are too willing to use terrorism as a tool for us to assume that we can just relax and not defend ourselves. It just doesn't seem to make any common sense.

And I completely agree with your comments. But I had yielded to the gentleman from Arizona to try to get a little bit of the technical thing. And we will also hear from a good friend of mine, Congressman LAMBORN, who is great on this subject, also, from Colorado. But I want to go to my friend from Arizona first just to get the mechanisms of how this works.

Mr. FRANKS of Arizona. Well, I appreciate, first of all, the gentleman's comments about history. Ever since mankind took up weapons against his fellow human beings, there has always been a defensive response to an offensive capability, whether it was the spear and the shield or whether it was bullets and armor; I mean, it has always happened that way. And yet there are those today that would debate whether we need a defense against the most dangerous weapon that has ever come into the arsenal of mankind, which is a ballistic nuclear missile.

As Mr. AKIN said, the primary divisions of missile defense are as follows; we have the boost phase, which is where potential enemy missile is coming off of the launch pad—or it doesn't have to be a launch pad, it is just where it is beginning its flight. This is the most vulnerable stage for an enemy missile. And this is, in my judgment, where we need to do everything that we can to make sure that we have the capability.

One of the tragic things about the defense budget—that looks like it is going to be put forth here, Mr. AKIN—is that they are cutting one of our main boost-phase systems, the airborne laser. I believe laser will some day be to missile defense what the computer chip was to the computer industry because it travels at Mach 870,000. It is very, very fast. It can reach anywhere on the globe, if the reflections are properly made, in a second.

Mr. AKIN. So just reclaiming my time, what you are talking about—and I am a little bit of one of these Popular Science-type guys, it is sort of interesting—one of the strategies that uses what I described, you shoot a missile at a missile, and both of them are traveling, and you have to wait until your missile gets there to do something. And the trouble with that is it takes time. And what you are talking about is boost phase. How many seconds is boost phase typically?

Mr. FRANKS of Arizona. Well, boost phase can be several seconds. To give you an example: Say a missile left—well, let's say Russia now, because they have the largest arsenal of missiles. I don't suggest that they are going to be our biggest danger. It would probably take somewhere between 28 and 31 minutes for that missile to arrive. And its longest stage is the boost stage. And this is the opportunity that if we have the airborne laser or if we have what we call the kinetic energy interceptor or, in some cases, in the future, where we are coming up with faster missiles that could even be shot off of our ships, so we could potentially catch those missiles in their boost phase. With airborne laser, it could get six inches off the platform and we could destroy it.

Mr. AKIN. You are getting to the point. A laser is like a flashlight; if you could aim it at the right thing and hit it, you don't have to wait for anything; whereas a missile, even if it's a fast one, you still have to wait for it.

Mr. FRANKS of Arizona. Right. And the characteristics of the laser are that it has exactly parallel sides, and it can be a directed energy that you can increase almost without bound, depending on the focus of the energy.

□ 1715

Mr. AKIN. So then if you catch it in boost phase. The other thing is it's really fragile, isn't it? I mean, it's got all of these gadgets and tanks of pressurized fuel. You don't have to do much to it, and it gets it all confused. It just literally blows right over the enemy's territory and they get to do the cleanup.

Mr. FRANKS of Arizona. That's right. What you do is you use the fuel of the missile to blow it up.

Of course, there are other ways. Even if you're not shooting at a fuel tank on a missile, if you hit it with laser and damage the outer casing of the missile, you can cause it to become aerodynamically unstable and fly to pieces at that speed.

Mr. AKIN. So, now, that's the boost phase. But I want to jump over to the gentleman from Colorado here.

Congressman LAMBORN, I appreciate your work on this and also your concern for our country. Please jump in.

Mr. LAMBORN. Thank you, Mr. AKIN. I really appreciate what Representative FRANKS and what Representatives COFFMAN and BISHOP have also contributed to this important dialogue. Thank you for your leadership in setting up this time.

And I like what our friend across the aisle, Representative JOHNSON, was saying as well. We really have to use this technology in this day and age more than ever, and it's of a great concern to all of us here, I'm sure, that the Obama administration is proposing a $1.4 billion cut in missile defense funding for the next fiscal year. And as Representative FRANKS has mentioned, airborne laser is one of the things that's on the chopping block. Two other things that are on the chopping block: one is the Multiple Re-Entry Kill Vehicle. That's where we send up a missile that has multiple kinetic interceptors on it that could take out even a decoy or several decoys if they're using countermeasures and take out multiple incoming rounds and get the warhead that's hidden among a number. That's the Multiple Kill Vehicle. And to cut the funding for the research of that right now when we know that the bad guys are developing this capability is really a bad decision.

Mr. AKIN. Reclaiming my time, let's develop that a little bit and go back over to some of our other experts here on this.

The first thing is the airborne laser, and let's describe that a little bit. First of all, I actually was onboard the plane that's going to be the first plane that carries it. It's like Air Force One. It's a huge aircraft with these multiple, multiple tires on the landing gear and everything, and it's full of some very high-tech equipment. And the purpose of this thing is to shoot a laser, as I understand it, and it hits that fragile missile on the boost phase.

Now, Congressman FRANKS, is it true that that's what is being targeted in the budget that we are going to get rid of that thing that we've spent all of this money on? We're supposed to fire it for the first time this summer. Are they really going to cut that thing?

I yield.

Mr. FRANKS of Arizona. The airborne laser program is more than one aircraft, but they're doing everything they can to decimate the budget there. It is potentially possible even under the Obama administration budget that we will be able to maintain the one aircraft, which is a 747–400B aircraft with a chemical iodine laser aboard. And it has three different lasers. One's an aiming laser, one's a compensating laser, and one is a kill laser. And this is one of the most advanced mechanisms that we have in our entire arsenal, and it will do so much to build the entire technology if we can show that it's effective.

Mr. AKIN. Could you imagine if we had a bunch of those planes traveling around? Any nutcase that wants to shoot a missile with a nuclear device on it, we just poke a hole in it and plop it and it will just fall down. I mean, we could protect incredible numbers of human beings with that kind of technology. I don't understand why we would want to cut that.

But the gentleman from Colorado would like to jump in.

Mr. COFFMAN of Colorado. Thank you, Congressman AKIN. I think that Congressman FRANKS is right in discussing that this administration is deemphasizing missile defense at the

very time when we need it the most in the uncertain age, international environment, security environment that we're coming into. And I think to say that, well, if we develop it anyway, they will develop the capability to overwhelm the system I think presupposes that we're not going to be able to continue to improve technology as we always have been.

Mr. AKIN. We've heard that before, that you can't do it, and it turned out you can do it.

Congressman BISHOP.

Mr. BISHOP of Utah. I appreciate everything that has been said. And, Mr. AKIN, I appreciate your using this time especially with the expertise of those on the subcommittee to try to explain to the House exactly the details of what we are talking about because too often we slosh over this. I know I don't know the details as much as I can. What I do know, of course, is that Russia, even though it may not be our biggest threat, is driving much of our decisions and they're totally revamping their ICBM program: by 2016, 80 percent new missiles.

And the key element here by everything is still the concept of the deterrent. There are a lot of people asking why are we investing in this kind of stuff when we might not ever use it. And that's the wrong question. The right question is, When is that deterrent used? And the answer to that is, every day, whether we actually fire anything or not.

Mr. AKIN. Reclaiming my time, that is an incredibly important point you just made. People are asking the wrong question. It's not whether we're using it because, as a deterrent, every day we protect ourselves, we are using it. Is that what you said?

I yield.

Mr. BISHOP of Utah. Mr. AKIN, I appreciate that and I can't claim credit. I stole that line from the commission, who gave their report today. That is what they have said. A deterrent if it's effective is in use every day, and that's still important. I wish I could claim credit for having come up with it, but I stole it. It's still true.

Mr. AKIN. I am going to yield to my friend from Colorado, Congressman LAMBORN.

Mr. LAMBORN. Mr. AKIN, the other thing that's proposed to be cut by this $1.4 billion slashing of our missile defense program by the Obama administration, unless Congress stands up and restores that funding, and I think we're going to work to try to get both sides of the aisle hopefully to accomplish that, but that is we are going to cut the number of interceptors. We're going to just stop where they're at now.

We have a couple of dozen interceptors in Alaska and California. And North Korea is testing intercontinental missiles they say for the purpose of putting up satellites, but no one believes them. And right when they're developing that capability, this is the wrong time to say we've made our last interceptor, we're not going to build any more. The timing is bad. And yet that's what this Obama budget cut will result in.

Mr. AKIN. Reclaiming my time, I am concerned at a number of different things as it relates to missile defense that the current administration is doing. One thing we are doing is cutting the airborne laser. Another thing is this multiple warhead re-entry situation where we basically gave or sold the Chinese the technology of being able to send a missile up and then have the warhead split into parts and those parts targeting different things. So that's a more complicated target to stop, and we're giving up the technology to do that. But then we're also, in some sort of a diplomacy thing, going over to Putin and telling him we're not going to deploy missile defense in Europe to protect Europe and the eastern seaboard. That doesn't make sense to me either.

And I would like to go back to my friend from Arizona. Help us out with some of these things because this just doesn't add up, my friend.

Mr. FRANKS of Arizona. You mentioned two key things. Congressman LAMBORN mentioned the GBI, the Ground-Based Interceptors, with our GMD, our Ground-Based Midcourse system. This was meant to have 44 interceptors. The Obama administration said we will build no more than 30. And, of course, at that point then the system could atrophy and we may not even sustain it. But it is the only system that we have. I want to emphasize this. GMD is the only system that we have in the United States capable of defending us against incoming ICBMs.

Mr. AKIN. That's this missile right here. Am I correct in that?

Mr. FRANKS of Arizona. Yes, that's the GBI.

Mr. AKIN. We have how many silver bullets like this right now?

Mr. FRANKS of Arizona. Right now we're scheduled to build a total of 30. We have around, I think the Congressman is correct, around 26 or 28 in the ground now.

Mr. AKIN. I thought I remembered 24 but——

Mr. FRANKS of Arizona. But we're saying that we will build no more than——

Mr. AKIN. So that's it. We have got 26 or 28 silver bullets here, but that's about all we've got in case somebody shoots an intercontinental. That means more than 10,000 miles. It means it's going up pretty high. You have got to have a big missile to stop a big missile

Mr. FRANKS of Arizona. Those are not only fast missiles and not only do they have a very complex DACS, they call it, which essentially what we do here is we take our sensors and we run them directly into the incoming missile and the kinetic energy destroys the incoming missile.

But the reality is that in many cases we would want to shoot more than one of our interceptors at an incoming missile to make sure that we have the best chance of hitting it. Sometimes it can be two or three to one or even more. So this is a capability of maybe stopping as many as 10 or 12 incoming missiles. And that's not that many. We have a limited capability against a growing threat, and GMD is the only thing that we have that will protect our homeland against ICBMs at this time.

Mr. AKIN. I really appreciate having you here just to clarify and give us the detail on some of these points, Congressman FRANKS.

Congressman BISHOP, I thought I remembered that you were a little tight on time, and I would yield to you if you would like to clarify some points that you were making.

You were saying that some of these solid rocket motors are actually made in your district and that we're basically losing our industrial base capability to try to continue building some of these things, and that's, of course, worrisome as well.

I yield.

Mr. BISHOP of Utah. You're exactly right. They were made in our district. We are done with that phase right now. The problem is what do we do for the future?

And I actually would like to ask any of my colleagues right here, when Secretary Gates announced his blueprint for this budget, that was the very day that North Korea fired another long-range missile test that endangered Japan. And I would like somebody to express is this a legitimate fear for us. Is that something for which we should be concerned? And what approach is the best for this kind of future threat that comes from North Korea?

Mr. AKIN. I would go back to our resident expert, Congressman FRANKS.

Mr. FRANKS of Arizona. Well, in all the ways in the past, what we have tried to do is to say what is the capacity of our enemy, what is the intent? When we are talking about enemies like North Korea and enemies like Iran, we're not completely clear of their intent. Some of their goals are rather irrational and sometimes they've acted very irrationally. So the only wise thing for us to do for our people is to make sure that we have the capacity to meet that threat. They are now gaining the capacity to have missiles that can range the United States, and we need to make sure that we can meet that threat. We have a limited capability now, but if we back away now, we could be in a situation in the future where we will not have the ability to meet that threat.

Mr. AKIN. We're also joined by another good friend of mine, Congressman TURNER from Ohio.

I would like you to have a chance to be a part of our conversation and discussion because this is something that affects all Americans and it's something that apparently has not been given a high priority budget-wise; so we want to talk a little bit about that.

And I think we could get into the budget a little bit and where we have been spending money if people want to do that.

But I yield to my friend Congressman TURNER, a fine Congressman and great reputation too in the House.

Mr. TURNER. Thank you, Mr. AKIN. I appreciate your leadership on this and your leadership on the Armed Services Committee, and I want to thank you for doing this this evening. This is such an important issue.

And, Congressman FRANKS, I appreciate his leadership in trying to highlight where we have been, what we've accomplished, and, of course, the threats that we have in front of us.

Many people are not necessarily aware that we have missile defense currently deployed to protect portions of the United States and to respond to some of the threats. It's not a complete shield for the area, and it's certainly something that we moved quickly to deploy in the face of the issue of the threats of North Korea. Our system currently has 26 Ground-Based Interceptors in Alaska and California, 18 Aegis Missile Defense ships, 13 Patriot battalions, and five Ground-Based Radars all supported by satellite-based systems and command and control systems.

The issue here is that this is deployed initially to respond to emerging threats, but it's an incomplete system. It's one we have not fully yet assembled, and it certainly is technology that is emerging. The more that we work with this, the more that we learn, the greater ingenuity that we have and the ability to respond to what are real threats to our country.

As we all look to what Iran is doing and what North Korea is doing, we know that there is a real threat to our country, a real threat to our allies, and a real threat to our interests. So we have to preserve in this budget round our ability to fund the deployment of these systems, the maintenance, the upgrade, the research and development that will help us look to the future as to how do we protect our country and our allies. This is a very important function, and I really appreciate your bringing this to light and all those who are participating.

□ 1730

Mr. AKIN. Well, I appreciate your joining us here and recognizing what we have got going on. You have also mentioned quite a number of other missiles.

And just for some of our colleagues that are involved watching our discussion, and I started at the beginning, there is all different kinds of missiles an enemy can shoot at you. Some of them are little ones, some of them are medium-sized, some of them are big ones, and some of them are really big.

They all have different trajectories. And so depending on the trajectory, we match that with whatever size missile that we need to be cost effective to try to stop something coming.

The picture that we had before is a ground base. This is the big daddy. This is the one for the missiles that are coming over 10,000 miles, but there are a lot of other kinds of missiles. Some of them are more in the 3,000- to 5,000-mile range, and that's where you have our ships, our Aegis-class cruisers and our Arleigh Burke destroyers, with missiles inside these destroyers that they can direct at what's called a ballistic missile, but not an intercontinental ballistic. That's sort of the 3,000 to 5,000 range.

And then you have got your Patriots, that literally we have batteries, those defending a particular area or something like in South Korea, where there is a military base. You have Patriot missiles just defending against short-range North Korea.

So there is quite a range of these different missiles, and I appreciate your bringing that very important point out, and also the fact that this technology is moving and we need to be putting money into it and keeping ahead of the power curve on this; otherwise, we are going to see some one of our cities paying a big price on this kind of thing.

I want to go back to my friend from Colorado, Congressman LAMBORN.

Mr. LAMBORN. Yes, if I could just step back a couple of steps and look at defense spending in general. It's the only department where there are massive cuts being proposed. Everything else in the budget is going up. Social programs are going up, entitlement programs are going up.

Anything you can shake a stick at in our budget is going up, except for defense, and we are living in an increasingly more dangerous world. It's the wrong time to be cutting defense.

We are cutting F–22s. After this next year, we are going to build a few more and they are done, even though the Air Force would love to have many more than the roughly 200 that would be built by then. They wanted close to 400. I know they are expensive per unit, and yet they don't get shot down because they are so much more advanced than anything else existing in the rest of the world.

We can't decide what to do on tankers. Our heavy lift capability is being questioned. Some of our naval ships, classes of naval ships are just being zeroed out completely.

So we have some major defense cuts that are being proposed when everything else is going up in the budget. I don't understand that priority.

The first responsibility of a government is to protect the safety of the citizens living within its territory. So the first responsibility of the U.S. is the defense of our country, and yet we are slashing defense budgets and yet everything else is going up. I just don't understand that way of thinking. It's hard to understand that.

Mr. AKIN. I don't understand it either, but I have got a chart. Unfortunately the printer was down so I couldn't put it up on the board, but I could just read some numbers off of it.

You go back to 1965, and in 1965 our entitlement spending was between 2 and 3 percent of the budget, of the gross domestic product. It was 2 or 3 percent of gross domestic product was entitlement.

Now that entitlement has gone from the high 2s to 8.4 percent in 2007. So it has gone from a little over 2 to 8.4 percent. That's the entitlement growth. And yet the defense spending, at about '68 or so, was almost 10 percent of GDP, and that's gone all the way down to 4 percent.

So what you are saying in terms of numbers is absolutely true, and that is we have been slashing defense spending over a period of a number of decades and increasing entitlement. Now, maybe there is a good reason to have entitlement spending, but the one thing is sure: If our country gets hit with nuclear weapons, there isn't any security at all if you don't have military security.

I wanted to defer to my friend from Utah, Congressman BISHOP.

Mr. BISHOP of Utah. I do just want to add one thing, and I am so appreciative of what the last comment by Mr. LAMBORN was, and what you have simply said. We have been talking a great deal in this Congress about jobs. Every one of these programs creates jobs. It creates a work line. It creates the knowledge that we need. Everything Mr. LAMBORN was talking about are jobs. These are critical jobs for our country, and we need to do it.

I appreciate so much the experts here, the ranking member on the committee, Mr. FRANKS, who knows so much about it, your input into this thing, because as I said originally, when I was growing up, our defense was duck and cover. I don't want to have to go back to that.

And if we are not ready to build this program and to multiply and expand what we are doing, I am back to going under desks. And you can see there are only four desks in this room and there are 435 of us, and I am big. There is not enough room for my cover right here. This is essential and important.

Mr. AKIN. That duck and cover and the idea that somehow you can kind of stick your head in a hole like some sort of an ostrich and hope that thing isn't going to land on you, that sort of thing just doesn't work when you start to talk about nuclear weapons.

So I think we have gotten into a little bit of this question about funding. And I find it somehow a little bit cynical when in the first 5 weeks that we met in this Chamber this year we passed this bill to spend $840 billion, you put that in defense spending, that's equivalent of the average cost of an aircraft carrier. We have 11 aircraft carriers. That would be like building 250 aircraft carriers end to end.

That's how much money we spent in the first 5 weeks, and we are saying that we can't defend ourselves against

these kinds of missiles that are being developed by rogue nations. That, somehow, just doesn't seem to make sense.

And when you see that we have the capability of putting one of these systems into the air like this, and we can basically buy the lives of millions of people in a city for this kind of investment.

Now, I am going to ask my friend from Arizona here, you know, is this a big part of the defense? My understanding is we are only talking about 2 percent of the defense budget to be able to do this to protect our citizens. That doesn't seem like too much. Am I about right on the numbers?

Mr. FRANKS of Arizona. No, you are essentially correct. The budget was about $9.4 billion. It is being cut about a $1.5 billion and then some of the other systems are being moved around to where the total effective cuts are about $1.8 billion.

But here's the bottom line. All of the money that we have spent on missile defense is just a little over $100 billion since we started 25 years ago. And it took almost that much just to clean up after 9/11 hit New York, and 9/11 cost our economy about $2 trillion.

So if we are talking about being cost-effective here, we should remember that if that attack on New York that morning had been an ICBM with, say, 100-kilo ton warhead, it would have killed maybe 120,000 people instantaneously and half a million more within a couple or 3 weeks.

I am just astonished that we are so shortsighted that now, in this kind of an age that we live in, that we would cut missile defense. And I pray that we don't have to, in some future date, look back on this debate and say how could we have forgotten? If we build a system and we don't need it, then it must have worked.

And I would just say in closing that I will be glad to apologize if we build one that we don't have to use, but I don't want to stand before the Nation and have to apologize to them for failing to building a system that could have protected them.

Mr. AKIN. My good friend from Ohio, Congressman TURNER, please fill in some more of the details here, because you are the person in the committee that's really paying attention to this and we really appreciate your leadership on this.

This is so important, a lot of times I am sure your constituents are on you to do all kinds of things, and they probably don't realize how much time and attention you have to give to some of these issues. But we appreciate you and we are very thankful that the people of Ohio send you here.

Mr. TURNER. Again, I want to thank you for your focus on this because there is an information gap, I think, between our capability of what we are able to do and what the American people know that we can do. So many times when people talk about missile defense, they remember the past criticisms, that this is a system that would not work, it's an impossible task.

Well, this is a system that not only works, it's deployed. And many people are not aware that we actually have missile defense systems that are deployed for the purposes of protecting the United States from the threat of North Korea. Again, as you and I were discussing, it's an incomplete system in that we have not fully deployed all of the system that's necessary to protect the United States. But, again, this is a system that has not only been tested fully, responds to some of the threats that we have, but it's actually deployed.

Now, it is just the first phase of a system. We have to continue our research, continue the American ingenuity that is so great. The missiles that you have behind you that are able to intercept are so important, again, and technology that people said would not work.

We have other technologies that we need to explore; for example, the airborne laser, being able to take high directed energy and actually apply them to some of the missiles that threaten us. That's the technology that's so important to pursue.

Because as we pursue research and development, as we pursue testing and find out the ways in which we can utilize this, these technologies to protect ourselves, we are going to perfect it. We are going to find the American ingenuity that we all know and apply it in ways that protect our families and our communities and our cities.

Mr. AKIN. There is one thing I promised that I was going to toss in here, and this is something that I don't think people understand. We need to answer this question, and that is, if somebody could smuggle a nuclear weapon into our country, why do we care so much about something on a missile?

And the answer is that when a nuclear weapon is exploded high over a city, the amount of damage it does is hundreds of times what would happen if it were on the ground.

And I think that's something that people forget, that it's a combination of the missile getting the altitude and no problems with security, and then all of a sudden you have this tremendous burst in the air over a city, just wreaks absolute havoc and kills millions of people. I want to make sure you hit that point, because people say, oh, this is a waste because somebody could just bring it in a suitcase. Not so simple. Please talk to that point.

Mr. TURNER. I think the real easy answer as to why we should have missile defense is because our adversaries are so interested in funding missiles, and they obviously see that missiles are a way that they put us at risk because they are investing so heavily in it, in research and technology. And we are seeing in the rogue nations, now North Korea and Iran and their capabilities, the fact that they are reaching for these shows that we need to reach for the defense.

One area that I wanted to raise and that I know that we need investment in is in the area of intelligence and our space capabilities that give us the eyes and ears and the ability to understand what some of the threats are, to be able see them, to be able to respond.

It is good to bring this information to light for the public, because people need to know what's out there, what we are capable of, but also what is left to do.

Mr. AKIN. It is such a treat for me tonight to be able to share this time with my colleagues, people who are patriots, good friends of mine, people who love this country, want to see our cities and our citizens defended, people who continue in the tradition of Ronald Reagan.

I am a little bit surprised that we want to be cutting these programs. I don't think it's the right thing to do.

I don't think if the American public knew about our vulnerability, knew about the development of North Korea being able to fire missiles from North Korea and actually hit parts of America, this is not something that we want to play around with. We want to have a robust capability, and we need to make that investment, and the idea that we don't have enough money is absolute foolishness.

PREDATORY MORTGAGES AND FORECLOSURES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Missouri (Mr. CLEAVER) is recognized for 60 minutes as the designee of the majority leader.

Mr. CLEAVER. Mr. Speaker, when Barack Obama was sworn in as the 44th President of the United States, there were a number of statements that were subliminally made to the Nation and, indeed, to the world. And one of the statements was that we, as a Nation, had moved significantly from the days of not only chattel slavery but even the days of Jim Crow and the bitter segregation that enveloped the entire United States.

I can remember growing up in Texas, in Wichita Falls, Texas, and my father purchased a home in what was then, very clearly, what was known as a white neighborhood. And when my father purchased the home across the street from, I think, a shopping center that was going to be built, a strip shopping center, he had to move the home from its location to the east side of the tracks, where the African American community lived.

He purchased the home, hired a moving company that moved homes, and the home in which my father lives in today, the home in which I and my three sisters grew up in now stands at 818 Gerald Street in Wichita Falls, Texas, and it has been moved, probably, 8 miles from where it was built,

because in those days African Americans could not live on the other side of the tracks.

□ 1745

Now while I speak very clearly and experientially about Wichita Falls, Texas, please understand that was the case all over the length and breadth of the United States. We had problems where the banks would not lend money to purchase homes in certain neighborhoods. It was called ''red-lining,'' where if a white homebuyer wanted a home, it was clear that the banks would not sell them a home or would not finance the home in certain areas, and they would only finance homes in certain areas for African Americans and to some degree to Hispanics. And this went on in our country for years and years and then decades and decades.

And then, finally, as our Nation began to experience what I like to call the ''Great Awakening,'' we found that Martin Luther King, Jr. and Whitney Young really began to change things. And things began to change, really, in the 1950s with Brown v. Topeka Board of Education. And then with the movement, the Southern Christian Leadership Conference, Martin Luther King, Jr., when you look at what was going on with the NAACP, the Urban League, and I think a beginning of an awakening by all of the country, things began to change, albeit very slowly. And we had the Voting Rights Act approved. We had the Civil Rights Act of 1964, 1965.

And then by the 1970s, there was, for the first time, a very clear movement of the United States Congress toward creating some kind of a society that would allow all Americans to enjoy the benefits of America. And so, in 1977, the Congress of the United States put in place something called the Community Reinvestment Act. It is called CRA. And in this act, there was an attempt by Congress to address discrimination in loans made to individuals and businesses from low to moderate income neighborhoods.

Now, this is important because finally in 1977—and I know probably for young people who may be watching this broadcast on C–SPAN, they probably are having difficulty even grasping the fact that in 1977 the Congress of the United States had to pass a law that would stop the redlining that pretty much pushed African Americans and Hispanics in certain neighborhoods. They don't see that as much today, although we are still, unfortunately, still bitterly segregated in terms of housing. But in 1975, to reduce discrimination, Congress moved to pass the Community Reinvestment Act. That was a major piece of legislation.

And while many Americans probably don't even know what CRA is, this is an opportunity for you to understand what began to change the whole housing drama in the United States of America, the Community Reinvestment Act.

This act began to cancel out, to erase, the practice known as ''red-lining.'' And in this Community Reinvestment Act, it required that appropriate Federal financial supervisory agencies would regulate financial institutions to meet the credit needs of the local community in which they were chartered, consistent with, I might add, safe and sound operations. And that is important, and I will get to that in just a moment.

The agencies that have been commissioned with the responsibility for regulating these agencies, I think most people would know who they are. They would be the FDIC, they would be the Federal Reserve, they would be the Office of the Comptroller of the Currency, the OCC, and the Office of Thrift Supervision, the OTS. And those agencies would have the responsibility to monitor what banks in the United States did to make sure that they did not arbitrarily and capriciously exclude entire segments of cities for loans both in terms of residential homes and in terms of businesses. And therein, Mr. Speaker, we began a new chapter in the United States.

At this time, Mr. Speaker, I would like to yield time to my friend and colleague from Houston, Congressman AL GREEN.

Mr. AL GREEN of Texas. Thank you so much, Congressman CLEAVER. I greatly appreciate the history that you have afforded us. It is meaningful for us to understand history, because in understanding history, we can understand the benefits that have been accorded by way of the CRA. The CRA has clearly been of great benefit to all Americans, because when you help some Americans, you really do help all Americans. Dr. King reminded us that ''life is an inescapable network of mutuality tied to a single garment of destiny.'' Whatever impacts one directly impacts all indirectly. So by directly helping some, we have indirectly helped all Americans.

And I regret that there are many who contend that the current credit crisis is based upon some of the actions that the CRA might have mandated, which is totally not true. It really is not. And there does come a time, there really does come a time when every woman and every man must on truth stand. So tonight, I appreciate what you have said because I think we have to take the ax of truth and slam it into the tree of circumstance. And we just have to let the chips fall wherever they may, because there really is some truth in the notion that the truth will set you free. So let us see if we can free some souls as it relates to the CRA and its benefits to all Americans.

You see, the truth is that the Community Reinvestment Act that Congressman CLEAVER has given us a great recitation of its history, of the history of the act itself, the Community Reinvestment Act did not cause the current credit crisis. Now if you don't believe me, perhaps you will believe the Honorable Mark Morial. I have in my hand a copy of his testimony before the Senate Banking Committee on Thursday, October 16, 2008. In his testimony, he indicates that the CRA is not the cause of the current crisis. This may not be enough for some people. If you don't believe Mark Morial and you don't believe me, then maybe you will believe the Honorable Ben Bernanke, who is, of course, the head of the Fed. He has a letter that he has written to the Honorable ROBERT MENENDEZ, who is a member of the United States Senate. And he indicates that the CRA is not the cause of the crisis and that there is no evidence to support this.

And if this is not enough, then perhaps a summary from the analysts over at the Board of Governors of the Federal Reserve system. They have indicated by way of a report that the CRA is not at the root of the current crisis.

So the truth, you see, is this, that the CRA has been of great benefit, that it does not regulate lending, that it does not legislate and that it does not mandate. The CRA does not even apply to all financial institutions. And I can really understand how some people might conclude, based on some of the propaganda that I have heard, that the CRA regulates lending worldwide. But it really does not. It doesn't apply to all institutions within this country. For example, it doesn't apply to financial institutions like the defunct Countrywide, which at one time was one of the largest lending institutions with reference to mortgages in this country. It does not apply to financial institutions like the ruined Bear Stearns. It doesn't apply to AIG. It did not apply to Lehman's.

The CRA has been an institution and, if you will, it requires lending institutions to lend money into areas that had been redlined, as you indicated, and had literally been locked out of receiving the financial bootstraps that many communities receive so as to lift themselves out of poverty by way of wealth building through home purchases, as well as some other things that transform houses into worthwhile neighborhoods to live in.

Approximately 70 percent of the foreclosure filings from January 6 to September 8 took place in middle to high income, non-CRA-related neighborhoods. Now it is important to note that the CRA, while it does encourage lending, it doesn't mandate it. And the lending that did take place with reference to foreclosures, 70 percent of this lending that took place between September of 2008 and January of 2006 was in higher income neighborhoods, income neighborhoods that the CRA did not address. I will call them non-CRA neighborhoods.

The CRA doesn't regulate. It simply says that banking institutions are encouraged to cover and relate to and lend to all segments of the communities that they serve. And they are to do so without goals, they are to do so without targets, they are to do so without quotas. The CRA doesn't encourage

bad lending. It doesn't mandate bad lending. It doesn't condone bad lending. It doesn't generate any loans. The CRA does not regulate nor does it create any of these exotic loans that we are aware of. And many of them are at the root of this subprime crisis.

So I'm honored to tell you, Mr. CLEAVER, and I thank you for your history, that the CRA has been of great benefit to us. And I regret that there is a distortion of the facts that relate to the CRA and what it has meant to us. I think that we have an opportunity tonight to clear up some of the confusion and to make clear what the benefits of the CRA are and to also talk about some of the areas wherein the other institutions, other than the CRA—and I call it an institution, it is really an act of Congress—but wherein other institutions have created products that have created a lot of the subprime crisis that we suffer from today.

So I will yield back to you and trust that as we go through this process tonight, we can talk about some of these products. And I'm prepared to talk about a few of them. I will go ahead and talk about just a couple if I may.

I will talk about the exploding ARMs that were not created by the CRA and not regulated by the CRA. You're aware of them, the 327s and the 228s wherein persons literally had 2 years of a fixed rate and 28 years of a variable rate. They had a teaser rate that would, at the end of 2 years, an entry level rate that was usually low, at the end of 2 years would increase to sometimes 30 to 40 percent of what that teaser rate was. And there were many other products like this that the CRA had nothing at all to do with that have helped to create this crisis that we have to contend with.

Mr. CLEAVER. Would the gentleman yield?

Congressman, it may be of some value for you to share with us the yield spread premium, which is one of the critical developments that we find that people suffer as they are losing their homes. And what has happened over the past year is that in the middle of a tidal wave of foreclosures, people have sought to place the blame on somebody or somebodies. And tragically and painfully, it has fallen on the poor and the minorities. They are being blamed for the crisis.

One of the people I really liked a lot, and we had a very good relationship, was former Congressman Jack Kemp, the former Secretary of the Department of Housing and Urban Development. He, of course, died, and I think all of Capitol Hill is mourning Jack Kemp. He was a former quarterback in the NFL, and he was a great guy.

□ 1800

He wrote a book where he talked about what happens to the poor and how the poor get blamed. I have that autographed book in my office in my basement in Kansas City. He lays out clearly how the poor always seem to get the blame. When we say that CRA caused this tidal wave of foreclosures, it is a way of blaming poor people because what that means is when the government passed the Community Reinvestment Act and said you cannot discriminate any more, what is being suggested from Capitol Hill, and you can hear it at night on the television and radio talk shows, is that banks and Fannie Mae and Freddie Mac were forced to make bad loans, and there were a lot of bad things happening, including the yield spread premium.

Mr. AL GREEN of Texas. You are exactly correct. Poor people did not create this crisis, and people living in areas covered by the CRA did not create this crisis. Let us take a look at the yield spread premium. The yield spread premium says that if you are a seeker of a loan for a home mortgage and your originator can qualify you for a 5 percent loan, by way of example, if that originator can get you to take a loan for 8 percent when you qualified for 5 percent, that originator will get a lawful kickback by causing you to go into a higher mortgage than you qualified for, and never have to tell you that you qualified for the 5 percent premium.

That premium that is paid to the originator is a part of this process which we now call the yield spread premium.

This was invidious, and it did cause a lot of persons to take out loans that were much higher than the loans that they qualified for. But to further evidence the fact that poor people didn't create this problem, negative amortization, many people received loans that were negative in the sense that you could pay your principal, pay your interest, but if you didn't pay enough interest, you would find that that which you didn't pay would be tacked on to your principal.

So you had a loan where your principal was growing, and it was growing such that you could literally never pay for the loan and always owe more than you actually decided that you wanted to have as a mortgage amount.

We also had the situation with the no-document loans. Poor people didn't get a lot of no-document loans, loans wherein you didn't have to prove that you were working. Usually these were persons said to be associated with some sort of business and they had difficulty verifying income, but no-document loans were made and they were usually in the subprime market, they were either the Alt-A loans or subprime because they were said to be riskier. But these loans were not originated because of the CRA. They loans were not mandated because of the CRA.

I would also call to your attention prepayment penalties. There were loans that had prepayment penalties that coincided with these teaser rates. None of this was mandated by the CRA. The CRA did not require teaser rates. It did not require loans to have prepayment penalties at all. When these prepayment penalties coincided with the teaser rate, it simply meant that the person who wanted to refinance the loan when you were getting to that period or that time when the loan would adjust, would have to pay a large penalty just to get out of the loan into another loan. These teaser rates and prepayment penalties became a detriment to many people who were locked into these 327s and 228s.

I would call to your attention also the fact that there were loans that were interest only. The CRA did not mandate interest-only loans. These loans were loans created by mortgage companies. They were loans that were originated by entities that were not covered by the CRA for the most part. And these loans, if they were covered by the CRA, institutions that were regulated by the CRA, the CRA did not mandate an interest-only loan which means you would simply pay interest, not pay the principal and you would continually owe after some period of time what you started out with as your loan amount.

The CRA did not require credit default swaps wherein one party would agree to pay a second party if a third party defaulted. This is what AIG was infamous for, these notorious credit default swaps, not mandated by the CRA.

The CRA did not cause us to conclude that hedging was a good means of managing risk. The CRA didn't have any mandates with reference to hedging and hedge funds.

It did not require outsourcing as a risk management means.

Some of these large institutions were literally allowing credit rating agencies to manage their risk because they would ask a credit rating agency to give them an opinion about a certain instrument, and they were relying on that as their risk management tool. The CRA did not mandate any of this.

One really important thing, CRA did not create the circumstance wherein the lender was no longer concerned about whether the borrower could repay his or her loan. This was not in any way mandated by the CRA. It wasn't regulated by the CRA. It had nothing to do with the CRA. When this occurred, lenders no longer had to concern themselves with the liability associated with the loan if there was a default.

So originators started simply originating loans so they could put them in the secondary market, and by getting them out in that market, they would get payment for the loan itself. Somebody else was now responsible for the loans, and the loans were bundled. The CRA did not mandate nor did it require that these loans be placed in these bundles called securities and sold to investors. The CRA had nothing to do with any of these things. The CRA simply said if you are a lending institution covered by the CRA, you must lend to all persons within your area of influence.

And thank God the CRA did this because there are many persons who but

for the CRA wouldn't have homes. There are many communities that would not have been revitalized by dollars that were actually made available to communities to revitalize them. Nursing homes received CRA moneys by way of loan, and the elderly, homes for the elderly received CRA moneys. The CRA has been a benefit to all Americans, and I just regret there is this notion afoot by many that the CRA somehow created a crisis that it had absolutely nothing to do with. The empirical evidence is completely contrary to this notion that the CRA created the crisis.

Mr. CLEAVER. Mr. Speaker and Mr. GREEN, I flew into Washington on Monday of this week and sat next to a gentleman who serves on a board of a bank. When he found out that I was on the Financial Services Committee, we began to talk about the crisis, and I am sure that happens to you and all of us who end up on this committee at this particular time in history.

During the conversation he said to me that at a recent bank board meeting, one of his colleagues on the bank board said to him: CRA is going to ruin this bank. It is forcing us to give loans to people who don't qualify.

And he said no matter how he argued, the man would not release the notion that somehow the requirement that is placed on institutions to be fair caused the financial crisis.

I think that the Members of Congress in 1977 who had the vision of creating or beginning the task of creating an America where people could live where they wanted would be pleased today to know that we have made significant progress. We have not made the ultimate progress, but we have made significant progress.

Imagine this, Minneapolis, Minnesota, having an entire section of the city where banks are not making loans. And then as that city goes into decay, people would drive back and say, You know, poor people don't take care of their property. See what is going on over there, not understanding that banks were not making loans to that area. That was supposed to stop in 1977.

Now there are banks in my hometown who are very active in making loans in the urban core. There are other banks that I think are prodded by the passage and the enforcement of the CRA.

I did not have this on the airplane, but I wanted to bring it here tonight. This comes from chapter 20 of the Community Reinvestment Act, section 2901, Congressional Findings and Statement of Purpose. It reads: ''It is the purpose of this chapter to require each appropriate Federal financial supervisory agency,'' those are the agencies that I mentioned earlier, ''to use its authority when examining financial institutions to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.''

This is in the language of the law. And in spite of the clarity of this statement, there are people, even unfortunate and tragically who are part of this body, who are still going around on TV shows saying that CRA caused the financial crisis.

I would yield to my colleague KEITH ELLISON from Minnesota.

Mr. ELLISON. Mr. Speaker, what else are these purveyors of confusion supposed to say?

They have had an opportunity to spread deregulation all over. They have declined the opportunity for many years to pass an antipredatory lending bill. They have promoted tax breaks for the wealthiest among us. And now that they have had the opportunity to have a House and a Senate in which their particular caucus was in the majority, they have had a full opportunity to manifest their economic ideas, and what those ideas have come to has been the largest foreclosure crisis since the Great Depression. What these economic ideas that the poor have too much and the rich don't have enough is that we have had serious unemployment spikes higher than any that we have seen since the early eighties, which was the Reagan recession. What we have seen is record lows in consumer confidence.

The fact is you can't expect the people who are purveying confusion regarding the CRA to come clean because then they would have to admit that it is their economic policies that have brought forth the economic malaise that America is in now.

In fact, the Community Reinvestment Act is good economics. The Community Reinvestment Act says that what we are going to do is we are going to ask banks who draw deposits from neighborhoods to also loan to that neighborhood.

The Community Reinvestment Act came about based on statistically documentable evidence of red-lining, which is a process whereby lenders and sometimes insurance companies systematically denied credit to certain communities, particularly low-income and minority communities. Importantly, the Community Reinvestment Act does not prescribe minimum targets nor dictate specific underwriting policies. It doesn't even set goals for lending or investment. Instead, it gives considerable discretion to bank regulators and examiners, and ensures that loans are made in a manner consistent, as you pointed out, Congressman CLEAVER, with safe and sound banking practices.

Let me just quote from somebody who ought to know a little bit about banking and the financial markets, and that is Fed Governor Elizabeth Duke. Fed Governor Elizabeth Duke is a person with a Ph.D. in economics who studied these issues, is not known for wild statements, and is essentially a paragon of reliability and stability.

Here is her analysis. She says that the claim that the CRA, the Community Reinvestment Act, caused the current crisis is a ''misperception promulgated by many who either do not know much about the law or don't like it.''

□ 1815

That's what Fed Governor Elizabeth Duke had to say.

Finally, Federal Reserve Chairman Ben Bernanke has indicated, ''Our own experience with the CRA over more than 30 years and recent analysis of available data, including data on subprime loan performance, runs counter to the charge that the CRA was at the root of or otherwise contributed to in any substantive way the current mortgage difficulties.''

So I have more to say, Congressman CLEAVER, but let me share the mic with others who have much more to say as well. Thank you.

Mr. AL GREEN of Texas. Thank you. I ask that you yield to me.

Mr. ELLISON. I will certainly yield to the gentleman from Texas, Congressman AL GREEN, who is a stalwart advocate of consumers, investors, and all Americans.

Mr. AL GREEN of Texas. Well, I thank you, my friend. I will pick up where you left off because I happen to have a copy of the letter that Chairman Bernanke sent to the Honorable ROBERT MENENDEZ. This ties into what you said as well, Congressman CLEAVER.

In this letter he indicates, ''A recent board staff analysis of the Home Mortgage Disclosure Act and data sources does not find evidence that CRA caused high default levels in the subprime market.''

He also goes on to say, ''The CRA statute and regulations have always emphasized that these lending activities be consistent with safe and sound operation of the banking institutions,'' clearly indicating that the CRA is not at fault.

I would like to do this just for a moment and then we will come back to more of why it's not at fault. But I'd just like to say this. Assume for just a moment for the sake of wholesome argument and helpful debate that the CRA is at fault, just for a moment.

Then we have to ask ourselves: As those who, by the way, have been saying and continue to say that it's at fault, we would have to ask ourselves if they had control of the U.S. House of Representatives, the U.S. Senate. They had control of the executive branch of the government, even had control of the Supreme Court, and they had all of this at the same time. If the CRA posed the hazard that they contend it poses, and they said that they made statements at the time that the CRA was not functioning as it should, then why didn't they do something when they had control of the House, the Senate, the executive branch of government as well as the Supreme Court?

It would have been easy to generate legislation that could have gone from one House to the other. It would have been very easy to get the President, who apparently would have been in

agreement, to sign it. But the truth is that the CRA was functioning well and has functioned well.

In times of crisis, it is very unfortunate that the least among us will sometimes be blamed for what others have done. This is not the time to blame the CRA or the persons that the CRA might benefit for what has happened. Why? Because if we do this, we will allow ourselves to be distracted from the real causes—these exotic products.

And not all exotic products are bad, but many of them are harmful and hurtful. These exotic products like these 3/27s and 2/28s that we talk about, exotic products that allowed people to get into homes, but it didn't enure to their becoming homeowners.

We developed a society wherein people became homebuyers such that they could simply get into a home with no assurance that they could pay for the loan that they were purchasing.

So we cannot allow ourselves to be distracted with this CRA stalking horse, if you will. We must focus on the real causes so that we can come up with real solutions.

I would yield to you, Mr. CLEAVER.

Mr. CLEAVER. Thank you, Mr. Green. I think that those forward-thinking Members of this body who in 1977 approved the Community Reinvestment Act did a tremendous service for all of us. It provided us with opportunities to buy homes—and our children.

It is refreshing for me to know that the young pages who work here in the Capitol—we have two helping us tonight, Raven Tarrance and Jasmine Jennings. These pages will not have to suffer what my father had to experience and what our parents and grandparents had to experience because, in part, the Community Reinvestment Act will not allow banks to take deposits from people and then not make loans to them. And it's really so ludicrous that we have to argue this point because the law is so clear.

I just added another section of the law here with us. The bill text of section 2903, Financial Institutions Evaluation, reads thusly: ''A, in general, in connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall, one, assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods consistent with the safe and sound operation of such institutions.''

Now, according to recent data, we found out that 75 percent of the higher-priced loans during the peak years of the subprime boom were made by independent mortgage companies not operating under CRA, which means that it is absolutely ridiculous to blame CRA for the crisis when the institutions that ignited the crisis were not operating under CRA.

It is so sad that a Nation that is moving in many ways far beyond where most of us thought it would move, at least at this moment in time in history, is still, in part, dealing with those who are spreading divisive messages that CRA, or poor people, caused this crisis.

When you read about the Great Depression or when you read about recessions even in foreign countries, for some perverted reason, and maybe it's a part of human nature, people always look for a villain instead of us saying that we had a problem.

Housing prices in the United States rose precipitously for a 50-year period. There was not one year during the 50-year period that the housing prices did not rise. There was no way that they could continue to go as such. And so eventually they were ballooned, and the balloon burst, and what we have here is a result of creating a housing market that was never real.

In Washington, D.C., if you walk within a couple of blocks of our offices, you will find homes at $450,000 to $500,000. You go to California, we have the jumbo loans out there, with $750,000 homes that would probably cost, in the Midwest, $200,000 or less.

And so we had this explosion of growth and everybody was getting their little piece. Everybody participated in it. People were making bad loans because money was plentiful and victims were plentiful. There were a lot of people who were steered into getting these loans. All of us had people in our own congressional district to tell us horror stories about how they ended up in a home underwater, where the mortgage owed on the home is far greater than the value.

What we find right now is that those mortgages, as my colleague Mr. Green mentioned, have been bundled, securitized, and then sold on Wall Street. When we passed the Toxic Asset Removal Program, known as TARP, it was designed to remove the toxic assets, mainly mortgages, bad mortgages. Toxic assets were bad mortgages. If we could move those out of the market, then there would be a higher level of confidence on the part of investors to invest their money. Unfortunately, at the time, Hank Paulson and President Bush used the money for something else.

It gives me an opportunity to say at this time, Mr. Speaker, that I spoke to a group of students in an MBA program from the University of Missouri-Kansas City a couple of hours ago on Capitol Hill. I asked them to raise their hands if they believed that the Congress had approved money to give to the banks. Two-thirds of the people raised their hands. I think the rest believed that they thought they might get a bad grade or something, or congressional punishment, if they raised their hands, so they didn't raise their hands. But probably most of the people looking at this program believed that we voted to give the money to the banks.

I would remind the public that we voted to approve the Toxic Asset Removal Program to buy the toxic assets. It was the Secretary of the Treasury, acting with the President of the United States, without consulting Congress, who decided to move the money from its intended purpose that was approved right here in this Chamber and give it to banks.

I think that they have been able to do that pretty much with impunity because most of the country probably still believes that we sat in here and voted to give the money to the banks. But the purpose of that was to remove the bad mortgages, and the bad mortgages did not come as a result of the Community Reinvestment Act.

I yield back to the gentleman from Minnesota.

Mr. ELLISON. Congressman and Mr. Speaker, let me just point out for our listeners that, today, about 30 percent of all homeowners are underwater. About 30 percent are underwater. That means that the value of their home is lower than the debt owed on their home.

This is a very serious and catastrophic situation and obviously causing a tremendous amount of angst, consternation, fear, and frustration among people across our country. Obviously, when your house is underwater, it might be easier for you to just leave the keys and walk away. We urge people to try to work things out with their lending institution.

But there's no doubting that the American Congress must be attune to the tremendous pain, difficulty, and frustration people are facing. When people are suffering from frustration, sometimes what they need is people who are in leadership to help clarify what is really going on as opposed to people in leadership confusing what is really going on. Confusing the issue is a very dangerous thing to do.

I would submit to you that America that has done so much to overcome racial division and may be one of the only countries in the world to go from a slaveholding society to a society where a person who, based on color, would have been a slave himself but is now President, a person who would have been denied a cup of coffee 50 years before he became sworn in to be President, is President.

This is a tremendous thing and a great thing for America. The credit goes to people of all colors: black, white, red, yellow, brown, everybody. But at times like this, it's important to also not allow the racial progress America has made to slip back by allowing some people to use code language and say that people of color, poor whites, are responsible for the problem.

When people are frustrated, they need answers. When they need answers, they need clarity, not confusion from leaders, not fear-mongering tactics assigning blame that is not there. And I would submit to you that all of us, people of all colors, need to stand together to clarify what is really going on with

the CRA because, in my opinion, people who say that the CRA is to blame, Fannie and Freddie are only to blame—of course, they do have some fault on them, but they are not, by any stretch of the imagination, the only one. I think it is very important that we say together as a unified racial community that we will not allow racial stereotyping as it relates to what caused this housing crisis.

In my opinion, saying that it's because of the CRA, knowing that the CRA was designed to promote racial harmony and opportunity, is a way of blaming people of color for the financial crisis. Now we can debate this issue, but I guarantee you, if you were to say, ''What does the CRA do?'' and you say, ''It was in response to redlining, that's why it was passed,'' so the question you might ask, ''Well, you mean so it was to try to stop racism or antidiscrimination?''

□ 1830

And the answer would have to be yes, that is what it is for.

Mr. CLEAVER. I am so glad that you brought that issue up because, as I mentioned at the beginning, how I think this Nation is maturing with regard to the issue of race. It is unsettling then to see how there have been people—and I am not sure all the motivation and I am not sure it is important at this point, why they would continue to say day after day after day after day that CRA caused the crisis. It boggles the mind. Our colleague, Mr. GREEN from Texas, had mentioned earlier that the chairman of the Federal Reserve found it necessary to come out and declare that this was not a fact.

Sandra Bernstein, the director of the Federal Reserve's Consumer and Community Affairs Division, stated at a hearing before our committee, ''I can state very definitely that, from research we have done, the Community Reinvestment Act is not one of the causes of the current crisis.''

And then Alan Greenspan, the former Chair of the Fed, pointedly did not blame the Community Reinvestment Act or low-income borrowers. In fact, his statement was, ''The evidence strongly suggests that without the excess demand for securitizers, subprime mortgage originators''—undeniably the original source of the crisis—''would have been far smaller and defaults accordingly far lower.'' Only 25 percent of these subprime loans were made by CRA regulated banks.

I yield to the gentleman from Minnesota.

Mr. ELLISON. So it sounds like, according to Mr. Greenspan, that he is saying that it was this excessive demand for collateralized debt obligations, for the credit default swaps, which a lot of people would take on more risk than they were able to really absorb. These things really accelerated the financial crisis, according to the experts. Is that right?

Mr. AL GREEN of Texas. Let me say, before I make my comment, Mr. ELLISON, I want to give you a note of appreciation for some legislation that you have recently introduced to help us cope with some of the problems that we are contending with as a result of this crisis, some of your work in the area with tenants and helping tenants who are being evicted, rent paid but still being evicted because a person who purchased property is in default. You are to be highly commended for the efforts that you are making to help out these tenants.

But I wanted to make this comment with reference to the evidence that is out there. The empirical evidence all supports the notion that the CRA is not at fault. It is unfortunate, as has been indicated, that there are many who would contend that the CRA is at fault; that the CRA ought to somehow now be eliminated because it is at fault.

I think that what we should be doing, in addition to pointing this out, we should also point out that the banks that have been good stewards, that have been making good, decent loans using sound banking policies in areas where persons traditionally could not acquire loans, these banks ought to be commended. We should not allow the distractions from the other side to prevent us from giving kudos when they are deserved.

So to all of the banks, those who have been making these loans and doing so with a good degree of safety and soundness, we want to compliment you.

But we also have to remember as we do this that, in addition to making some of these loans, we had other things that were happening that were not in the best interest of good banking, and these are the things that the legislation that we passed today out of the House, or that we put before the House today, is going to address this predatory lending that took place. It was the predatory lending that was a part of the problem, people having to get the loans that they did not want. Because no one wants a 9 percent loan if you qualified for 7 percent or 5 percent. You want the loan that you are qualified for. Steering people into the higher loans, higher interest rates, so as to make more money for the originator. These are the kinds of things that we have to deplore. These are the kinds of things that happened chiefly with originators that were not regulated by the CRA.

I will yield back to the gentleman, and thank him again for yielding to me.

Mr. ELLISON. Certainly. And I just want to raise this issue, if either gentleman would care to comment. While it is obviously true that the CRA did not cause this financial crisis, I hope you don't fault me too much for straying away and talking about what I think did cause the crisis.

And what I think caused the crisis, clearly, when you have a mortgage originator—and many mortgage originators are good, and I thank the gentleman for pointing out that we are not here to indict an entire industry. But we are saying that the bad actors, there was no cop on the beat here for the people who would transgress. That when mortgage originators were given additional money in order to steer a homebuyer who was seeking a mortgage to a higher priced loan, that is the kind of thing that would get people into a whole lot of trouble, particularly when that same mortgage originator would say, ''Oh, we'll just do stated income.''

''Oh, you don't have to verify income.''

''We're just going to underwrite your mortgage during the teaser rate period and not during the entire length of the loan.''

These are the kind of things that got people in trouble. There is one of our colleagues that is fond of saying: Oh, predatory lending, predatory lending. What about predatory borrowing? Have you heard this term before?

Well, predatory borrowing, what happened is that people would get a financial incentive to steer you away from that lower interest rate loan to that higher interest rate loan and keep the cream, yield spread premium. This is what got people steered to the higher priced loans. So that is part of the problem.

The next part of the problem is that when those mortgage originators did that loan, they could sell it on the secondary market where it was almost never scrutinized as whether it was a good loan or bad, that it would just be sucked up and it would be packaged up into a mortgage-backed security. And those mortgage-backed securities would be packaged up into collateralized debt obligations. And some of these loans that were nonperforming, and there were large numbers of them, people would go out and buy insurance or, quote-unquote, insurance on these securities, but they were never required with these swaps to have enough money to cover if in fact the value of the security went down. So when they started going down and people said ''pay me,'' the companies that wrote these swap agreements weren't able to cover; and when they couldn't cover, then some of them started going under.

Mr. AL GREEN of Texas. It is important to point out, also, that this credit default swap market was not regulated; that AIG had about $440 billion plus of credit default swaps.

It is also important to point out that the AIGs of the world, in an effort to cover themselves, would go to bond rating agencies and they were paying those agencies to rate these bonds. And, in so doing, they were getting products that were not totally reliable because of the way the payment system was working.

Mr. ELLSWORTH. So you mean to say, Congressman, that rating agencies would say that this is a AAA product,

when in fact there were a lot of problems with the product. Is that right?

Mr. AL GREEN of Texas. That is exactly right.

It also promoted, as a result of this, this new industry that AIG became sort of the father of, in a sense, or at least the biggest benefactor of this credit default swap industry, such that they could capitalize on what became a form of gambling, if you want to know the truth. It really was a means by which one person was willing to bet that a default wouldn't take place on something that a third party was ultimately going to have to pay for at some point in time. It really was a lot of confusion that was created.

I would like to say this and digress for just a moment, because I think it is important. Our chairperson, the Honorable BARNEY FRANK, has been wrongfully accused in this process. And I want to stand and say before the world that this is absolutely untrue that he is in any way associated with the ills that we find ourselves having to cope with.

I say this because at the time when all of this was taking place, the persons across the aisle who had the opportunity to do something about it, they had the House, they had the Senate, they had the Supreme Court, they had the executive branch of government, yet they didn't do anything about it. But now that the Honorable BARNEY FRANK happens to have some influence because he is the chairperson of Financial Services, but all of this took place before he became chairperson and, as a result, he is trying to clean up something that took place on someone else's watch.

He is dutiful and mindful of his watch, and I think we ought to let the world know that he has been a fine chairperson who has tried to clean up the problems that have been created.

Mr. CLEAVER. The three of us serve together on the Financial Services Committee with our chairman, BARNEY FRANK, who has been roundly beaten about the face and head by some of our colleagues and as well as some of the talk show folk around the Nation, and I think it is important to mention at this time that he is an unbending advocate for the Community Reinvestment Act. I also take a great deal of joy in saying that as a very clear sign that we are in fact moving in the right direction on issues of race in this country.

When you look at BARNEY FRANK, who is not, as the three of us, African American, and who has been as strong an advocate for equality of lending as I have ever seen in my life, and I count myself fortunate to have had the opportunity to serve with him. But I think it might be of some value for me to mention, and I think the two of you mentioned earlier, that BARNEY FRANK has been chair 2 years and a little more than 100 days, and so all of a sudden the blame has been pushed on him, and secondarily us, for causing a crisis and blaming a bill that was actually passed in 1977.

The truth of the matter is many people believed, and they were led to believe, that these were new homebuyers rushing out to buy homes. From 1998 to 2007, 50 percent of the subprime loans were refinancings. They were people who simply refinanced their homes and fell victim to an exotic product. So these are people who already had loans and there were crooks out there ready to take advantage.

By the way, the three of us were in a hearing today trying to stop another problem from arising. There is no lack of ingenuity for wrongdoers, and there are people now ready to take advantage of people trying to get their mortgages modified and they are doing all kinds of tricks.

So I am pleased that we have this opportunity to stand before our colleagues and you, Mr. Speaker, to try to clear up the problems that have been created by people who have given the wrong information about the Community Reinvestment Act.

TESTIMONY OF HON. MARC H. MORIAL, PRESIDENT AND CEO, NATIONAL URBAN LEAGUE, OCTOBER 16, 2008

Chairman Dodd, Ranking Member Shelby, thank you for this opportunity to testify today to set the record straight about what I call the Financial Weapon of Mass Deception: the ugly and insidious and concerted effort to blame minority borrowers for the nation's current economic straits.

This Financial Weapon of Mass Deception—as false and outrageous as it is—has taken hold, thanks to constant and organized repetition and dissemination throughout the media and political circles.

This is not a harmless lie, an innocuous stretching of the truth for some fleeting political advantage. It is an enormously damaging and far-reaching smear designed to shift the blame for this crisis from Wall Street and Washington, where it belongs, onto middle class families on Main Street and Martin Luther King Boulevard who are most victimized by their excesses.

For years, the National Urban League and others in the civil rights community have raised the red flag and urged Congress and the Administration to address the predatory lending practices that were plaguing our communities. For example, in March of 2007, I issued the Homebuyers Bill of Rights in which I called upon government to clamp down on predatory lending and other practices that were undermining minority homebuyer. Unfortunately, my call went unheeded until disaster struck.

Now that disaster has struck, many of those who caused it are trying to blame the minority community and measures that helped to clear the way for qualified minorities to purchase homes—most notably the Community Reinvestment Act (CRA). In fact, it was the failure of regulatory policy and oversight that led to this debacle.

Let's start with the plain and simple facts:

1. Wall Street investors—not Fannie Mae and Freddie Mac—were the major purchasers/investors of subprime loans between 2004 and 2007, the period for which this data is available.

2. While minorities and low-income borrowers received a disproportionate share of subprime loans, the vast majority of subprime loans went to white and middle and upper income borrowers. The true racial dimensions of the housing crisis have been reported in a number of outlets, including the New York Times.

3. African-Americans and Hispanics were given subprime loans disproportionately compared to whites, according to ComplianceTech, leading experts in lending to financial services companies. Also, African-American borrowers are more than twice as likely to receive subprime loans as white borrowers.

Furthermore, according to a detailed analysis by ComplianceTech:

In each year between 2004–2007, non-Hispanic whites had more subprime rate loans than all minorities combined;

In 2007, 37.3% of African American borrowers were given subprime loans, versus 14.21% of whites, according to ComplianceTech. More than 53% of African-American borrowers were given subprime loans compared with 21% of whites, according to the National Urban League's Equality Index published in our 2008 State of Black America report;

The vast majority of subprime rate loans were originated in largely white census tracts, i.e., census tracts less than 30% minority;

The volume of subprime rate loans made to non-Hispanic whites dwarfs the volume of subprime rate loans made to minorities;

In each year, the white proportion of subprime rate loans was lower than all minorities, except Asians;

Upper income borrowers had the highest share of subprime rate loans during each year except 2004, where middle income borrowers had the highest share;

Contrary to popular belief, low income borrowers had the lowest share of subprime rate loans;

It is becoming clearer everyday that a large number of people who ended up with subprime loans could have qualified for a prime loan. That's where the abuse lies;

Non-CRA financial services companies were major originators of subprime loans between 2004 and 2007, the period for which data is available.

These facts are unequivocal. They are clear. They are indisputable.

Yet these facts are being buried in an avalanche of false accusations, scapegoating and downright lies being spread by the purveyors of the Financial Weapon of Mass Deception. Conservative commentators from Fox News commentator Neil Cavuto to ABC News analyst George Will to Washington Post columnist Charles Krauthammer have fanned out across the airwaves, talking points in hand, telling the world that this crisis is NOT the result of a failure of regulation but the fault of minority borrowers who bit off more than they could chew.

Charles Krauthammer tells us that ''[f]or decades, starting with Jimmy Carter's Community Reinvestment Act of 1977 . . . led to tremendous pressure to . . . extend mortgages to people who were borrowing over their heads. That's called subprime lending. It lies at the root of our current calamity.''

George Will tells us that regulation: ''criminalize[d] as racism and discrimination if you didn't lend to unproductive borrowers. Fannie Mae and Freddie Mac existed to gibber—to rig the housing market because the market would not have put people into homes they could not afford.''

And even right here in the halls of Congress, echoes this same, false refrain, as we heard from Rep. Michele Bachmann of Minnesota (R–Minn), who added Congressional weight to this myth when she quoted an Investor's Business Daily article from the floor of the House that said banks made loans ''on the basis of race and little else.''

As seen in the attached internet blogs from highly trafficked sites, this baseless blame game has turned into vicious attacks on African-Americans, Hispanics, Jews and Gays and Lesbians.

In the last few weeks, I have undertaken an aggressive campaign directed at the nation's financial leaders to dispel this myth. In letters to Treasury Secretary Henry Paulson and Federal Reserve Chairman, Benjamin Bernanke, I have asked that they both publicly refute claims by some conservative pundits and politicians that most of the defaulted subprime loans at the root of the crisis were made to African-Americans, Hispanics and other so-called ''unproductive borrowers.''

On the basis of hearsay, rumors and misinformation, seeds of division are being sown all across the United States in a volatile political environment where Americans are terrified by the economic situation. History provides too many lessons on the consequences of singling out only certain segments of the population as culprits for a country's woes for us not to do all within our power to stop this ugly and insidious smear campaign in its tracks.

I urge you, in the strongest possible terms, to join me in standing up to this big lie, this Financial Weapon of Mass Deception. It is your duty to stop the precious waste of time and energy being spent on blaming the victims and force a healthy debate on what must be done to curb too much Wall Street greed and too little Washington oversight. This hearing is an important step toward that end and I applaud you for holding it.

I call upon you to join with me to ensure that innocent people in our community who look to you for protection are not further scapegoated, victimized and exploited by unscrupulous and greedy players and those who do their bidding.

I call upon you to not allow yourselves to be distracted by the attempts to undercut the Community Reinvestment Act and undermine regulatory reform.

I call upon you to stay focused and to take strong and positive steps to strengthen our communities and the nation's financial foundation through regulatory reform.

I call upon you to do your part to disarm this false and dangerous Financial Weapon of Mass Deception.

In this time of global crisis, we must bring Americans together and not continue to divide ourselves with false racial arguments.

Please enter my testimony into the record.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DIVISION OF RESEARCH AND STATISTICS

Date: November 21, 2008.

To: Sandra Braunstein, Director, Consumer & Community Affairs Division.

From: Glenn Canner and Neil Bhutta.

Subject: Staff Analysis of the Relationship between the CRA and the Subprime Crisis.

Summary: As the financial crisis has unfolded, an argument that the Community Reinvestment Act (CRA) is at its root has gained a foothold. This argument draws on the fact that the CRA encourages commercial banks and savings institutions (banking institutions) to help meet the credit needs of lower-income borrowers and borrowers in lower-income neighborhoods. Critics of the CRA contend that the law pushed banking institutions to undertake high risk mortgage lending.

In this memorandum, we discuss key features of the CRA and present results from our analysis of several data sources regarding the volume and performance of CRA-related mortgage lending. In the end, our analysis on balance runs counter to the contention that the CRA contributed in any substantive way to the current crisis.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

Washington, DC, November 25, 2008.

Hon. ROBERT MENENDEZ,
U.S. Senate,
Washington, DC.

DEAR SENATOR: Thank you for your letter of October 24, 2008, requesting the Board's view on claims that the Community Reinvestment Act (CRA) is to blame for the subprime meltdown and current mortgage foreclosure situation. We are aware of such claims but have not seen any empirical evidence presented to support them. Our own experience with CRA over more than 30 years and recent analysis of available data, including data on subprime loan performance, runs counter to the charge that CRA was at the root of, or otherwise contributed in any substantive way to, the current mortgage difficulties.

The CRA was enacted in 1977 in response to widespread concerns that discriminatory and often arbitrary limitations on mortgage credit availability were contributing to the deteriorating condition of America's cities, particularly lower-income neighborhoods. The law directs the four federal banking agencies to use their supervisory authority to encourage insured depository institutions—commercial banks and thrift institutions that take deposits—to help meet the credit needs of their local communities including low- and moderate-income areas. The CRA statute and regulations have always emphasized that these lending activities be ''consistent with safe and sound operation'' of the banking institutions. The Federal Reserve's own research suggests that CRA covered depository institutions have been able to lend profitably to lower-income households and communities and that the performance of these loans is comparable to other loan activity.

Further, a recent Board staff analysis of the Home Mortgage Disclosure Act and other data sources does not find evidence that CRA caused high default levels in the subprime market. A staff memorandum discussing the results of this analysis is included as an enclosure.

As the financial crisis has unfolded, many factors have been suggested as contributing to the current mortgage market difficulties. Among these are declining home values, incentives for originators to place loan quantity over quality, and inadequate risk management of complex financial instruments. The available evidence to date, however, does not lend support to the argument that CRA is to blame for causing the subprime loan crisis.

Sincerely,

BEN BERNANKE.

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

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 896. An act to prevent mortgage foreclosures and enhance mortgage credit availability.

The message also announced that pursuant to Public Law 110–229, the Chair, on behalf of the Republican Leader, announces the appointment of the following individual to be a nonvoting member of the Commission to Study the Potential Creation of a National Museum of the American Latino:

Sandy Colon Peltyn of Nevada.

The message also announced that pursuant to section 276d–276g of title 22, United States Code, as amended, the Chair, on behalf of the Vice President, appoints the following Senators as members of the Senate Delegation to the Canada-United States Interparliamentary Group conference during the One Hundred Eleventh Congress:

The Senator from Alabama (Mr. SESSIONS).

The Senator from Maine (Ms. COLLINS).

The Senator from Ohio (Mr. VOINOVICH).

The message also announced that pursuant to Public Law 106–286, the Chair, on behalf of the President of the Senate, and after consultation with the Republican Leader, appoints the following Members to serve on the Congressional-Executive Commission on the People's Republic of China:

The Senator from Tennessee (Mr. CORKER).

The Senator from Wyoming (Mr. BARRASSO).

HEALTH CARE

The SPEAKER pro tempore (Mr. DRIEHAUS). Under the Speaker's announced policy of January 6, 2009, the gentleman from Texas (Mr. BURGESS) is recognized for 60 minutes.

Mr. BURGESS. I thank the Speaker for the recognition.

Mr. Speaker, I thought I would come to the House floor this evening and talk for just a little while about health care, because there is a lot of talk going on about health care in this Congress, a lot of talk about the bills that we will see, we haven't seen, and bills that we may not see.

I wanted to point out to the Members that yesterday I introduced a bill, H.R. 2249, which is a bill I had actually introduced in the previous Congress. It is the Health Care Price Transparency Promotion Act of 2009, updated from the last Congress and reintroduced this year. I urge Members on both sides to take a look at this because, after all, we hear a lot about the concept of transparency these days, and it is important for our constituents, for our consumers, for our patients in our districts to be able to access clear and timely information about physicians, hospitals, health care facilities in their areas, and understand and do some research on their own to find out which are the best facilities for them to use when they have occasion to need a doctor or a hospital.

□ 1845

So as we talk about health care—and it was, of course, all of the discussion during the Presidential campaign last year—I would just point out that there are good ideas that are coming from both sides of this House of Representatives. Certainly, Democrats are not the only ones with ideas on health care. There are Republican ideas. There are

Republican ideas that really should shape the debate of health care reform or the natural evolution of health care that we see going on in our country at the present time.

There are plenty of people working on health care reform. You know, when I take a step back and look at what should we be doing when we try to frame the debate, when we have our hearings in committee, when we mark up our bills in committee—really, when you look at the vast American medical machine, the widget that it produces, what we do on a daily basis in doctors' offices and hospitals across the country, it is that fundamental interaction that takes place between the doctor and the patient in the treatment room. That is the fundamental unit of production in American medicine. And when we look at it in that context, whether it be the treatment room, the emergency room, the operating room, that fundamental unit of interaction, are the things that we are doing here bringing value to that interaction or are they subtracting value from that interaction?

And to the extent that, whether it is a Republican or Democratic idea, if it brings value to that interaction, that is something that I am going to have to look at quite critically and quite favorably. If it is something that subtracts value from that interaction, that is something that is going to be very difficult for me to be for. So I try to always look at it through that lens of, ultimately, it is about doctors taking care of patients, it is about hospitals helping people get well. And to the extent that we can encourage and enhance that process, where there are places where we can help, certainly we should. If there are places where we don't belong—that is, between the doctor and the patient—maybe we ought not to do that.

Now, it comes to me frequently, not infrequently, when I'm sitting in committee—and I am fortunate enough to sit on a subcommittee that deals with health care, on the Committee on Energy and Commerce. In fact, in the last Congress I was the only physician to sit on that committee. And when we would deal with problems, when we would deal with issues that had to do with health care or the regulation of the Food and Drug Administration, I was always mindful, when I looked around the room, there is only one person in this room that has ever sat across from a patient, looked him in the eye, picked up a pen and written a prescription, counseled as to risks and benefits, torn off that prescription, and sent the patient on the way. There is only one person in the room that has ever done that, and that was me. And yet here we were with a hearing or a bill that might have profound impact on how that doctor/patient interaction was going to be carried out from that day forward for the next generation or two, and there is only one person in the room who has ever actually been there and done that. So I feel a tremendous amount of responsibility as we go through this health care debate.

Yes, I have been joined by some other physicians on the committee. There are physicians on the Subcommittee on Health on Ways and Means. We all bear that special burden to ensure that the decisions that we make today do not negatively impact the next generation and the generation after that.

Think back just 44 short years ago when Medicare was enacted in this body. The men and women who sat in this body at the time were the ones who crafted that legislation. And we are dealing with the good aspects and the bad aspects that have been dealt to us because of decisions that were made in our committees, in Congress, and in this body in the House of Representatives. So it is in that sort of context that we need to look at what we are doing.

It is not about, and let me emphasize, it is not about the next election. It is not about who wins or loses seats in the great economy that goes on here in the House of Representatives or over in the other body on the other side of the Capitol. It is not about the next election; it is about the next generation. And that is why it is so important for us to get it right.

That is why the American people get so frustrated with us as a group here when they see us fight about things and never work together. It is difficult, I know. It was difficult when we were in charge. When the Democrats were in the minority, it was difficult for them to understand how to work with us in the majority, and it is difficult for us to understand in the minority how to work with the Democrats, but it our obligation. That is why we were sent here. That is why we were elected, to do that hard work, and to work with each other where we can, to oppose each other where we must, but to always have focused not on November of 2010, but what is life going to be like when our children are the age we are now, when our children's children are the age we are now? What is it going to look like to them?

What is health care going to look like in this country? Are they going to continue to be blessed with the stunning rate of advances that we have seen since the Second World War in the practice of medicine? And it has been stunning. The last 50 to 60 years has seen untold events. Think of the physician in practice right at the dawn of the antibiotic age, when a patient comes into the hospital, significant infection, and there is just not much they can do but keep them comfortable, perhaps drain an abscess if one is available. But the medications that they had were—at best you hoped they didn't do any harm to the patient. Now we have a vast array, a huge armamentarium of medicines to fight infections, bacterial infections to be sure, but also fungal infections and some viral infections. It is an incredible armamentarium that today's physician has. When you think of the young physician sitting in a medical school or attending to a patient in a clinic at a residency program today, think of the things that they are going to have, the tools that they are going to have at their disposal if only we don't screw it up for them today.

So we always have to keep foremost in our minds and our imagination what that world is going to look like for the patients of tomorrow, for the young physicians and nurses, folks that work in the hospital that come after us. We have to keep them foremost in our minds.

And how great it would be if we didn't even need a health care system, if we had a way to keep people healthy throughout their lives. We're not there yet. But we always need to stay focused on that goal because, after all, I would much rather have my health than my health care. If I have my health, I don't have to worry about my health care. But we know it doesn't always work out. We know that people do have problems, we know that illnesses do strike, we know that problems and complications do occur. So when health care is necessary, to the extent we can make it more affordable and more accessible, sure, we need to do the things we can to make that happen.

Now, a lot of people are working on health care reform. A lot of people have been talking about it certainly throughout the last year or two on the floor of this House. I know I have come down several times a month to have this very discussion. Throughout the Presidential campaign last year I worked for the nominee of our party as a surrogate on the health care debates. I got to meet a great many of the surrogates on President Obama's team and heard their discussions for health care. And everyone talks about, well, where is the Republican plan? In fact, for that matter, where is the Democratic plan?

I have to say that as I watched the health care debates really from the inside last fall as a surrogate working for Senator MCCAIN, I thought that when this Congress convened with a referendum that was likely to be on health care in November, that they would be much further along as far as the development of a bill—maybe not from the Republican side, but certainly from the Democratic side.

The Democratic chairman of the Senate Finance Committee last October convened a big group over at the Library of Congress one day, developed a white paper that really had all the look to it of a roadmap for legislation. I was fully prepared, after the election, for the chairman of the Finance Committee in the Senate to have a bill that would be sort of the model bill, if you will, that everyone in the Senate would support and then, likewise, everyone in the House. In fact, I counseled my colleagues to think in terms of having something, if there are things that concern you about that white paper, be

certain you have your arguments all spiffed up and all toned up, because I thought we were going so see that perhaps even in the lame duck session last December.

So I was very surprised that we didn't see anything in November or December. Well, surely we are going to see a bill before the inauguration; but in fact we didn't. And then of course the story continued to unfold. The nominee for the Secretary of Health and Human Services ended up withdrawing his name and there was a several-month gap until Secretary Sebelius was confirmed last week.

So now we are near Mother's Day of 2009 and still no health care bill—from the Republicans, to be sure, but still no health care bill from the Democrats, either the Democrats in the House or the Democrats in the Senate.

Now, I know that there was a letter sent to the President from the Democratic leadership in the other body last week or the week before that said we will have a bill that will be marked up in the Senate the first week in June. But that is a pretty long timeline from a white paper in October to having a bill on the floor of the Senate perhaps in a month that is going to be debated. I think what that shows us, it underscores how difficult this process is.

There are many people in this body on both sides who have worked on this issue for years. There are many people in this body who have very set ideas of whatever this bill is when it comes forward—from whatever side that it comes from—they have very definite ideas of what it should look like. In fact, you stop and think; if you were to pick out six of us from either side of the aisle in this body, put us in a room by ourselves and say write the health care legislation that you would like to see, I have no question that there are six of us who could just sit down and do that really without any other help or any other input from anyone else. The problem is when you put all six of us in the room together and say now write a health care bill on which you all agree, that becomes much more difficult. And that is sort of the position that I know I see occur on my side of the aisle. I rather suspect that's the position we see on the other side of the aisle.

And then you add into the mix all of the other things that go on here in the course of a normal week or a normal month, notwithstanding the scare we had with the flu last week, the cap-and-trade bill that is out there that at some point is going to come through, it is going to come through my committee. So that is going to take resources and time that the majority, the leadership of the committee, the majority leadership of the committee has to devote their time and resources to that as well. So really working on two tracks in tandem, two parallel tracks, one on energy and one on health care. And it's a tall order. Either one of those bills by themselves is a tall order, but put both of them together.

And then you heard the discussion that just concluded from the last hour, what is going to happen as far as regulatory reform in the financial industry, in the banking industry? In fact, when President Obama gave his speech at Georgetown 2 or 3 weeks ago, he talked about how before the end of this year he will have a health care bill, he will have a climate change bill, and he will have a banking regulatory bill all signed before the end of December this year. That is an extremely tall order.

And of course many of these things, as their work is in process, one affects the other. Certainly, when you look at the way the budget was constructed, the health care part of the budget is likely to depend upon the energy part of the budget, as some of the costs for health care are going to be offset by some of the revenue that is raised on the energy side. One can't proceed without the other. And it becomes very, very difficult then to marshal these things through and keep everyone on track and everyone on task.

And then when you add to it the fact that, yes, by definition, the House of Representatives is a house that is divided between the two major political parties and we don't always work together, that just increases the amount of difficulty. It underscores to me why it is important for us to work together and why it is disappointing that sometimes we don't take those opportunities to work together. But a tall, tall order.

And then add to all of that, when you think of the timeline that stretches out ahead of us on health care, remember there was, in this body—I think it was September 23, 1993, when then-President Bill Clinton stood at this very podium and gave a beautiful, eloquent speech that had people weeping for joy about how the President was going to change the delivery of health care in this country. I was just a regular guy sitting in labor and delivery back in Louisville, Texas, monitoring a labor and watching the speech on television, but a beautiful speech delivered. And everyone left this House thinking, oh, now we are well on the way to getting this done. But the reality hit that by the end of September of a nonelection year, you are very close to everyone getting ready for the next election. Because in the House of Representatives, we have 2-year terms. We really don't have an off year. Many of us are already thinking about the next election. So that is another consideration and another thing that makes it more difficult to get big things done because the time frame for getting those big things done between elections is relatively small. The off year, if you will, is condensed down to perhaps 6 months.

Certainly by the end of July, when we leave for the August recess from this House, my impression is that the health care bill, whatever it is, likely will have to pass the House before then or it may become very problematic to get something done before the end of the year. And then of course you know what happens next year, it is all election all the time.

□ 1900

So even as late as the end of September of 1993, it turned out to be too late for then-President Clinton to get his vision of health care reform through the House of Representatives and the Senate because at the end of September, we were already into the electoral process, and by the time things were finally prepared and ready for a vote, it actually came too late.

Look at the difference between 2009 and 1993, 15 to 16 years' difference. But you didn't have all the cable news shows back in 1993. You didn't have the instant analysis, the 24 hours of instant analysis, that we have today. So if anything, the time frame for development of a complex legislative issue like health care or energy or banking regulation, the time frame likely is even more condensed now than it was back in 1993.

But I think back to 1993 and 1994. Again, I was just a regular guy working as a physician in a small town in north Texas. It wasn't like nothing got done during that interval. True enough, it wasn't the vision that was articulated by the President that night. But we do have now an entirely different type of insurance product called a health savings account that was actually a byproduct of having an alternative solution to offer to what the then-Democratic majority was offering in health care reform. So there are things that happen during the course of the normal evolution of things, and sometimes they work out to be good things. I would argue that the institution of a health savings account, the ability to buy a high-deductible insurance policy on the Internet, at least provides an option for insurance particularly for younger individuals just getting out of college but also people more in the middle of life, like in their 50s, who may find themselves between jobs.

There are options out there for purchasing insurance. It actually didn't exist in 1994. And I know that because I tried to buy an insurance policy for a member of my family in 1994 and you couldn't do it at any price. Now you can go onto the Internet. You type ''health savings account'' into the search engine of choice, and you can get a variety of choices. The cost for a high-deductible health plan for someone in their mid-20s who's just getting out of college is very reasonable. It runs somewhere between $75 and $100 a month depending upon the policy that you select. These are reputable companies that are well recognized. Many of them are PPO plans with, again, a high deductible, but they are affordable and they are available. And it is not always necessary to go without insurance simply because we don't happen to be working for a company that provides insurance as one of its benefits.

You know, you want to see a plan. You want to see a plan come from the Democratic side. You want to see a plan come from the Republican side. You want to see the merits of each argued and debated here on the floor of the House. You want to see the strongest points articulated well and perhaps incorporated into whatever the final product is. And then, of course, the other body that has its opportunity to work on the legislation comes together in a conference. And in an ideal world, going through that regular order, in an ideal world, you would get the best possible legislative product. And I do worry that we will adhere to regular order throughout that process, but at the same time, as we sit here today, I'm going to profess to some optimism that we will adhere to regular order, mark the bills up in the appropriate subcommittees, have the full committee markup, as we are supposed to, bring the bill through the Rules Committee to the House floor, have ample opportunity for debate and amendment. Then it goes over to the other body. After passage of the bill, it goes to the other body, a similar process, and we have a real conference committee, not a made-up conference committee but a real conference committee of appointed conferees that get together and work out the differences between the House and Senate version and ultimately then get a product that will serve the American people well. We really do our best work when we go about it that way.

If we short-circuit the process, which we do—unfortunately, we do. We did it when we were in charge. And certainly the Democrats have done it in the last 2½ years since they have taken back the majority. When we short-circuit the process, that's when we get our less than perfect legislative products that are shoved out the door.

Now, if I were one of those people that sat in a room by myself, what would I envision as a plan? How would I make things better? And bear in mind that for 63, 65 percent of the country who has primarily employer-sponsored insurance, many people don't want to change from where they are now. So although people are concerned about where we are with what's happening in the health care system in America, those individuals who have employer-sponsored coverage or those individuals who have purchased their own coverage on their own may be quite satisfied with where they are today. So really it must be approached from building upon what is currently in place and working, building upon that platform, and making certain the problems that occur in the existing system today are mitigated or eliminated for the individuals who are feeling the effects of those problems.

Well, what are some of those problems? Well, I mentioned someone who perhaps owns their own insurance policy. And there are, depending upon what you read, for round numbers, 10 million people in this country who own their own insurance policy. They are discriminated against in the Tax Code, and that's unfortunate. That has the effect of actually raising their cost for insurance, and there are things we could do to correct that. I'm not sure I have all the answers there. I'm not sure that Republicans have all the answers there or Democrats, but we could fix that. We could fix that. That would be one of the relatively easy fixes we could do. And certainly that's something that I think has to be one of the pieces. That's one of the things that needs to be debated in subcommittee, full committee, here on the House floor, and in conference committee, but we could fix that problem. It is within our power to do that.

Now, one of the great fears that people have is that, yes, I've got health insurance now through my job, but I worry that if I get sick, I might lose it, or if I lose my job, I might lose my insurance and then I get sick, and then it will be difficult when I have a claims history, when I have got a preexisting condition. It will be difficult for me to get insurance after that. Again, we can fix that. There are things that could be done to address that segment of the population. We may not even necessarily need to change the whole structure to help that segment of the population that has a condition of medical fragility or a preexisting condition. Many of the States, 32 or 33 out of the 50 States, already have some system in place for helping an individual with preexisting conditions. Certainly we as a body can look at the best practices from those States.

Look at the States that are doing things well. North Carolina, Idaho come to mind. Look at the States that are doing things well. Take from those best practices. Is it going to be necessary to ask there to be some contribution from the private sector? There may be. So there may be a level at which the premiums cannot increase above. There may need to be some help as far as a voucher or subsidization of the premium from the Federal Government, from the State government. But this can be fixed. This can be addressed. And it doesn't mean that we don't act upon it just because it's not everything we want. We can help those individuals who find themselves between jobs, between insurance companies, then with a significant diagnosis who then fear that they're not going to be able to get insurance past that point. That can be dealt with. That can be fixed.

Insurance reform, there's no question. Even the American Health Insurance Plan Organization admits that there is a need for insurance reform in this country.

One of the things that has concerned me is that if an individual works for a large corporation in this country, if that corporation does business in multiple States, that individual can move from location to location throughout the several States and their insurance never changes. It never varies. It's the same insurance policy in one State as it is in the other.

And think of the analogy of the National Football League. If there is a player that is traded from one city to another, their insurance goes with them. If they have a knee injury in one location, that knee injury is covered in their secondary location. But the fan, just the regular guy or woman who follows their favorite player from one city to the next, they've got to start all over again with their insurance policy. And that's one of the fundamental inequities. That inflexibility that we built into the system, that's one of the things people want to see us fix. So why not give the regular individual, why not give the little guy the same breaks we give the larger multi-State corporations? We can do that. That's within our power to do that.

One of the biggest issues that we hear about all the time is affordability. Well, there are things we can do as far as providing benefits packages that are affordable, and it is within our power to do that. And, quite frankly, I don't understand why we haven't done that. We have at different times agreed on what basic benefit packages are. We did that 35 years ago when we created the Federally Qualified Health Centers across the country. Anyone who goes into a Federally Qualified Health Center knows exactly the benefits that are going to be available to them in that facility. But why don't we get together and do the same thing for now, not necessarily a bricks-and-mortar facility, but do the same thing for a policy that could follow a person from place to place, job to job, State to State, a policy that would be affordable that perhaps could build some longitudinal stability because it would be a policy that someone could keep throughout various phases of their life?

We can do all of that. We don't need to endanger the current system that's in existence. We can build upon what is good in our system and add more choices and more options and more flexibility and ultimately more security for people within their health care.

After all, that's what people are concerned about. They're concerned about if I lose my job, am I going to lose my health care? If I lose my job and lose my health care, there is no way I could afford a product out there. We can help with that. There are things that we can do. There are regulations that we can look at, that we can suspend, that we can pull back. There is flexibility we can build into the system if we only have the courage to do it. And there's the problem. We won't have the courage or we won't have the opportunity if one side won't talk to the other on this, if we craft our bills out of the public view, behind closed doors, committee staff rooms, Speaker's Office, wherever they are done, and don't do it in the light of day.

Politics is a full-contact sport. I understand that. I didn't begin my life to live it in public service, but in the last 6½ years I have, and I understand the

nature of the beast. I understand that there are going to be people who take issue with what I say who want to attack me personally because of it. That's okay, as long as we do that debate here in the public arena, as long we do it in the light of day and that we don't do it behind closed doors and then roll out something at the last minute that the American people had just better like because that's what they are going to get.

It's wrong if we do it when we're in charge. It's wrong if they do it when they're in charge. That's not the type of legislative activity that the American people want to see. They want to see legislative activity that brings them peace of mind. They want to see legislative activity that saves them time and saves them money. And why wouldn't they? If we can deliver more care to more people at less cost with better quality, why wouldn't we do it? Why wouldn't we take that choice?

In short, as I look at this and I look at how to craft particular legislation, there's also room for common ground, I think, on both sides. On both sides. People talk about how we want to see an expanded role for information technology in health care. Some of the easy discussions that we can have. We may disagree on how it's to be apportioned or how it's to be structured. I don't think we should be writing the codes. I don't think we should be telling doctors and hospitals what type of platform they need to buy. But certainly we ought to be encouraging people to evolve into that next arena, which would include electronic medical records and electronic prescribing.

What about things like medical homes? I don't think you would find a lot of disagreement throughout the body on whether or not this is a good thing. Care coordination, we talked about it when we were talking about the Medicare bill back in 2003 and 2004. Disease management care coordination, accountable care organizations, these are things that bring value to that doctor-patient interaction that I referenced at the beginning of this talk. So it's easy to be for that stuff, and I think you would find a good deal of common ground on both sides on that.

Where the arguments occur is who is to be the owner and are we going to micro-manipulate these aspects of health care from here or from the committee room or are we, in fact, going to let the people know what they are doing, the doctors, the nurses, the hospitals, are we going to let them be in charge of the system?

In short, the American people want everything but a Washington takeover. And that, I think, is the one place where the American people really draw the line, and they are concerned that Washington will overreach, that we will put that congressional committee between the doctor and the patient. We have no place between the doctor and the patient, that interaction in the treatment room. The doctor and the patient activity should be completely free from any congressional interference, and too often, too often, it is otherwise the case.

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We hear about expanding a public program. We hear about perhaps expanding Medicaid, maybe expanding Medicare. Some of the more serious problems that we deal with in this body are problems that are brought to us because those two programs, for all the good that they do, they do have some problems.

Medicare and Medicaid are programs where, unfortunately, the inefficiency, the duplication of services and sometimes just the actual theft of services occurs, and we don't do a good enough job to keep that under control. No one wants us to be spending money inappropriately in any of those programs.

The problem is, with both of those programs, they do consume a lot of time, they do consume a lot of activity, and they consume a big portion of the budget every year, the so-called entitlement budget. And when Congress looks to control costs on those programs, the only lever we can pull is to restrain payments to doctors. The other lever we can pull is to restrain payments to hospitals.

And the only problem there is you are going to be getting less, then, of the doctor's attention and less of the hospital's attention when you restrain those provider payments. And, unfortunately, we do that all the time.

Medicare is notorious for every year coming up and having to face a reduction in the reimbursement rate to physicians across the country. Medicaid reimbursements vary from State to State, but in many States the reimbursement for Medicaid is a fraction of what it is for Medicare.

And here is the hard truth of this. You can't run a medical practice off of what Medicare and Medicaid reimburse, at the levels where they reimburse. And you are sure not able to run a practice if we, in fact, restrain provider payments like we are scheduled to do later this year and like we are scheduled to do every year for the next several years.

We had a pediatrician come and testify in my committee last year in Energy and Commerce, and she testified and really got my attention because she started practice the same year I did, 1981. Her practice was 70 percent Medicaid in rural Alabama. She was having to borrow money from her retirement fund to keep her practice open.

That's a bad situation. If you are losing money on each patient, it's hard to make that up in volume, and that was the situation that she faced.

You know, a physician in that kind of crisis, they are not going to be able to keep their doors open. And if they can't keep their doors open, that entire patient population in rural Alabama, that pediatric population is going to be put at risk. Because she didn't talk about how many other providers are in the area, but you can only imagine, if it's that hard to make a practice go in that environment, there may not be many pediatrician practices.

If you don't have the private sector to cross-subsidize the public programs, the Medicare and Medicaid, a lot of practices just simply can't make it. Here was an individual who had cut expenses everywhere she could. She had let people go. She had reduced hours. She had reduced some of the services she provided, all in an effort to try to keep the doors open, but she was still unable do that.

Therein is a problem. If we expand the public sector, and we depend upon cross-subsidization from the private sector to keep the public going, what's going to happen if you reduce the private sector? How are you going to get that money to cross-subsidize the public part of that?

And the amount of subsidization varies from study to study on what you read, but it's about 9 or 10 percent that it costs the private sector to support the public sector to keep it going. So, on a 50/50 mix, Medicare, Medicaid, private pay, you will likely be able to make the cash flow, but when you get to 70/30, it just doesn't work any longer, and that's a physician who is at risk of not being in practice this time next year.

So those are some of the problems that we need to fix. We are obligated to fix those problems within our publicly administered health care plans before we expand them.

And that is my concern when I hear us talk in this body about how we want to have an expanded public option that competes with the private sector. Right now it doesn't really compete with the private sector. It depends on the private sector in order to keep those practices open. So I think we are obligated to look at the job we are doing now before we reward ourselves with an ever-increasing or an ever-larger segment of that.

You know, currently, we are close to about a 50/50 split in this country. About 50 cents out of every health care dollar that's spent comes from here, originates here in the House of Representatives. The other 50 cents of every dollar that's spent is self-pay private insurance or charitable gifting of a doctor who just doesn't expect to get reimbursed for what they do. Fifty percent comes from the Federal and State governments, 50 percent comes from the private. If we shift that balance, we are apt to find that we are no longer supporting the infrastructure we had hoped we would be able to continue to support.

So adding to the public sector may, in fact, be detrimental. For people who want to keep what they have now, we say you can, right up until the time we make it unprofitable for that to continue.

One of the things that concerns me greatly is, again, what we do with our provider payments. December 31 of this year, physicians across this country will face a reduction in reimbursement for Medicare patients of 20 percent, a little over 20 percent. That's a significant and stark reality that's facing every doctor that sees Medicare patients throughout the country. And doctors are concerned about it, patients are concerned about it.

Many patients will find they move locations, and finding a new doctor on Medicare becomes extremely difficult. There are stories in The Washington Post. I have seen stories in my hometown newspaper in Dallas and Fort Worth, extremely difficult to find a physician to take a new Medicare patient in many locations in the country.

And the reason for that is what Congress has done the last several years where we say we are spending so much money on Medicare, we would like to hold the costs back a little bit, we will just hold the cost down or we will hold the price down by cutting payments to doctors a little bit each year. And that, over time, has become a very pernicious effect on people going into medicine, quite frankly.

There are concerns that the physician workforce will continue to erode over time, such that just the sheer numbers of doctors available may not be enough to treat the patient load as us baby boomers get older, may not be enough to treat the patient load that emerges on the other side. So it's a problem that this Congress, this Congress, the one that's seated here, really has to face up to, because by the end of December, there will be a 20 percent pay cut across the board. We did a big Medicare bill July of 2008, big, big hoopla here on the day we did it. Yeah, we solved the problem for a little while.

Every time we do that temporary fix, every single time we do that temporary fix, we make it harder, we dig the hole deeper and we make it harder to get out of that problem on the other end.

Now, every Congress that I have been here, I have introduced legislation to deal with what's called the sustainable growth rate formula that creates that 5 percent, 10 percent or now 20 percent reduction in rates to physicians. I will be reintroducing a bill next week that will deal with this problem. I had a similar bill last year. There have been some changes made because of some of the changes in legislation that have happened over the past 24 months, but ultimately we are going to have to deal with this problem.

We need to move physicians into the same type of payment formulas that we do for hospitals, that we do for insurance companies, that we do for drug companies, that we do for HMOs, and that's essentially a cost-of-living adjustment that occurs every year.

There is no magic to it. I didn't invent it. It's called the Medicare Economic Index. It's about a 1 or 1.5 percent update that occurs every year to account for the increased cost of delivering that care.

We haven't kept up with the cost of delivering that care. There are some years we have provided a zero percent update. There are some years we have allowed the cuts to go into effect. There are some years we have provided a 1 percent update, but it hasn't been enough.

And as a consequence, it now costs doctors more to actually do the work of seeing the patient. It costs them more. It costs them money to see every patient on Medicare.

We are not carrying our load. We are not paying our freight from Congress, and that has an extremely detrimental effect on the physician workforce, the morale of the physician workforce, and certainly the continued—it will lead to continued problems with physician—spot physician workforce shortages, some patients not being able to get in to see a Medicare provider.

And it's up to us, up to us to address it. Doctors are seeing the patients we asked them to see, our Medicare patients. Congress in 1965 said we are going to take over the care of individuals over the age of 65 in this country, and we asked the doctors to see those patients.

They are arguably sometimes the most complex and complicated patients that will be in a physician's practice. They are complicated because they have multiple medical problems. They may be on multiple medications. They are not necessarily the easiest patients to take care of, but they are important, because they are our parents, they are our colleagues. In fact, many of us, in a few short years, will be in that Medicare age group.

It is critical that we provide the physicians the support they need to take care of those Medicare patients. And it's something I just frankly do not understand why this Congress is always so reluctant to deal with this problem and always pushes it off to the last minute.

We push physicians in this country up to the brink every year, every 6 months, every 12 months, every 18 months, whatever it is we decided to fix it for the last time. We don't even deal with it until we are right up against that problem again. Well, this time let's be different about it. We have 8 months till the end of the year, 7 months till the end of the year. Let's take that time to fix it and get it right and make certain that this time we don't leave our doctors waiting at the last minute to wonder if they are going to be able to keep their doors open January 1 or not.

One of the last things I want to touch on, a few weeks ago in March, I was invited down to the White House to participate in the White House forum. And, again, as alluded to earlier, I have been concerned that there is a bill that's already been done and the rest of this is just for show. At the appropriate time, the Speaker's door will fly open, the health care bill will come out. It will roll down here to the floor of the House. We will have a brief time to debate it, no time to read it, and off we will send it to the Senate.

I have been concerned about that. As I said, I am the eternal optimist, and I am going to be optimistic that we are going to go through regular order, but I also fear at some point there will be a bill that just comes crashing through with no time to read, evaluate or debate, and off it will go to the Senate and that will be that.

Now, the President, to his credit, said that that was not the case, that we would go through regular order. In fact, as we wrapped up after the breakout sessions that afternoon in the White House, the President stood in the East Room and said that it will up to the congressional committees and congressional leadership to get this bill done through the regular order, that he would be glad to offer guideposts and guidelines, perhaps some budgetary boundaries, but he wanted that work done in the Congress, where it was supposed to be done.

Again, I will take him at his word. In fact, I applaud his courage for saying so. He said at one point, I just want to find out what works. Well, I want to help the President find out what works, and to that end, I will continue to be involved in this debate.

Now, let me just spend a few minutes talking about a caucus that is currently working in Congress to try to help inform on the health care debate. It's not a legislative caucus. It's not a legislative committee. It won't write legislation, but we do have forums. We do have hearings. We do have Member educational events. We do have educational events for staff, congressional staff, particularly on the communication side.

On occasion, we go outside of the confines of Washington and talk to groups of doctors, nurses, hospital administrators, again, the people who are involved in taking care of our patients on a day-to-day basis. We like to solicit their input, to receive their advice and criticism on things they see happening from Congress.

And the caucus is the congressional health care caucus, and it does have a Web site, www.healthcaucus.org, healthcaucus being all one word with no space or bar in between. I encourage people, Mr. Speaker, to look into this. It is a way for people to have their voices heard on this debate.

We have had several good forums. I try not to make them one-sided. We try to have people who represent, perhaps, a left-of-center view and a right-of-center view. We had one forum on the options for reform that was attended by people from the Commonwealth Fund, by people from the Galen Institute and the Council for Affordable Health Insurance. It was a very instructive forum. The Webcast for that

is, in fact, archived on the Web site if anyone is interested in that.

We had another forum on improving affordability, listening to some of the people who have actually done the work of making health care affordable in their communities and for their groups of patients. We heard that time from Rick Scott, who runs a number of outpatient clinics in Florida. We heard from Greg Scandlen from the Consumers for Health Care Choices, and we heard from Dr. Nick Gettas, who is a chief medical officer at CIGNA. Again, on the Web site, the Webcast of that is archived and people are welcome to look at that and review that.

When we do these forums, we do Webcast them from the Web site, and they are available live and broadcast live on the Web site when they are done, and through the magic of Twitter, we are able to take questions from people who are not actually in the physical audience. We do take questions from the physical audience. We take questions from the virtual audience.

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This can, again, sometimes lead to some quite lively debate.

Upcoming within the balance of the month of May and into the month of June, we are going to be doing another forum, one dealing with the question of mandates and one dealing with the concept of health reform from the journalists' perspective. We have many good writers up here who write about this on a regular basis, and we want to bring them in, perhaps turn the tables and interview the interviewers for part of the morning on some of the aspects of the health care debate.

And then finally, in the month of June, we are going to have another forum on promoting quality. And we have got a number of good people lined up for that. Again, some left of center, some right of center, but designed to give a balance of opinion as we have these forums. And again, as I mentioned, Mr. Speaker, if anyone were interested, they are available live on the Web site when we hold those.

In short, Mr. Speaker, I did not leave a viable and active 25-year practice of medicine to come here and sit on the sidelines. I came here to be part of the debate as the debate was going on, and I intend to be fully engaged. I hope that both sides will stay lively and will stay engaged on this debate. I hope we can have this debate in the light of day and not in the dark of night. I hope we can have input from both sides when this bill ultimately comes forward from this and leaves the floor of this House and goes over to the Senate. Certainly I know the American people are depending upon Republicans and Democrats to work together. And it is my hope, my fervent hope and my prayer that that is indeed what happens.

Mr. Speaker, you have been very generous, and I'm going to yield back the balance of my time.

THE AMERICAN CLEAN ENERGY JOBS BILL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Washington (Mr. INSLEE) is recognized for 60 minutes.

Mr. INSLEE. Mr. Speaker, I have come to the floor this evening to speak about a bill that we hope to have on the floor in the next couple of months that is going to be styled the ''American Clean Energy Jobs'' bill. It is the right name for the bill because it will jump-start, kick-start and initiate an economic recovery based on the growth of clean energy jobs in this country. And it is timely, it is vital, and we believe it is possible this year to really give a boost to the American economy by helping create the millions, and I say that with an M, the millions, not hundreds, not thousands, but the millions of new jobs that we can create if America fulfills its destiny to become the arsenal of clean energy for the world. America is a country with a very special destiny. We have fulfilled the destiny to bring democracy to the world. And later we served as the arsenal of democracy during World War II. We armed the rest of the world with the tools they needed to defeat the powers of darkness during World War II.

And now we will have a bill on the floor shortly that will call on the American economy to produce the clean energy jobs and tools to essentially provide a new clean energy future for the world. And when we do that, we believe we will dramatically expand our economy, dramatically expand Americans' employment opportunities, and as an additional side benefit, dramatically reduce the pollution that today is threatening, in a very serious way, the way we live. We will also, at the same time, dramatically reduce our dependence on foreign oil. And as a side benefit, we will dramatically increase our national security, because we know that our addiction to foreign oil is a security risk to the United States.

I want to start talking about this bill from its first job, which is to create jobs for this country. In the current economic malaise we are in, we have got a couple of choices. We can sort of roll over and play dead and not take bold action to jump-start the American economy by seizing this opportunity to start new businesses in this country that can create employment. Some people in this Chamber still think that is what we should do, which is nothing. They are unwilling to make the investments both in governmental action or in the dollars that it is going to take to really create these clean energy jobs.

We think they are wrong. We think inaction is not the American way. We think America should take bold action to create clean energy jobs and that Congress has the responsibility to create the policies that are going to help create those jobs in this country.

So if I can, let me just start this discussion tonight by talking about just some very simple samples of the kind of jobs that we believe need to be jump-started in this country. I will start in Michigan, a State that has been so hard-hit right now with some difficult times in the auto industry. I will mention a couple of companies that if we do the right thing can really expand employment.

One is General Motors, which is going to bring out a car called the Volt in a year or two. The Volt is a plug-in electric car. The Volt is a car where you can plug it in at night and the next day run it on all electricity for about 40 miles, which is really cheap. It is about 1 cent a mile, maybe a little more to run, compared to 7 or 8 cents a mile for gasoline. And 60 percent of all the trips we take a day are less than 40 miles. But if you want to go more than 40 miles, then it will run on the internal combustion engine that is in the car as well. And you can drive it for 250, 300 miles, bring it home at night, plug it in again and you are off to the races the next morning on very inexpensive electricity, very quiet electricity and very nonpolluting electricity.

Now at some point, they may use some batteries by another company. It is a Massachusetts company called A123 Battery Company. And A123 Battery Company now, because of some policies we just adopted in the stimulus bill, we hope to be able to open a manufacturing plant in Michigan to provide the advanced lithium ion batteries that we think can be the backbone of an American electric car industry.

Now those two companies, General Motors, we know they are in difficult times, and A123 Battery Company, have the potential to employ thousands of Americans in high-paying manufacturing work if—if—Congress takes a path of action to develop the clean energy policies we need to drive investment into those companies.

And that is what is at stake tonight. What we are talking about is making sure that those jobs of the future don't go just to China, where China has a very aggressive national policy to build electric cars. We need some national policies to make sure that they are done here.

I go to Washington State and I hail from Washington State. Take a look at the McKinstry Company, which is a little company that just started providing advice on how to do efficiency. And then they figured out that they could save corporations millions of dollars a year by teaching companies how not to waste energy, how to save energy. That company has now grown to hundreds of people who are working in Seattle, Washington, basically teaching companies around the world how to save energy. And that company is now probably the leading energy efficiency company in the world when it comes to teaching companies how to save energy. And hundreds of my neighbors

and constituents are working there saving energy. That company needs policies that will continue to drive investment into efficiency and away from waste. And we need this clean energy jobs bill that we will be introducing on the floor shortly to make sure that that happens.

Right up the street from that company a few miles is the Bio Novartis Company. Bio Novartis has figured out a way to help an algae-based biofuels company make essentially gasoline and other automobile and other fuels out of algae. And they figured out a way to get light to the algae using a glass tube to provide light into these algae pools that one day will power our cars. And they are not the only company doing it. There are other companies. I met a guy in a ferry boat in Seattle who has a company called Sapphire Energy that does the same thing. They are doing their work in New Mexico and San Diego.

These companies need policies, though, that give them a level playing field viz-a-viz the old type of energy we had, which was gasoline. They don't have a level playing field right now because the deck is stacked in the law right now to favor gasoline, the old kind of gasoline, rather than the new kind of fuel. And we will talk tonight about how this bill will level the playing field.

The list goes on and on about the companies. About 4 miles from that other company is a company called AltaRock. It is in northern Seattle in the Greenwood district. And they have the potential of hiring hundreds and thousands of employees doing what is called ''engineered geothermal.'' Engineered geothermal is a new type of way to produce electricity. What you do is you drill a hole down in the Earth. You pump water down. It picks up the heat that is in the Earth's crust. You bring it up hot, about 300 degrees, and you use that water to generate steam and then electricity. Zero pollution, all American energy, using pretty old technology. They have got to improve their pumps to make sure they can pump under high temperature positions. They have to do some geological testing to see where this works best. But drilling holes isn't totally rocket science. AltaRock has the potential to generate enormous job creation in this country.

You go about 5 miles from that company to downtown Seattle and there is a little company I met called Glosten Engineering. They are a marine architecture firm. It is a relatively small company now. They have about 65 employees. They are now starting to work on how to design offshore wind turbines, where we can put wind turbines off our shorelines, say 10 miles off our shorelines, where there is enormous wind potential where we might be able to provide 10 or more percent of our electricity from offshore wind. This company can grow and provide employment in the construction, not only the design, but the construction of these offshore wind turbines. They are going to design floating platforms for these 200-foot towers to be offshore. And that is going to require massive construction for cement, iron workers, steelworkers, machinists and the like.

Now what do all these companies have in common? What they have in common is they have great ideas. They have the potential to create nonpolluting energy in America and grow thousands of new jobs in this country. But what these companies need is a kick-start. And they need some messages from Congress that we are going to treat them fairly. Now, right now they are not treated fairly. The cards are stacked against these small businessmen and women, these entrepreneurs who are creating these new technologies. And the reason they are stacked against them is that the laws essentially, right now, allow a cost to be imposed on Americans by polluters that the polluters don't have to pay but citizens do. Citizens today have to incur the costs of what is happening because of pollution.

Pollution is going to be costing Americans big-time in the next several decades. It is going to cost them in loss of jobs associated with the decline of our forests, because we are putting too much pollution, carbon dioxide, in the air. That is changing the weather. And the weather is killing our forests. And people are going to lose jobs in the forest products industry because of the deaths of our forests. And costs are being imposed on our citizens right now that the polluters aren't paying, citizens are paying, and loss of jobs and loss of revenue. Fishermen are going to lose their livelihoods, and costs are being imposed on them because we are going to lose our salmon stocks because of changes in precipitation. We are in a prolonged drought right now in the West. And we have already experienced some decline in salmon stocks associated with no water in the rivers during the summer months, plus the threat of ocean acidification because pollution goes into the atmosphere, goes back into the ocean and changes the acidity of the ocean. Costs are being imposed and not paid by polluters.

We are going to experience very substantial costs caused by polluters when we get sea level changes associated with melting that is going on right now with the Arctic and potentially Greenland that will be relatively slow but will require very significant expenditure of infrastructure improvements. So right now, costs are being imposed on citizens that the polluting industries are not paying.

We are going to do a couple of things in this clean energy jobs program. We are going to basically make sure that investment goes to these new companies to create these jobs and that the cost of this pollution is put where it should be, not on the citizen, but on the polluting industries. And we are going to do this in kind of a simple way. It sounds complex, but it is really quite simple. We are going to do, right in this bill, a bill that will essentially do what we have already done in America for pollutants in several ways. In sulfur dioxide, for instance, several years ago, we had an acid rain problem.

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So we decided and Congress passed a law that essentially limited the amount of acid that could be put in the atmosphere, sulfur dioxide, because sulfur dioxide went into the atmosphere and then made acid rain.

We are doing the same thing right now with carbon dioxide that is making acid oceans. It is doing the same only on a much, much larger scale. But there is a loophole in our law. This pollutant, carbon dioxide, is not covered by our antipollution laws. And as a result, citizens are going to have to pay for that unless we change that law.

So what this bill will do is exactly what we did for this other pollutant, sulfur dioxide, and it put a cap on the amount of pollution that is going into the atmosphere every year, and it will make the polluting industries pay for permits to be allowed to put that pollution into the atmosphere. And that money, significant parts of it, will then be recycled back to American consumers to help with their utility bills.

So three things will happen under this bill. And they all will result in what we want to achieve which is the creation of American jobs in these clean energy technologically driven companies. These three things that I am about to describe will all drive investment into these new jobs.

Number one, the creation of this cap once we limit the amount of pollution going into the atmosphere will immediately make these new jobs much more cost effective and much more attractive to investors because once there is a cap on some of these old polluting ways to use energy, now the new, clean energy companies become much more attractive because they are not subject to this cap.

The engineered geothermal jobs of the future will not have to buy a permit because they are not putting out pollution. The lithium ion battery producers in Michigan will not have to buy a permit because they are not pollution. The Bio Novartis Company with algae-based fuel is not going to have to buy a permit because they are not putting out pollution. And those jobs will immediately become much more economically tenable. That is the first way it will work.

The second way it will work is that it will put the cost of this problem where it belongs, which is on polluting industries. No longer will that be borne by citizens, John and Sally Citizen. It will be borne by the polluting industries. They will have to go out and they will have to buy permits from the government to be allowed to continue putting acid into our ocean and pollutants into

our atmosphere that is changing our planet. That seems fair to me; and it also seems fair to my constituents.

And the third thing that will happen is that the money that the polluters pay for these permits, some of it is going to go into research, some of these clean jobs; some of it will help industries clean up their act. But a bulk of it is going to go back to consumers. It is going to go back to citizens either in their paycheck or some tax credit, or perhaps a direct distribution to them.

So the bulk of the money that the polluters will have to pay will go back to citizens to help them with their utility bills. So this will mean that Americans in this bill will get more jobs. They are going to get help with their utility bills, and the polluters will pay for that.

What I am here to report to those who may be interested in this subject, and there are those here who still resist this idea because they are still fear mongering because they resist change. People who resist change, they try to create fear. They are going to try to create fear that this is going to drive people into bankruptcy for doing this.

But I will tell you, when you ask Americans do you think it might be a good deal for you to get a tax credit and the polluters have to pay for that and we increase our energy independence and decrease our pollution, we have asked Americans what they think and by margins of somewhere between 20 and 40 percent margins, people realize it is a good idea, even if it requires some up-front investment. And this will require some up-front investment. It will require some costs, but Americans' common sense understand that makes sense because Americans understand you don't get something for nothing.

What we are getting here is job creation, a clean future for our kids and our grandkids and our great grandkids, increased energy independence, and help with our utility bills. And Americans by huge margins favor that kind of an approach. We have asked them what they think.

Now, we have had some experience with this before. In the next several weeks, and already you are hearing the fear mongering that is going on. Some people in this Chamber are trying to scare Americans to think that the sky is falling if we take this approach. They have tried to drum up fear that this is going to cost Americans numbers that they pull out of the air that are pretty fantastic, thousands of dollars that are not substantiated by the economic analysis, and, secondly, are not substantiated by what America is about. What America is about fundamentally is innovation and optimism. What we have always learned through our experience in this country is if we put our minds to it, we can innovate our way out of almost any challenge.

The best example of this is what happened when we have seen this movie before, and we have seen this movie before. This movie played out in the Clean Air Act where people said that if we did exactly what we are doing right now, if we put a limit on the amount of acid rain and sulfur dioxide going into the atmosphere, and if we charged polluters for permits to put that pollution out, people came to this Chamber and said if you do that, it will drive Americans across the country into bankruptcy because utility bills will skyrocket and you will be facing huge, double, triple prices of your utility bills because the utilities will have to increase their costs. They will pass it on to utility ratepayers, and there will be these desperate economic conditions. That is exactly what people said in this Chamber.

What happened in reality? What happened in reality was that good old tried and true character of Americans kicked in, which was to innovate, to invent new ways to reduce this pollution. And very bright American scientists went to work and invented ways to capture sulfur dioxide, make sure it did not go up the smokestacks, at half the cost or less than what was predicted by the fear-mongers.

The other thing that happened is that we cleaned up our lakes, and we saved our lakes for our grandkids, where there might be some fish in them. It was a hugely successful program at less than half the cost predicted. And why is that? It is not because Congressmen and Congresswomen are smart or even lucky. It is because American businessmen and American scientists are smart and ambitious and creative, and they created the technologies to solve this problem. That is what is going to happen when we pass this bill now. American businesses, some of which I talked about tonight, are going to get the investment and they are going to create these clean energy jobs. They will get out there and figure out a way to produce electricity in a cost-effective way to in fact have the potential over the long run to reduce our utility rates.

The reason I say this is we really have two choices that will be presented to Congress in the next month or so. One choice is the status quo. And, unfortunately, a lot of my friends on the other side of the aisle are going to advocate for the status quo. In the status quo, we remain addicted to oil from the Middle East. I can tell you over the long run that price is not going to go down. It is going to go up and down over time, but over the long run, we are facing limited supplies of oil and increasing demands on oil. When the Chinese start driving cars, as they are starting to do, over the long run, with the limited supply of oil and an increasing demand in China and India and other places, don't predict that prices of gasoline are going to go down. They are going to go up over the long run.

The status quo, people who are against this bill who don't want to do anything about this problem, who just want to use fear to prevent people from acting, they want to remain hooked to oil. They want to remain slaves to the needle of oil addiction. We have to break that addiction. It is our only path to job creation in this country.

What we are saying is we have got to get out there and create new sources of energy. We are going to be burning oil for some time. There is no question, this is not going to happen overnight. But we have to start the transition where Americans can start to have their own energy sources that are beyond oil, frankly. And, fortunately, we now have the ability to do that.

By the way, those people who think electric cars are just some kind of Tonka toy, take a ride in a Tesla. I got in a Tesla in Seattle the other day. It is a little sporty thing. It goes zero to 60 in 3.9 seconds, which is faster than a Porsche. I rode in one and of course we obeyed the speed limit because I am a Congressman and I always do, but it was like getting into a rocket sled to feel that acceleration. I haven't been in a car that quick since I was 17 years old. That car is expensive right now, and not many Americans are going to be driving a Tesla. But a lot of Americans are going to be driving a Ford Focus, which is going to be all electric, and a lot of Americans are going to be driving a General Motors Volt, and a lot of Americans are going to be using electricity generated by wind power and solar power from the BrightSource Company.

By the way, we have this power all over the country. I talked to the BrightSource Company. I met them in California last weekend. They now have either hundreds or thousands of megawatts under contract. They do what is called concentrated solar energy, and they use mirrors to capture the sun's energy and they reflect the sun back up into a central tower that is about 100 feet tall. On top of this tower is a canister of oil or some product, it might be sodium, and they heat it up to terrific temperatures, and then they create steam and electricity from that. This company is going gang-busters, but what they need is fairness competing against some of the other technologies that are still allowed to put their junk in the air for free.

I have another company called Ramgen up in the State of Washington. They are building a compression technology that might allow us to burn coal and take the CO_2 from the coal and bury it underground and sequester it. This is a compression technology that will decrease the cost of doing that.

But what they need is this bill that will create American jobs by creating a cap on the amount of CO_2 going in the atmosphere. This bill will do some other things to help the emergence of these companies.

It is going to create a promise to Americans that we are going to get a certain percentage of our electricity

from clean energy sources. And 22 States or more have now adopted these laws. Every single one of them has worked. Every single one of these States that has set these goals for a percentage of their electricity is on target to meet those goals. We have one in the State that I am from, in the State of Washington, that was adopted by popular vote. Now we need a national goal that is called a renewable energy standard. We are talking amongst ourselves to figure out what that number should be right now, but it should be somewhere in the neighborhood of a fifth of our energy by 2025 to get from renewable sources, and this is eminently achievable.

The Department of Energy and various other entities have evaluated this, and this is an achievable goal. We know that, again, once we put these innovators to work and let them loose, we are going to get tremendous technological innovation to get this job done.

We are also going to create mechanisms to help these small businesses do this research. You know, we know what Uncle Sam can do. Uncle Sam is only going to play a part of this. Most of this will be driven by private enterprise. Most of it is going to be driven by private equity and lending from the private sector. But Uncle Sam does have a role to play in some of the over-the-horizon technologies.

Like in the original Apollo Project when we went to the Moon, Uncle Sam promoted the research and development, and we went to the Moon.

In World War II, Uncle Sam invented, with its nickel weapons systems that were incredibly powerful, and that was as a result of Uncle Sam's research and development.

Now Uncle Sam needs to step up to the plate and do the research and development that can now jump-start these clean energy jobs.

□ 2000

So who's going to pay for that research and development? Well, in this bill, the people who are going to pay for that research and development in the amount of about $15 billion a year are the polluting industries that are putting the pollution in the atmosphere today, unchecked, unregulated, in infinite amounts, at zero cost. They're going to pay for this research and development, not the taxpayer, not the individual American citizen. Because when these permits are sold at auction for these pollution permits, that money is going to be taken and put into a fund that will go to research and development to help these companies develop these over-the-horizon technologies. Now, that's the way it should be because we know we can be creative and we know that's the place that should fund this.

So the long and the short of it is that, by creating this limit on pollution, we make these jobs more economically competitive, number one. Number two, we create a financing mechanism to help the companies that are going to hire these people in these new jobs paid by the polluters.

Number three, we create a standard, a legal standard that utilities will need to meet of at least a portion of our energy will be guaranteed to come from clean energy sources. Those are the first three things that we do.

Fourth, we create a thing called a low carbon fuel standard, which will create a standard which will call for Americans to have more cleaner fuels over time so that companies that sell transportation fuels will be able to have—they will be required basically to provide cleaner energy sources to America and put out less pollution over time on a transition period.

Fifth, we're going to create in this bill, I hope, and it's not a done deal yet, but I hope we will be creating a thing called a green bank, where Uncle Sam will provide a revolving fund that will provide lending for some of these businesses at what is called the ''valley of death.'' A lot of these businesses, you get the people in a garage, they come up with a brilliant idea. They get some venture capital, create a prototype of their device. It works. They scale it up, but when it comes time to put it in the factory, to the build the first factory, they can't get a loan because banks just won't loan on sort of the first commercial-sized projects.

So in this bill financed by polluting industries, from these permits we will be creating a revolving fund. So in this credit crunch that we're now experiencing, these business will be able to, in fact, get access to capital.

This bill is going to be action-oriented. This is change. It is big change for our economy. And when you are in moments of crises, as we are, and when you think about it, we're sort of in a perfect storm of crises right now. We have had this enormous economic challenge that we're experiencing, huge reductions in capital so these businesses can't get capital—not just clean energy businesses, but any businesses right now—very high unemployment. So we have got an economic challenge.

We have a national security challenge. We're involved in two wars right now, and it is not accidental that one of those is in an area where the oil comes from. It's not accidental that a lot of the threats this Nation faces are from oil-rich areas. It's not an accident. It's a fact. Until we wean ourselves from our addiction off that oil that comes from that region, we're always going to be embroiled in these security threats.

So we have got a national security threat. We have an environmental threat that is also a national security threat. We have got a letter from 20 generals who have told us that if we don't solve this problem of global warming, we're going to have a national security threat of mass migration, because as droughts continue to affect the areas south of us and in the northern and sub-Saharan areas of Africa, you're going to have mass migrations of people and you're going to have collapses of governments, and you will continue to see what we're seeing in North Africa right now, of governments that just don't function because their society has literally dried up and blown away with their topsoil.

These generals are telling us that global warming is a security risk to the United States over the long run and have urged us to take action to limit the amount of carbon dioxide going in the atmosphere. So we have these multiple crises right now that are all hitting us all at once.

Now, it seems to me that when you're in that kind of situation, Americans want action. And that is what this bill, the American Clean Energy Jobs bill, will give Americans, which is action. Inaction is not an option here.

Unfortunately, at the moment, and I hope this will change, my colleagues across the aisle have insisted, No, no. Things are good enough. We will just leave them the way they are. We don't need these clean energy jobs by the millions. We don't need clean energy. We don't need to address our national security threat of addiction to oil. We don't need to address global warming, and we don't need to address the Chinese.

I want to address this for a minute. We are also in an economic race with the rest of the world. I don't mean to single out China, but I will just start the discussion with China.

We are in a race today to create these clean energy jobs, and we're not really winning that race today because other countries around the globe have got the drop on us. They're out of the gate first with policies that will support the creation of clean energy jobs in their countries, not ours.

That's got to stop. I am tired of Germany leading America in the production of solar energy because Germany has adopted what's called a feed-in tariff, which essentially creates something like we're going to create, which is a demand for clean energy. We have a little different version. We call it a renewable electrical standard. And they're now leading America.

We created these technologies in our country using American capital and American smarts. We invented solar energy, but the Germans are commercializing it and leading the export market around the world because Congress has sat on the dime and hasn't created these policies like the German Government has. I'm tired of that. We need to change that.

I'm tired that the Danish Government, because they created policies to drive investment into wind turbines a decade and a half ago, that the little country of Denmark, with 45 million people, is outproducing us, until very recently, in wind power. Now, we just passed them a couple of months ago, but with 300 million people in America and the most brilliant people in America, we should not be allowing the Danish, who I love as a people—and a

shout-out to Sven Auken, a friend of mine. He was the environmental minister who led this movement in Denmark. He saw something two decades ago coming, and they created some policies to help clean job creation in Denmark. But I want those jobs right here.

Now we're getting them back. The Clipper Wind Company in Iowa, the Gamesa Company in Pennsylvania. We have one of the largest wind farms in my State in Washington, but not fast enough. I'm not satisfied.

Take a look at what China is doing. I met in California last weekend a senior advisor to the Chinese Government. He told me just matter of fact, We're going to build electric cars. Unless you change in America, we're going to dominate this field. And the Chinese and Chinese Government are making massive investments now in developing the electric car.

We are going to be in a race with China to figure out whether we're going to make the electric cars in Michigan, Ohio, and Tennessee, and maybe the Carolinas, or whether they're going to be made in China, and we lose again to an Asian country that got the drop on us in technology.

I will not stand here and allow the Chinese to become dominant in the electric car industry. My side of the aisle is going to insist that we adopt policies to build those cars here.

Now we have started down that track. In our stimulus package, we put $2 billion in to assist the development of the domestic electric battery companies so we can make those batteries and cars here. Yesterday, I was at the White House—time flies around here—meeting with President Obama about how we do this energy bill. He urged us to pass this energy bill. I agree with him on this.

We reached an agreement yesterday in a program called Cash for Clunkers. We, on my side of the aisle, are going to put a Cash for Clunkers provision in this bill, which will basically tell Americans if you're driving kind of a clunker that gets substandard mileage, below 18 miles a gallon, if you turn in your car and buy a new car with higher gas mileage, at least the CAFE standard, you will get a $2,500 voucher from Uncle Sam towards buying that new car. And that amount will go up the more fuel efficient the car is. I think it's up to $4,000. Don't hold me to this, but I think that's the amount it goes up to.

So Uncle Sam is going to give Americans an incentive to buy a fuel-efficient car and get off the road some of these inefficient cars to create jobs in this country. And that's one way we're going to help Americans in this clean energy transition.

It's not the only way, because Americans are also going to get cash in their pockets, either through a tax credit or some other mechanism that we're designing right now.

So we're going to take measures that make sure that America gets in this game of creating clean energy jobs in this country, and we recognize that we don't have the luxury of time like some of my friends across the aisle think. They think we can wait another 20 or 30 years to do this. We cannot wait to do this. We have got to do this right now.

We have got to create clean energy jobs right now or the Chinese, the Germans, and the Danish are going to do it. I mean, again, no disrespect to these other countries. They're great countries. They're competitive. They're eager. But we should not allow our technology to be mastered by them.

I want to talk right now, because we have some very important people in the Chamber right now that have just entered the Chamber, about the ability to use coal in our future.

Right now, we have great Americans who are working in the coal industry, and they're working hard and they're producing huge amounts of energy for Americans today. The problem is, unfortunately, that we need to find a way that we can use coal in a way that will reduce the amount of pollution going into the atmosphere. To do this, we think that there's an opportunity to be able to find a way to burn coal in a way that doesn't put massive amounts of carbon dioxide into the atmosphere.

So what we are doing in this bill, in this Clean Energy Jobs bill, we will be taking money from polluting industries and creating a fund which will go to researching how we can find out a way to do what is called carbon sequestration. It's a fancy word for taking the carbon dioxide out of the coal-fired plants, electrical generating plants, and take that carbon dioxide and burying it in the Earth permanently.

If we can figure out a way to do this, we will find a way to use coal for decades. If we can't find a way to do this, it's going to be difficult to use all the coal we have, because if we burn all the coal we have, it will be good, cheap power, but it will also essentially change life as we know it in this country based on climate change.

So what we're doing in this bill is we're creating a fund that will help the coal industry have a long-term survival in this country, and they will be able to have assistance in this bill to generate over a billion dollars a year for research into coal sequestration technology.

□ 2015

Now, the reason I point this out is I think some very good people here in Congress are being a little shortsighted, and they are not seeing the benefit of generating funds that can go to the research and development of this new technology, technology that we clearly need to solve this problem. If we don't generate this money to create this technology, people in the coal industry eventually are going to have difficulty because of the inevitability of the climate change that we face.

Now, if I can, just for a minute I would like to address that issue of why we can create jobs while simultaneously dealing with climate change. First, I want to address a little bit the problems we face on climate change.

Climate change is now a fact, not a theory or hypothesis. We have direct observational evidence that carbon dioxide in our atmosphere has skyrocketed during the industrial revolution. It has gone from about 250 to about 360, 370 parts per million. It will continue to rise to double the levels of carbon dioxide. This is simply a fact.

Now, the problem with carbon dioxide is you can't see it, you can't smell it, you can't taste it. But it has a nasty little attribute, and no scientist today anywhere who has a scientific degree will disagree with this statement: It has the attribute of trapping a certain spectrum of radiation that can go in as one spectrum of radiation but can't go out when it is reflected off the surface of the Earth. All scientists of any repute recognize that.

So we are now involved in this massive experiment where we are the guinea pigs of what happens when you double the amount of carbon dioxide in the atmosphere. Now, unfortunately, we are seeing what happens when you do that, and we are seeing it right now with our own eyes.

The Arctic is melting. The Arctic in the last several decades has decreased by 40 percent, and many scientists believe in the next decade or so it will disappear in the late summer months almost in total; it will just have a fringe of the Arctic.

We are seeing tundra melting rapidly in Alaska. We are experiencing droughts. We are experiencing by the millions of acres death of our forests because it doesn't get cold enough to kill the beetles, and they then kill the trees.

We are seeing changes in patterns of migration of our animals. We are seeing off my coast in the State of Washington creatures we have never seen in the State of Washington before off our coastline.

And, importantly, we are seeing increases in the acidity of the ocean. The oceans are becoming more acidic. And this isn't related to temperature; this is related to carbon dioxide, which comes out of our smokestacks, drifts over our oceans, goes into solution; and, when carbon dioxide goes into solution it makes it more acidic. The oceans today have 30 percent more acidic ions in them than they did in pre-industrial times. So we know we have to deal with this problem. By the way, there is no debate about ocean acidification. And even if we could solve the global warming problem, unless we create these green collar jobs and green energy jobs, we won't solve this problem. So we intend in the next several months to succeed, as we have always done, and by innovating to create these clean energy jobs.

Now, people are going to talk about: If we do this, that this is going to cost Americans, this fear factor that people

are going to try to scare people in, they are going to tell Americans it is going to cost thousands of dollars a year. It just doesn't hold up to any economic analysis, an analysis by MIT, which by the way has been incorrectly cited by some of my colleagues here. We have a letter from the MIT professor that basically said the total cost to the U.S. economy averages out to about 18 cents a day for the investments that will be involved in changing this. The EPA studies that have looked at this have concluded it will be in the $200 to $300 range a year of investment that will create millions of clean energy jobs.

These investments we know succeed because we have confidence in American businesses and American workers and American scientists to create these new clean energy jobs; and when we give them the investment they need, they will produce what we need, which is new technology. And this bill will be the largest jump-start of American technology since the original Apollo project.

Now the Democratic members of the Commerce Committee went to the White House to meet with President Obama yesterday, or the day before, and we talked about this bill. We are shaping this bill in a way that is fair to every region and takes into consideration the needs of certain industries.

By the way, I will point out something that is very important in the bill. We want to make sure that jobs don't go overseas as a result of this bill. And if some electrical rates go up as a result of this, we don't want to see jobs in steel mills or cement plants or aluminum plants go overseas to places where electricity may be cheaper. So what we are doing is we have a provision that Congressman MIKE DOYLE of Pittsburgh and I have worked on which will give benefits, free permits, to the steel, aluminum, other energy intensive, trade sensitive businesses. They will get free permits. The reason we are doing this is so they will not have a disincentive for keeping those jobs in this country. We are designing this bill in a way that is sensitive to make sure we keep jobs in this country and this does not distort our job creation, and it is being carefully designed to achieve that.

What President Obama talked about, I just want to cite one thing he said. He said that Members of Congress come here for a reason, and that reason is to very rarely and infrequently have a chance to do something historic.

This is a truly historic moment for America. It is a moment where we have the opportunity to seize the destiny of this country, to create a clean energy future for the country, to reduce pollution, to increase our energy independence. And that only happens when men and women of good faith come together to find a consensus that will create clean energy jobs, will limit pollution, will require polluting industries to pay, and will in fact move this country with a great, great leap forward in technology.

You don't do that by doing nothing. Doing nothing is not an action. We will be doing something historic in this bill, and I look forward to working with my colleagues to pass this clean energy American jobs bill. I look forward to the many ribbon cuttings that we are going to have as a result of this bill when these companies start up and start hiring Americans and start manufacturing the electric cars and wind turbines and solar cells and engineered geothermal and all of the things we are going to do to help create job creation in this country. That is a future worthy of this country. That is a bill worth passing. I look forward to it.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WAMP (at the request of Mr. BOEHNER) for today and the balance of the week on account of attending his son Weston's college graduation in Tennessee.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. WASSERMAN SCHULTZ, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. ROYBAL-ALLARD, for 5 minutes, today.

Ms. BERKLEY, for 5 minutes, today.

Mr. ENGEL, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. BRALEY of Iowa, for 5 minutes, today.

Mr. SARBANES, for 5 minutes, today.

(The following Members (at the request of Mr. POE of Texas) to revise and extend their remarks and include extraneous material:)

Mr. MCHENRY, for 5 minutes, today and May 7.

Mr. POE of Texas, for 5 minutes, May 13.

Mr. JONES, for 5 minutes, May 13.

Ms. FALLIN, for 5 minutes, today.

Mr. JORDAN of Ohio, for 5 minutes, today.

Mrs. SCHMIDT, for 5 minutes, today.

(The following Member (at his request) to revise and extend his remarks and include extraneous material:)

Mr. FLAKE, for 5 minutes, today.

ADJOURNMENT

Mr. INSLEE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 23 minutes p.m.), the House adjourned until tomorrow, Thursday, May 7, 2009, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1623. A letter from the Acting Administrator, Department of Agriculture, transmitting the Department's final rule — Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2009-2010 Marketing Year [Doc. No.: AMS-FV-08-0104; FV09-985-1 FR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1624. A letter from the Acting Associate Administrator, Department of Agriculture, transmitting the Department's final rule — Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2 [Doc. No.: AMS-FV-08-0094; FV09-948-1 IFR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1625. A letter from the Acting Associate Administrator, Department of Agriculture, transmitting the Department's final rule — Kiwifruit Grown in California; Decreased Assessment Rate [Docket No.: AMS-FV-08-0095; FV09-920-1 FIR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1626. A letter from the Acting Administrator, Department of Agriculture, transmitting the Department's final rule — Regulations Under the Perishable Agricultural Commodities Act, 1930; Section 610 Review [Doc.: #AMS-FV-08-0013; FV08-379] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1627. A letter from the Acting Administrator, Department of Agriculture, transmitting the Department's final rule — Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements [Doc. No.: AMS FV-08-0090; FV09-966-1 FIR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1628. A letter from the Acting Associate Administrator, Department of Agriculture, transmitting the Department's final rule — Tart Cherries Grown in the States of Michigan, et al.; Change to Fiscal Period [Docket No. AMS-FV-08-0066; FV08-930-2 FIR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1629. A letter from the Acting Administrator, Department of Agriculture, transmitting the Department's final rule — Milk in the Appalachian and Southeast Marketing Areas; Order To Terminate Proceeding on Proposed Amendments to Marketing Agreements and Orders [Doc. Nos.: AMS-DA-07-0133; AO-388-A15; AO-366-A44; DA-03-11-B] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1630. A letter from the Acting Administrator, Department of Agriculture, transmitting the Department's final rule — Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2008-09 Crop Natural (Sun-Dried) Seedless Raisins [Doc. No.: AMS-FV-08-0114; FV09-989-1 IFR] received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1631. A letter from the General Counsel, National Credit Union Administration, transmitting the Administration's final rule — Regulatory Flexibility Regarding Ownership of Fixed Assets (RIN: 3133-AD53) received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

1632. A letter from the Attorney, Office of Assistant General Counsel for Legislation and Regulatory Law, Department of Energy, transmitting the Department's final rule — Occupational Radiation Protection; Correction [Docket No.: HS-RM-09-835] (RIN: 1901-AA95) received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1633. A letter from the Attorney, Office of Assistant General Counsel for Legislation and Regulatory Law, Department of Energy, transmitting the Department's final rule — Procedural Rules for DOE Nuclear Activities (RIN: 1990-AA30) received March 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1634. A letter from the Attorney, Office of Assistant General Counsel for Legislation and Regulatory Law, Department of Energy, transmitting the Department's final rule — Energy Conservation Program: Test Procedures for Battery Chargers and External Power Supplies (Standby Mode and Off Mode) [Docket No.: EERE-2008-BT-TP-0004] (RIN: 1904-AB75) received March 27, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1635. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Amendment to Requirements for Providing Information on the Delegation of the Administrator's Authorities and Responsibilities for Certain States [EPA-RO4-OAR-2008-0904; FRL-8893-7] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1636. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Minnesota [EPA-R05-OAR-2007-1045; FRL-8894-1] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1637. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Update to Materials Incorporated by Reference [R08-ND-2008-0001; FRL-8892-7] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1638. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Department's final rule — Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets, and 2002 Base Year Emissions Inventory; Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area [EPA-R06-OAR-2007-0528; FRL-8895-3] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1639. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; South Carolina; NOx SIP Call Phase II [EPA-R04-OAR-2005-SC-0002-200535 (a); FRL-8894-8] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1640. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Approval of the Ventura County Air Pollution Control District — Reasonably Available Control Technology Analysis [EPA-R09-OAR-2008-0863; FRL-8784-2] received April 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1641. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — In the Matter of Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Des Moines, Iowa) [MB Docket No.: 09-22 RM-11516] received April 21, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1642. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — In the Matter of Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations. (Columbus, Georgia) [MB Docket No.: 08-100 RM-11437] received April 21, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1643. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — In the Matter of Implementation of the DTV Delay Act [MB Docket No.: 09-17] received March 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1644. A letter from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting the Department's final rule — In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants [MM Docket No.: 95-31] received March 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1645. A letter from the General Counsel, Federal Energy Regulatory Commission, transmitting the Commission's final rule — Version Two Facilities Design, Connections and Maintenance Reliability Standards [Docket No.: RM08-11-000; Order No. 722] received April 21, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1646. A letter from the Chairman, International Trade Commission, transmitting the Commission's annual report for fiscal year 2005 on the category rating system, pursuant to 5 U.S.C. 3319(d); to the Committee on Oversight and Government Reform.

1647. A letter from the Acting Chairman, National Endowment for the Arts, transmitting the Endowment's annual report for fiscal year 2008 in accordance with Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; to the Committee on Oversight and Government Reform.

1648. A letter from the Deputy General Counsel for Operations, U.S. Department of Housing and Urban Development, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

1649. A letter from the Deputy Chief, Regulatory Management Division, Department of Homeland Security, transmitting the Department's final rule — Forwarding of Affirmative Asylum Applicationsto the Department of State [CIS No.: 2440-08; DHS Docket No.: USCIS 2008-0022] (RIN: 1615-AB59) received April 14, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

1650. A letter from the Chairman, Defense Nuclear Facilities Safety Board, transmitting the Nineteenth Annual Report describing the Board's health and safety activities relating to the Department of Energy's defense nuclear facilities during the calendar year 2008; jointly to the Committees on Armed Services and Energy and Commerce.

1651. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment on FEMA-1822-DR, pursuant to Public Law 110-239, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1652. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information on FEMA-1827-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1653. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information on FEMA-1824-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1654. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information for FEMA-1828-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1655. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information for FEMA-1821-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1656. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information for FEMA-1825-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

1657. A letter from the Acting Administrator, Department of Homeland Security, transmitting the Department's report on the Preliminary Damage Assessment information on FEMA-1826-DR, pursuant to Public Law 110-329, section 539; jointly to the Committees on Homeland Security, Transportation and Infrastructure, and Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CARDOZA: Committee on Rules. House Resolution 406. Resolution providing for further consideration of the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes (Rept. 111–98). Referred to the House Calendar.

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. CHAFFETZ (for himself, Mr. BISHOP of Utah, and Mr. MATHESON):

H.R. 2265. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Magna Water District water reuse and groundwater recharge project, and for other purposes; to the Committee on Natural Resources.

By Mr. FRANK of Massachusetts:

H.R. 2266. A bill to delay for 1 year the date for compliance with certain regulations prescribed by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System under subchapter IV of chapter 53 of title 31, United States Code; to the Committee on Financial Services.

By Mr. FRANK of Massachusetts (for himself, Mr. PAUL, Mr. GUTIERREZ, Mr. KING of New York, Mr. WATT, Mr. ACKERMAN, Mr. CAPUANO, Mr. CARSON of Indiana, Mr. MCDERMOTT, Mr. DELAHUNT, Mr. MCGOVERN, Mr. WEXLER, Ms. BERKLEY, Mr. COHEN, Mr. PERRIELLO, and Mr. SABLAN):

H.R. 2267. A bill to amend title 31, United States Code, to provide for the licensing of Internet gambling activities by the Secretary of the Treasury, to provide for consumer protections on the Internet, to enforce the tax code, and for other purposes; to the Committee on Financial Services, and in addition to the Committees on Energy and Commerce, 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 Mr. MCDERMOTT (for himself and Mr. FRANK of Massachusetts):

H.R. 2268. A bill to amend the Internal Revenue Code of 1986 to regulate and tax Internet gambling; to the Committee on Ways and Means.

By Ms. ZOE LOFGREN of California (for herself, Mr. TAYLOR, Mr. CONYERS, Mr. STARK, Mr. CAO, Mr. LEWIS of Georgia, Ms. LEE of California, Mr. RANGEL, and Mr. MELANCON):

H.R. 2269. A bill to establish the Gulf Coast Civic Works Commission within the Department of Homeland Security Office of Federal Coordinator of Gulf Coast Rebuilding to administer the Gulf Coast Civic Works Project to provide job-training opportunities and increase employment to aid in the recovery of the Gulf Coast region; to the Committee on Education and Labor, and in addition to the Committees on Financial Services, Transportation and Infrastructure, Natural Resources, and 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. BUYER (for himself, Mr. WALZ, and Ms. HERSETH SANDLIN):

H.R. 2270. A bill to amend title 38, United States Code, to provide for the establishment of a compensation fund to make payments to qualified World War II veterans on the basis of certain qualifying service; to the Committee on Veterans' Affairs.

By Mr. SMITH of New Jersey (for himself, Mr. SHERMAN, Mr. WOLF, Mr. BURTON of Indiana, Mr. ROHRABACHER, and Mr. MCCOTTER):

H.R. 2271. A bill to prevent United States businesses from cooperating with repressive governments in transforming the Internet into a tool of censorship and surveillance, to fulfill the responsibility of the United States Government to promote freedom of expression on the Internet, to restore public confidence in the integrity of United States businesses, and for other purposes; to the Committee on Foreign Affairs, 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. RUSH (for himself, Ms. LEE of California, Mr. WATT, Mr. SERRANO, Mr. DAVIS of Illinois, Mr. CLEAVER, Mr. RANGEL, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. FUDGE, Mr. COSTELLO, Ms. WOOLSEY, Mr. FARR, Ms. RICHARDSON, Mr. KUCINICH, Ms. SCHAKOWSKY, Mr. ABERCROMBIE, Mr. ELLISON, Mr. BISHOP of Georgia, Ms. CLARKE, Ms. KAPTUR, Ms. KILPATRICK of Michigan, Mr. TOWNS, Mr. AL GREEN of Texas, Mr. SCOTT of Georgia, Ms. MOORE of Wisconsin, Ms. WATERS, Mr. JOHNSON of Georgia, Mr. FATTAH, Mr. CLYBURN, Mr. PAYNE, Mr. CLAY, Mr. BRADY of Pennsylvania, Mr. STUPAK, Mr. FILNER, Ms. VELÁZQUEZ, Mr. CAPUANO, Mr. NEAL of Massachusetts, Mr. CONYERS, Mr. MEEKS of New York, Mr. CUMMINGS, Mr. DELAHUNT, Mr. KILDEE, Mr. COHEN, Ms. MATSUI, Mr. HINCHEY, Mr. FRANK of Massachusetts, Mr. MCDERMOTT, and Mr. LEWIS of Georgia):

H.R. 2272. A bill to lift the trade embargo on Cuba, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committees on Ways and Means, Energy and Commerce, the Judiciary, Financial Services, Oversight and Government Reform, and Agriculture, 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. SCHAKOWSKY (for herself, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. STARK, Mr. RANGEL, Mr. CONYERS, Mr. YOUNG of Alaska, Mr. ABERCROMBIE, Mr. MCGOVERN, Mr. SHERMAN, Ms. DELAURO, Mr. ELLISON, and Ms. BALDWIN):

H.R. 2273. A bill to amend the Public Health Service Act to establish direct care registered nurse-to-patient staffing ratio requirements in hospitals, 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. MCKEON (for himself, Mr. BOEHNER, Mr. CANTOR, Mr. PENCE, Mr. HOEKSTRA, Mr. KLINE of Minnesota, Mr. BISHOP of Utah, Mr. MCCLINTOCK, Mr. HUNTER, Mr. SAM JOHNSON of Texas, Mr. BARTLETT, Mr. LINDER, Mrs. MYRICK, Mr. HENSARLING, Mr. CULBERSON, Mr. MARCHANT, Mrs. BACHMANN, Mr. LAMBORN, and Mr. CHAFFETZ):

H.R. 2274. A bill to repeal ineffective or unneccesary education programs in order to restore the focus of Federal programs on quality preschool, elementary, secondary, and postsecondary education programs for disadvantaged students and students with disabilities; to the Committee on Education and Labor.

By Mr. JACKSON of Illinois (for himself, Mr. CRENSHAW, and Mr. CASTLE):

H.R. 2275. A bill to support research and public awareness activities with respect to inflammatory bowel disease, and for other purposes; to the Committee on Energy and Commerce.

By Mrs. BONO MACK (for herself and Mrs. LOWEY):

H.R. 2276. A bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity and eating disorder prevention, and for other purposes; to the Committee on Energy and Commerce.

By Mr. POMEROY (for himself, Mr. PITTS, Ms. SCHWARTZ, and Mr. BRADY of Texas):

H.R. 2277. A bill to establish and provide for the treatment of Individual Development Accounts, and for other purposes; to the Committee on Ways and Means.

By Mr. BILIRAKIS (for himself and Mr. CROWLEY):

H.R. 2278. A bill to direct the President to transmit to Congress a report on anti-American incitement to violence in the Middle East, and for other purposes; to the Committee on Foreign Affairs.

By Ms. CASTOR of Florida (for herself, Mr. GRIJALVA, Mr. HINCHEY, Mr. RUSH, Ms. BORDALLO, Ms. NORTON, Mr. KUCINICH, Ms. BALDWIN, Ms. LEE of California, and Ms. SUTTON):

H.R. 2279. A bill to amend title XVIII of the Social Security Act to eliminate contributing factors to disparities in breast cancer treatment through the development of a uniform set of consensus-based breast cancer treatment performance measures for a 6-year quality reporting system and value-based purchasing system under the Medicare Program; to the Committee on Ways and Means, 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 Ms. HIRONO (for herself, Mr. TERRY, Mr. KISSELL, Mr. YOUNG of Alaska, Mr. MCINTYRE, Mrs. CAPPS, Mr. GONZALEZ, Mr. DICKS, Mr. COSTELLO, Mr. LARSEN of Washington, and Mr. SIRES):

H.R. 2280. A bill to reauthorize the impact aid program under the Elementary and Secondary Education Act of 1965; to the Committee on Education and Labor.

By Mr. KAGEN (for himself and Mr. EDWARDS of Texas):

H.R. 2281. A bill to establish a temporary program in the Small Business Administration to assist small business concerns by decreasing interest payments for certain loans, and for other purposes; to the Committee on Small Business, and in addition to the Committee on Financial 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 Mr. KING of New York:

H.R. 2282. A bill to amend the Immigration and Nationality Act to reauthorize the State Criminal Alien Assistance Program; to the Committee on the Judiciary.

By Mr. MORAN of Kansas:

H.R. 2283. A bill to amend the Clean Air Act to permit the Administrator of the Environmental Protection Agency to waive the lifecycle greenhouse gas emission reduction requirements for renewable fuel production, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PAULSEN:

H.R. 2284. A bill to amend the Internal Revenue Code of 1986 to allow individuals to defer tax on income reinvested in a partnership or S corporation; to the Committee on Ways and Means.

By Mr. PETERS:

H.R. 2285. A bill to amend the Internal Revenue Code of 1986 to allow a business credit

for the acquisition of fleet vehicles; to the Committee on Ways and Means.

By Mr. ROHRABACHER:

H.R. 2286. A bill to amend title II of the Social Security Act and the Internal Revenue Code of 1986 to provide that an employee whose employment for an employer is not otherwise covered for social security benefit purposes may irrevocably elect to have his or her employment with such employer treated as so covered and subject to social security taxes; to the Committee on Ways and Means.

By Mr. ROHRABACHER (for himself, Mr. SULLIVAN, Mr. GARY G. MILLER of California, Mr. PITTS, Mr. BARTLETT, Mr. BILIRAKIS, Ms. GINNY BROWN-WAITE of Florida, Mr. BURTON of Indiana, Mr. JONES, Mr. KLINE of Minnesota, Mr. MARCHANT, Mr. MCHENRY, Mr. PLATTS, Mr. ROGERS of Alabama, Mr. SESSIONS, Mr. SIMPSON, and Mr. SMITH of Nebraska):

H.R. 2287. A bill to amend title II of the Social Security Act to exclude from creditable wages and self-employment income wages earned for services by aliens illegally performed in the United States and self-employment income derived from a trade or business illegally conducted in the United States; to the Committee on Ways and Means.

By Mr. SALAZAR (for himself, Ms. MARKEY of Colorado, Mr. LUJÁN, Ms. DEGETTE, Mr. HEINRICH, Mr. POLIS of Colorado, Mrs. LUMMIS, and Mr. TEAGUE):

H.R. 2288. A bill to amend Public Law 106-392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023; to the Committee on Natural Resources.

By Mr. SCOTT of Virginia (for himself and Mr. CONYERS):

H.R. 2289. A bill to establish a meaningful opportunity for parole or similar release for child offenders sentenced to life in prison, and for other purposes; to the Committee on the Judiciary.

By Mr. SHERMAN (for himself, Mr. ROYCE, and Ms. ROS-LEHTINEN):

H.R. 2290. A bill to provide for the application of measures to foreign persons who transfer to Iran, Syria, or North Korea certain goods, services, or technology that could assist Iran, Syria, or North Korea to extract or mill their domestic sources of uranium ore; to the Committee on Foreign Affairs.

By Mr. THOMPSON of California (for himself and Mr. REICHERT):

H.R. 2291. A bill to amend title XVIII of the Social Security Act to eliminate coinsurance for screening mammography and colorectal cancer screening tests in order to promote the early detection of cancer; 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. THOMPSON of California (for himself and Mr. BLUMENAUER):

H.R. 2292. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to require coverage of preventive care for children; to the Committee on Ways and Means, and in addition to the Committees on Education and Labor, and 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. VAN HOLLEN (for himself and Mr. DOGGETT):

H.R. 2293. A bill to amend the Trade Act of 1974 to require a Public Health Advisory Committee on Trade to be included in the trade advisory committee system, to require public health organizations to be included on the Advisory Committee for Trade Policy and Negotiations and other relevant sectoral or functional advisory committees, and for other purposes; to the Committee on Ways and Means.

By Mr. HINCHEY (for himself, Mrs. CAPPS, Mrs. BONO MACK, Ms. DELAURO, Mr. SHERMAN, Mr. NADLER of New York, Mr. SCOTT of Virginia, Ms. BALDWIN, Mr. COBLE, Mrs. MALONEY, Mrs. NAPOLITANO, Ms. LEE of California, Ms. BERKLEY, Ms. SPEIER, Mr. JOHNSON of Georgia, Mr. LEWIS of Georgia, Mr. BACA, Ms. BORDALLO, Ms. NORTON, Mr. FALEOMAVAEGA, Ms. KAPTUR, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MCGOVERN, Mr. BOREN, Mr. BISHOP of Georgia, Ms. JACKSON-LEE of Texas, Ms. KILPATRICK of Michigan, Mr. MORAN of Virginia, Mr. INSLEE, Ms. WASSERMAN SCHULTZ, Mrs. TAUSCHER, Mr. FILNER, Ms. CASTOR of Florida, Mr. SERRANO, Mr. MCDERMOTT, Ms. BEAN, Ms. SCHAKOWSKY, Ms. MATSUI, Ms. HERSETH SANDLIN, Ms. EDWARDS of Maryland, Mrs. DAVIS of California, Ms. SUTTON, Mr. ELLISON, Mr. DAVIS of Illinois, Mr. SCOTT of Georgia, Ms. SCHWARTZ, Mr. GRIJALVA, Mr. DEFAZIO, Ms. HIRONO, Mr. KILDEE, Mr. BOSWELL, Mr. TOWNS, Mr. GENE GREEN of Texas, Mr. COOPER, Mr. DINGELL, Mr. WEINER, Mrs. CHRISTENSEN, Mr. GONZALEZ, Mr. ORTIZ, Mr. MURPHY of Connecticut, Ms. GRANGER, Mr. LOEBSACK, Mr. SCHIFF, Ms. WOOLSEY, Mr. ARCURI, Ms. GIFFORDS, Mr. BISHOP of New York, Ms. KILROY, Ms. ROYBAL-ALLARD, Mr. MASSA, Ms. MCCOLLUM, Ms. DEGETTE, Mrs. DAHLKEMPER, Mr. PIERLUISI, Mr. FARR, Mr. ISRAEL, Ms. FUDGE, Mr. COHEN, Ms. CLARKE, Ms. MOORE of Wisconsin, Mr. TANNER, Mr. HALL of New York, Ms. ZOE LOFGREN of California, Mr. BRALEY of Iowa, Mr. DELAHUNT, Mr. CHANDLER, Mr. ROSS, Mr. HONDA, Mr. ABERCROMBIE, Mr. ROTHMAN of New Jersey, Mr. THOMPSON of California, Mr. CLYBURN, Mr. SIRES, Mr. ENGEL, Mr. LYNCH, Mr. PASTOR of Arizona, Ms. LORETTA SANCHEZ of California, Mr. HASTINGS of Florida, Ms. TSONGAS, Mr. JACKSON of Illinois, Mr. RANGEL, Ms. ESHOO, Mr. MEEKS of New York, Mrs. MCCARTHY of New York, Mr. NYE, and Mr. HARE):

H. Con. Res. 120. Concurrent resolution supporting the goals and ideals of National Women's Health Week, and for other purposes; to the Committee on Energy and Commerce.

By Mr. KING of New York (for himself, Mr. BOEHNER, Mr. CANTOR, Mr. PENCE, Mr. SMITH of Texas, Mr. SOUDER, Mr. DANIEL E. LUNGREN of California, Mr. ROGERS of Alabama, Mr. MCCAUL, Mr. DENT, Mr. BILIRAKIS, Mr. BROUN of Georgia, Mrs. MILLER of Michigan, Mr. OLSON, and Mr. AUSTRIA):

H. Res. 404. A resolution directing the Secretary of Homeland Security to transmit to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of documents relating to the Department of Homeland Security Intelligence Assessment titled, ''Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment''; to the Committee on Homeland Security.

By Mr. POMEROY:

H. Res. 405. A resolution commending the heroic efforts of the people fighting the floods in North Dakota; to the Committee on Transportation and Infrastructure.

By Ms. CASTOR of Florida (for herself, Mr. KENNEDY, Ms. BERKLEY, Ms. BALDWIN, Mr. GRIJALVA, Ms. SHEA-PORTER, Mr. HINCHEY, Mr. BISHOP of Georgia, Mr. MCDERMOTT, and Ms. BORDALLO):

H. Res. 407. A resolution expressing support for designation of May as ''National Asthma and Allergy Awareness Month''; to the Committee on Energy and Commerce.

By Mrs. DAVIS of California (for herself, Mr. SKELTON, Mr. WILSON of South Carolina, Ms. BORDALLO, Ms. SHEA-PORTER, Mr. JONES, Mrs. MCMORRIS RODGERS, Mr. ORTIZ, Mr. RODRIGUEZ, Mr. MCGOVERN, Mr. BRADY of Pennsylvania, Mr. WALZ, Ms. GIFFORDS, and Mr. BARTLETT):

H. Res. 408. A resolution recognizing the vital role family readiness volunteers play in supporting service members and their families; to the Committee on Armed Services.

By Mr. EHLERS:

H. Res. 409. A resolution celebrating the life of President Gerald R. Ford on what would have been his 96th birthday; to the Committee on Oversight and Government Reform.

By Mr. KLEIN of Florida (for himself, Mr. BROWN of South Carolina, Mr. TAYLOR, and Mrs. MILLER of Michigan):

H. Res. 410. A resolution recognizing the numerous contributions of the recreational boating community and the boating industry to the continuing prosperity and affluence of the United States; to the Committee on Transportation and Infrastructure.

By Mr. MCCARTHY of California (for himself, Mr. MCKEON, and Mr. COSTA):

H. Res. 411. A resolution supporting the goals and ideals of the Intermediate Space Challenge in Mojave, California; to the Committee on Education and Labor.

By Mr. MURPHY of Connecticut (for himself, Mr. CASTLE, Ms. DEGETTE, Ms. SLAUGHTER, Mrs. BIGGERT, Ms. MCCOLLUM, Ms. CORRINE BROWN of Florida, Mr. MCGOVERN, Ms. JACKSON-LEE of Texas, Ms. SCHAKOWSKY, Mr. COHEN, Mr. MASSA, Mrs. MALONEY, Ms. DELAURO, Mr. MORAN of Virginia, Ms. BALDWIN, Mr. KENNEDY, and Mr. RYAN of Ohio):

H. Res. 412. A resolution supporting the goals and ideals of a National Day to Prevent Teen Pregnancy; to the Committee on Energy and Commerce.

By Mr. STEARNS (for himself, Mr. GORDON of Tennessee, Mr. HALL of Texas, Mr. LIPINSKI, Mr. EHLERS, and Mr. ROHRABACHER):

H. Res. 413. A resolution supporting the goals and ideals of ''IEEE Engineering the Future'' Day on May 13, 2009, and for other purposes; to the Committee on Science and Technology.

MEMORIALS

Under clause 4 of Rule XXII, memorials were presented and referred as follows:

39. The SPEAKER presented a memorial of the State Legislature of Alaska, relative to Legislative Resolve No. 6 Certifying that the State of Alaska requests and will use any funds provided to the state, a state agency,

a municipality, or a political subdivision of the state under the American Recovery and Reinvestment Act of 2009; to the Committee on Appropriations.

40. Also, a memorial of the State Senate of Nevada, relative to Senate Joint Resolution No. 5 urging the President and Congress to continue to support the participation of the Republic of China on Taiwan in the World Health Organization. (BDR R-1013); to the Committee on Foreign Affairs.

41. Also, a memorial of the 61st State Legislature of Washington, relative to House Joint Memorial 4014 memorializing the United States Congress to enact House Resolution 6922 of 2008 or substantially similar legislation that amends the small business act, provides low-interest loans to small businesses providing transportation services, and assists these small businesses in dealing with high motor fuel prices; to the Committee on Small Business.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 22: Mr. BUTTERFIELD and Ms. SCHWARTZ.

H.R. 23: Ms. VELÁZQUEZ, Mr. KIND, Ms. DEGETTE, Mr. HALL of New York, Mr. DENT, Mr. WELCH, Mrs. CAPITO, Mr. MURPHY of Connecticut, Mr. NYE, Mr. ROONEY, Ms. HARMAN, Mr. FARR, and Mr. WAXMAN.

H.R. 147: Mr. PASTOR of Arizona.

H.R. 179: Mr. GONZALEZ, Mr. ORTIZ, Mr. REYES, Mr. SIRES, and Mr. HOLT.

H.R. 197: Mr. CANTOR and Mr. DUNCAN.

H.R. 205: Mr. POSEY.

H.R. 211: Ms. SHEA-PORTER, Mr. ANDREWS, Mr. AL GREEN of Texas, and Mr. MILLER of North Carolina.

H.R. 233: Mr. DOGGETT and Ms. GIFFORDS.

H.R. 270: Mr. BISHOP of New York and Mr. SCOTT of Georgia.

H.R. 275: Mr. WITTMAN, Mr. WILSON of South Carolina, Mr. BARTLETT, Mr. CHAFFETZ, Mr. MOORE of Kansas, Mr. ROTHMAN of New Jersey, Mr. VAN HOLLEN, Mr. AKIN, Mr. FLEMING, Mr. DONNELLY of Indiana, Mr. NYE, Mr. LEE of New York, and Mrs. BIGGERT.

H.R. 391: Mr. ROGERS of Kentucky, Mr. HENSARLING, and Mr. POE of Texas.

H.R. 422: Mr. SMITH of Texas.

H.R. 430: Mr. CHAFFETZ.

H.R. 442: Mr. ADERHOLT, Mr. CANTOR, Mrs. LUMMIS, Mr. DUNCAN, and Mrs. HALVORSON.

H.R. 468: Mr. SESTAK.

H.R. 574: Mr. HINCHEY.

H.R. 620: Ms. KOSMAS.

H.R. 626: Mr. NADLER of New York.

H.R. 636: Mr. CASSIDY.

H.R. 653: Ms. DEGETTE and Mr. RYAN of Wisconsin.

H.R. 667: Mr. MILLER of North Carolina and Ms. DEGETTE.

H.R. 668: Mr. SMITH of Nebraska.

H.R. 669: Mr. WALZ.

H.R. 697: Mr. FILNER.

H.R. 721: Mr. ANDREWS.

H.R. 745: Mr. PETERS.

H.R. 750: Mr. SIRES, and Ms. WATSON.

H.R. 759: Mr. ROTHMAN of New Jersey.

H.R. 782: Mr. SCHOCK.

H.R. 783: Mr. SMITH of Texas.

H.R. 874: Ms. RICHARDSON.

H.R. 904: Mr. HOLDEN and Mrs. DAHLKEMPER.

H.R. 916: Mr. BISHOP of Georgia, Mr. COURTNEY, and Mr. PETERS.

H.R. 932: Mr. SPACE, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. MAFFEI.

H.R. 939: Mrs. BONO MACK.

H.R. 949: Mr. BRADY of Pennsylvania and Mr. OBERSTAR.

H.R. 950: Mr. LOEBSACK.

H.R. 959: Mr. MAFFEI and Mr. MASSA.

H.R. 1016: Ms. JENKINS and Mr. LEE of New York.

H.R. 1018: Mr. KUCINICH.

H.R. 1021: Mr. FARR.

H.R. 1030: Ms. BORDALLO.

H.R. 1053: Mr. BARTLETT.

H.R. 1079: Mr. MINNICK, Mrs. NAPOLITANO, Mr. HALL of New York, Mr. HARPER, and Mr. BOCCIERI.

H.R. 1101: Mr. GUTIERREZ.

H.R. 1126: Mr. CASTLE, Ms. FOXX, Mr. SIMPSON, Mr. PAUL, and Mr. ROGERS of Alabama.

H.R. 1177: Mr. BOSWELL.

H.R. 1185: Mr. MEEKS of New York.

H.R. 1190: Mr. KISSELL.

H.R. 1207: Ms. SCHAKOWSKY, Mr. LINDER, Mr. ADERHOLT, Mr. DAVIS of Kentucky, Mr. DENT, Mr. RADANOVICH, Mr. SCHOCK, Ms. HERSETH SANDLIN, Mr. AUSTRIA, and Mr. ADLER of New Jersey.

H.R. 1211: Mrs. MCCARTHY of New York, Mr. TIM MURPHY of Pennsylvania, Ms. SLAUGHTER, Mr. MCGOVERN, Mr. MCNERNEY, Mr. WHITFIELD, and Mr. CONNOLLY of Virginia.

H.R. 1231: Mr. MEEKS of New York.

H.R. 1294: Mr. GOODLATTE.

H.R. 1308: Mr. MAFFEI, Mrs. KIRKPATRICK of Arizona, Ms. EDWARDS of Maryland, Mr. GRIJALVA, and Mr. MICHAUD.

H.R. 1330: Ms. CASTOR of Florida.

H.R. 1378: Ms. SUTTON.

H.R. 1392: Mr. BOREN, Mr. CLAY, and Ms. NORTON.

H.R. 1405: Mr. COSTA.

H.R. 1430: Mr. WAMP.

H.R. 1454: Mr. INGLIS, Mr. STARK, Mr. ALEXANDER, Mr. MCGOVERN, Ms. WASSERMAN SCHULTZ, Mr. PAYNE, and Mr. PASTOR of Arizona.

H.R. 1458: Ms. DEGETTE.

H.R. 1470: Mr. PETERS and Mr. DENT.

H.R. 1479: Mr. MORAN of Virginia, Ms. WATSON, and Mr. RUSH.

H.R. 1509: Mr. HIMES.

H.R. 1521: Mr. THOMPSON of Pennsylvania, Mr. BISHOP of New York, Mr. ROONEY, Mr. SHIMKUS, and Mr. MARCHANT.

H.R. 1544: Mr. COURTNEY.

H.R. 1550: Mr. MCCOTTER and Mr. ROGERS of Michigan.

H.R. 1551: Mr. NADLER of New York, Mr. SABLAN, Mr. HASTINGS of Florida, and Ms. BALDWIN.

H.R. 1552: Mr. HUNTER, Mr. PITTS, Mr. LAMBORN, Mrs. LUMMIS, Mr. MARCHANT, and Mr. POLIS of Colorado.

H.R. 1581: Mr. SESTAK.

H.R. 1585: Mr. HINCHEY, Mr. PRICE of North Carolina, and Mr. SCHIFF.

H.R. 1594: Mr. LIPINSKI.

H.R. 1614: Mr. FARR and Mr. PLATTS.

H.R. 1622: Mr. LUCAS.

H.R. 1633: Ms. DEGETTE and Mr. SCOTT of Georgia.

H.R. 1640: Mr. KUCINICH and Mr. JACKSON of Illinois.

H.R. 1671: Mr. COURTNEY, Mr. MCCOTTER, and Mr. CARSON of Indiana.

H.R. 1678: Mr. MCCOTTER.

H.R. 1700: Ms. BALDWIN.

H.R. 1702: Mr. BLUMENAUER, Mr. FATTAH, and Mr. WEXLER.

H.R. 1708: Mr. RUSH.

H.R. 1721: Mr. DOYLE.

H.R. 1744: Mr. MCHENRY, Mr. ANDREWS, Ms. HERSETH SANDLIN, and Mr. SCOTT of Georgia.

H.R. 1764: Mr. STARK.

H.R. 1774: Mr. INSLEE.

H.R. 1775: Mr. LUJAN.

H.R. 1778: Mr. BISHOP of New York, Mr. HOLT, Mr. FILNER, Ms. BORDALLO, Mr. WEXLER, and Mr. ROSS.

H.R. 1787: Ms. ESHOO.

H.R. 1792: Mr. COURTNEY.

H.R. 1826: Mr. HINCHEY and Ms. DELAURO.

H.R. 1836: Mr. SIMPSON and Mr. KAGEN.

H.R. 1842: Mr. HARPER.

H.R. 1847: Mr. TERRY.

H.R. 1869: Mr. STARK, Mr. CONNOLLY of Virginia, Ms. MCCOLLUM, Mr. FILNER, and Mr. PETERS.

H.R. 1870: Mr. COHEN and Mr. HOLT.

H.R. 1877: Ms. SCHAKOWSKY and Mr. SIRES.

H.R. 1879: Mr. FILNER and Mr. LOBIONDO.

H.R. 1881: Mr. BRADY of Pennsylvania, Mr. LUJÁN, Mr. ACKERMAN, and Mr. ENGEL.

H.R. 1903: Mr. SESSIONS.

H.R. 1910: Mr. PIERLUISI.

H.R. 1912: Mr. PIERLUISI.

H.R. 1934: Mr. VAN HOLLEN, Ms. BORDALLO, Mr. SIMPSON, Mr. SARBANES, Mr. ISRAEL, Mr. RUPPERSBERGER, Mr. BISHOP of Utah, and Mr. LOBIONDO.

H. R. 1941: Ms. GIFFORDS and Mrs. LUMMIS.

H.R. 1944: Mr. DAVIS of Alabama.

H.R. 1956: Mr. SMITH of Texas.

H.R. 1967: Mr. MCCOTTER.

H.R. 1980: Mr. GALLEGLY, Mr. LAMBORN, and Ms. CORRINE BROWN of Florida.

H. R. 1989: Mr. DAVIS of Tennessee.

H.R. 2001: Mr. GONZALEZ and Mr. MCHUGH.

H.R. 2006: Mr. KIND.

H.R. 2017: Mr. FILNER.

H.R. 2026: Mr. CRENSHAW.

H.R. 2028: Mr. GUTHRIE.

H.R. 2036: Mr. CONNOLLY of Virginia.

H.R. 2058: Mr. ROE of Tennessee and Mr. BRADY of Pennsylvania.

H.R. 2060: Mr. POLIS of Colorado.

H.R. 2077: Ms. SUTTON, Mr. COSTA, and Ms. DELAURO.

H.R. 2083: Mr. MCCLINTOCK, Ms. FALLIN, Ms. FOXX, Mr. MCKEON, Mr. POSEY, Mrs. LUMMIS, Mr. BROUN of Georgia, and Mr. BISHOP of Utah.

H.R. 2097: Mr. EDWARDS of Texas, Mr. RANGEL, and Ms. CORRINE BROWN of Florida.

H.R. 2101: Mr. LOEBSACK and Ms. PINGREE of Maine.

H.R. 2105: Mr. GERLACH.

H.R. 2106: Mr. GERLACH.

H.R. 2110: Mr. CHAFFETZ.

H.R. 2123: Mr. SHUSTER, Mr. HOLDEN, Mr. HINCHEY, and Ms. SCHWARTZ.

H.R. 2169: Mr. CHAFFETZ.

H.R. 2172: Mr. CONNOLLY of Virginia and Mr. COBLE.

H.R. 2182: Mr. LYNCH.

H.R. 2192: Mr. INSLEE.

H.R. 2194: Mr. GENE GREEN of Texas, Mr. LATOURETTE, Mr. MARCHANT, Mr. GERLACH, Mr. BISHOP of Utah, Mr. SOUDER, Mr. PAULSEN, Mr. SULLIVAN, Mr. GORDON of Tennessee, Mr. TIBERI, Mr. CULBERSON, Mr. KING of New York, Mr. QUIGLEY, Mr. BACA, Mrs. MYRICK, Mr. POE of Texas, Mr. FILNER, Mr. MORAN of Kansas, Mr. BUCHANAN, Ms. FOXX, Mrs. MILLER of Michigan, Mr. LAMBORN, Mrs. SCHMIDT, Mr. LOBIONDO, Ms. FALLIN, Mr. SENSENBRENNER, Mr. BACHUS, Mr. DENT, Mr. COOPER, Mr. WAXMAN, and Mr. PALLONE.

H.R. 2197: Ms. FALLIN.

H.R. 2198: Mr. GERLACH and Mr. SOUDER.

H.R. 2203: Mr. HINOJOSA and Mr. BURTON of Indiana.

H.R. 2220: Mr. TOWNS.

H.R. 2223: Mr. COSTA, Mr. MCHUGH, Mr. EDWARDS of Texas, and Mr. WEXLER.

H.R. 2245: Mr. GORDON of Tennessee, Ms. GIFFORDS, Mr. HALL of Texas, Mr. OLSON, Ms. KOSMAS, and Mr. POSEY.

H.R. 2251: Ms. SCHWARTZ.

H. Con. Res. 48: Mr. HOLT.

H. Con. Res. 84: Mr. MARSHALL.

H. Con. Res. 102: Mrs. MCCARTHY of New York.

H. Con. Res. 105: Ms. BORDALLO, Mr. BROWN of South Carolina, Mr. PIERLUISI, Mr. GRIJALVA, Mr. ROGERS of Kentucky, Mr. PAYNE, Ms. BERKLEY, and Mr. POSEY.

H. Con. Res. 110: Mr. UPTON.

H. Res. 57: Mr. PIERLUISI.

H. Res. 81: Mr. SMITH of Washington.

H. Res. 111: Mrs. EMERSON, Mr. GUTHRIE, Mr. GUTIERREZ, and Mr. MORAN of Kansas.

H. Res. 185: Mr. NYE.

H. Res. 192: Ms. DEGETTE, Mr. EHLERS, Mr. BILBRAY, Mr. HONDA, Mr. MILLER of North Carolina, Mr. HINOJOSA, Mr. COSTELLO, Mr. LEWIS of Georgia, Mr. YOUNG of Alaska, Ms. GRANGER, and Ms. JACKSON-LEE of Texas.

H. Res. 196: Mr. WESTMORELAND, Ms. BORDALLO, Mrs. CAPITO, Mr. BROWN of South Carolina, Mr. SHUSTER, Mr. MACK, and Ms. DELAURO.

H. Res. 232: Mr. SOUDER, Mr. FLEMING, Mr. GARRETT of New Jersey, Mr. EHLERS, and Mr. KLINE of Minnesota.

H. Res. 259: Mr. BUCHANAN, Mr. BARRETT of South Carolina, Mr. MORAN of Kansas, Mr. POSEY, Mr. GARRETT of New Jersey, Mr. WALZ, Mr. STEARNS, Mrs. TAUSCHER, Mr. FILNER, Mr. BUYER, Mrs. MCMORRIS RODGERS, Mr. ORTIZ, Mr. INGLIS, Ms. FALLIN, Mr. CONAWAY, and Mr. REICHERT.

H. Res. 274: Mr. TERRY, Mr. BURGESS, Mr. PLATTS, Mr. EHLERS, Mr. CARSON of Indiana, Mr. FARR, and Ms. GRANGER.

H. Res. 309: Mr. LAMBORN.

H. Res. 350: Mr. FATTAH, Mrs. CAPITO, Mr. BRALEY of Iowa, Mr. ARCURI, Mr. SOUDER, and Mr. AL GREEN of Texas.

H. Res. 362: Mr. GUTIERREZ, Mr. BLUMENAUER, Ms. BERKLEY, Mr. LUJÁN, Mr. MCDERMOTT, Ms. MCCOLLUM, Mr. FATTAH, Mr. BOCCIERI, and Mrs. DAHLKEMPER.

H. Res. 374: Mr. THOMPSON of California, Mr. HARPER, Mr. BARTLETT, Mr. GERLACH, Mr. BURGESS, Mr. FORTENBERRY, Mrs. MCMORRIS RODGERS, Mr. ARCURI, Mr. CONNOLLY of Virginia, Ms. NORTON, and Mr. JONES.

H. Res. 375: Mr. BISHOP of New York and Mr. SERRANO.

H. Res. 378: Mr. PIERLUISI, Mr. BURGESS, and Mr. LATTA.

H. Res. 387: Mr. CONNOLLY of Virginia and Mr. BOYD.

H. Res. 388: Mr. TIAHRT and Mr. CANTOR.

H. Res. 390: Mr. SHUSTER, Mr. ROONEY, Mr. TERRY, Mr. HENSARLING, Mr. BURTON of Indiana, Mr. SHIMKUS, Mr. MCCARTHY of California, Mr. BROUN of Georgia, Ms. FOXX, Mr. SESSIONS, Mr. LINCOLN DIAZ-BALART of Florida, Mr. MOORE of Kansas, Mr. ROGERS of Michigan, Mr. NADLER of New York, Mr. WESTMORELAND, Mr. ROHRABACHER, Mr. CANTOR, Mrs. LUMMIS, and Mr. POE of Texas.

H. Res. 397: Mr. CULBERSON, Mr. PAUL, Mr. WITTMAN, Mr. ALEXANDER, Mr. SOUDER, Ms. FALLIN, and Mr. TIAHRT.

H. Res. 399: Mr. BACA, Ms. KILPATRICK of Michigan, Ms. GIFFORDS, Ms. BORDALLO, and Ms. HIRONO.

H. Res. 401: Mr. ACKERMAN, Mr. TURNER, Mr. POLIS of Colorado, Mr. SCALISE, Mr. SMITH of New Jersey, and Mr. TOWNS.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

The amendment to be offered by Representative FRANK of Massachusetts, or a designee, to H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

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PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, WEDNESDAY, MAY 6, 2009 No. 69

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

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

Let us pray.

Eternal God, known to us in countless ways and times without number, we turn to You that in Your light we might see light. As our lawmakers work, help them to see You in the common rounds and ordinary labors of their day. As they become aware of Your presence, may their lives experience the splendor and strength that You alone can give. Save them from pride and contention and lead them in Your way. Help them, Lord, to remember that You are still their refuge and strength and a very present help in the time of trouble. Send them forth to face this day armed with a faith that will not shrink though pressed by many a foe.

We pray in the Redeemer's Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 6, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico 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.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business for up to an hour. The Republicans will control the first 30 minutes. Following morning business, the Senate will resume consideration of the Helping Families Save Their Homes Act. We will immediately proceed to a series of votes in relation to the remaining amendments. Currently we have nine amendments pending. We hope not all of the amendments will require a rollcall vote.

In addition, there may be a break in the voting sequence because Chairman BAUCUS, Senator GRASSLEY, and others have been invited to the White House. We may begin opening statements on the procurement bill during that time, while the White House meeting is taking place.

All votes following the first vote will be 10 minutes in duration. Senators are encouraged to remain near the Chamber during the series of votes.

Upon disposition of this legislation, the Senate will begin the consideration of S. 454, a bill to improve the organization and procedures of the Department of Defense for the acquisition of major weapons systems.

Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

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

GUANTANAMO PLAN

Mr. MCCONNELL. Mr. President, it should be clear to everyone at this point that the administration got ahead of itself by announcing an arbitrary closing date for Guantanamo before it even drew up a list of safe alternatives. So I rise this morning to express my continuing concerns about the administration's apparent lack of a plan for detainees at this facility and to press the administration for answers on a number of important questions.

Over the past 2 weeks, I and others have asked the Attorney General to provide the American people with the assurance that closing Guantanamo will keep the American people as safe as Guantanamo has. We have asked a series of questions. So far these questions have gone unanswered. But the questions remain.

Which detainees will be released or transferred overseas?

How do we know these men will not return to the battlefield?

Will they be tried in American courts or will we use military commissions?

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

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Will any be sent to U.S. soil, even though the Senate voted against it 94 to 3?

Finally, what legal basis does the administration have to release trained terrorists into the U.S.?

Americans want answers. Unfortunately, the administration seems more comfortable discussing its plans for the inmates at Guantanamo with a European audience than it is discussing these details with Americans.

Senator SESSIONS wrote a letter to the Attorney General weeks before his trip to Europe asking about the legality of releasing trained terrorists into the U.S. He sent another one to the same effect on Monday. He still has not heard back.

During the same trip, Attorney General Holder talked specifics about Guantanamo with European leaders. He said that the administration has identified 30 detainees at Guantanamo who are ready for release and that he would ''be reaching out to specific countries with specific detainees.'' And according to reports, the administration has presented at least one country with a list of detainees it would like that country to accept.

Americans want to know that on the issue of Guantanamo the administration is as concerned about safety as it is about symbolism. They are concerned about the administration's plans for releasing or transferring some of the most dangerous terrorists alive. They want to know that these terrorists will not end up back on the battlefield or in their backyards.

At the very least, they should know as much about the administration's plans for these men as our European critics do.

So this morning I would like to ask the Attorney General to provide Congress with any information he has provided to foreign governments about his plans for detainees at Guantanamo. If the administration will not relate its plans to the American people or their representatives in Congress, it should at least relate the details of its conversations on this issue with foreign leaders. This is not too much to ask.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the second half.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

DOMESTIC ENERGY PRODUCTION

Mr. JOHANNS. Mr. President, I rise today to discuss some of the energy issues currently facing the American economy. First among them is our dependence on foreign sources of energy.

Last summer, we all experienced the consequences of serving the foreign masters who control most of the oil we consume. In July, oil prices climbed to just under $150 per barrel. Policymakers wrung their hands and scrambled while Americans tried to control their frustration. What did Americans see? They saw prices rising uncontrollably on the global petroleum market. That was especially painful for families. At the same time some at least started to realize that we have abundant reserves right here at home. But these reserves have been actively blocked by Federal policy for over 20 years.

Just how import dependent are we as a nation? Last year we imported about 4.7 billion barrels of oil. Based on an average price of $100 per barrel, Americans shipped about $470 billion overseas, nearly half a trillion dollars. That was just for calendar year 2008 alone.

We need to address this problem by expanding every domestic energy source in an environmentally responsible way. This strategy should include clean and renewable sources. I believe in that.

But one might ask: Why raise this issue now? That was last summer, and this year prices are down some. I raise this issue now to note to Nebraskans and to my Senate colleagues that even though prices have relented, our exposure to foreign oil markets has not changed. That alarms me, and it should alarm my colleagues.

I fear the American people are getting set up again. Unfortunately, United States policy on domestic sources of energy hasn't changed much. For too long our Federal policy on domestic energy sources has consisted of three words: No, no, and no. Unfortunately, since this administration has taken office, we have seen evidence of more of the same tired no, no, no policies. First the administration in February canceled 77 leases for natural gas development in the State of Utah. Can we turn our backs on a domestic resource as critical as this one? We know that natural gas is clean relative to other fossil fuels. We know demand for natural gas is only going to increase. We need look no further than the Capitol's own power plant. The Speaker of the House and her own majority leader announced on Friday that we will no longer burn coal to heat the Capitol complex buildings and water.

What is the alternative? It is natural gas. Most troubling, perhaps, we know that natural gas is not easily transported. So increasing demand translates very quickly into increased price where additional supply is not available. This is not only true for heating; it is especially true for fertilizer and other industrial uses of natural gas. Fertilizer affects my State immensely. For the good of our farmers, for the good of manufacturers, for the good of the Nation, we need to find more domestic sources of natural gas.

If the administration says no to Utah, what about energy exploration in the Outer Continental Shelf, known as the OCS? Since the early 1980s, there has been in place a Federal moratorium of one sort or another on exploration in the OCS. Essentially, most of the Federal waters of the Atlantic and California coasts were off limits to energy development. This is worth repeating. For more than 20 years, Federal policy blocked energy exploration in many of the OCS areas.

Finally, last year, in the face of $4 gasoline and very angry constituents, the moratorium on OCS exploration was lifted. Unfortunately, it appears to have been a short-lived victory.

In February, the administration announced a delay in the rules for exploration and utilization of the natural gas and crude oil off our shores. The administration assures us that the delay is only to pave the way for ''wise decisions.'' But to a savvy American public, it sounds like more of the same. It sounds like a policy of no, no, and no or at least delay, delay, delay some more, especially when they hear that the same script was used for oil shale leases. That is right. The administration in February also withdrew leases for research and development of oil shale on Federal lands in Colorado and Utah where our oil shale resources are equivalent to 800 billion barrels of oil.

The reason: According to the administration, the leases had ''several flaws.''

So what is the promise? The administration would offer a new round of oil shale leases for research and development. I will take the administration at its word but, again, it does sound like a broken record: Delay, delay, delay. So Americans, Nebraskans, and this Senator cannot be faulted for being a bit skeptical, for thinking that the most recent delays are simply more of the same. The day will return—unfortunately, perhaps in the not too distant future—when fuel prices will shoot up. Promises that the administration is doing everything it can may very well ring hollow. Americans will know that 77 leases for natural gas exploration were canceled. Americans will know that OCS and oil shale development and exploration was delayed again. Meanwhile their commutes are not getting any shorter. Their electricity bills are not going down. Fertilizer and food prices are continuing to increase.

There has been a lot of talk from the administration about ending our dependence on foreign oil. I welcome that. I want to be a partner in that.

But so far the actions don't match the promises. The administration's only comprehensive policy document, which would be the budget outline to date, contains no effort to increase domestic production of critical oil and natural gas resources. Instead, the proposal raises taxes on the consumption of energy, spends a small fraction of the revenue on energy research, and claims that it is a strategy to end our dependence on foreign oil. Again, we see a policy of saying no to domestic energy sources.

Research and development in this field—don't get me wrong—is a good thing. It is a great thing, as a matter of fact. But we need to be candid with the American people. This should not be about bait and switch. We cannot promise a plan to end our dependence on foreign oil but give them the President's proposal to reach in the back pocket to take control of more of their money. With an abundant, largely untapped supply here at home, surely the administration can do better than to say their best idea is to restrict demand through an energy tax. That is essentially telling the Americans, your best bet is to buy a sweater because it is going to be costly to heat your home.

I am going to end my comments where I started. I am worried. Nebraskans are frustrated by a policy of saying no to American energy. I am in favor of the expansion of domestic sources of energy of all sorts—wind and solar, wave and tidal and geothermal, alternative biofuels and nuclear—a policy of doing all we can to end our dependence on foreign oil. But I am also for expanding domestic sources of natural gas and crude oil. We need them. It simply makes no sense to buy from abroad, indeed to beg for more oil at times, when we have made it a matter of Federal policy to place our resources off limits. I, as one Senator, will be watchful. The President will send up his budget this week. We will see if the President demonstrates a commitment to bringing on line American natural gas and oil resources. I hope he does. I will be anxious to support that. We will watch and see if the administration continues, though, the policy of no when it comes to energy that is right here at home.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

WITNESS TO HUNGER

Mr. CASEY. Mr. President, I rise this morning to talk about a very important and very moving exhibit I am proud to host in the Capitol complex; in particular, specifically in the Russell Building. The name of the exhibit is called ''Witness to Hunger.'' It is a project created by Dr. Mariana Chilton at Drexel University in Philadelphia, PA, and it is currently on display not far from here in the Russell Building.

To create this exhibit, Dr. Chilton gave cameras—cameras—to 40 women living in Philadelphia so they could document their lives, their struggles with hunger and poverty and so many other challenges. The result is a powerful exhibit of photographs giving us an insight—not the whole picture but an insight—into the lives of these women and the lives they lead and their children's lives and their struggles living today in Philadelphia.

Women who are living in this city—part of this exhibit—try every day to provide a safe and nurturing home for their children, while finding a job that pays a living wage. They labor every day to provide food and medicine for their children. These are women fighting to make sure their children, their families, can have the health care they need. I will have the opportunity today to meet with several of the women who participated in the ''Witness to Hunger'' exhibit and this project. I wish to thank them for their bravery and rare courage to be able to open themselves, open part of their lives to all of us, and for making the trip to Washington so we can hear about their experiences firsthand.

I have always believed that at its best, when it is doing the right thing, Government is about people. It is not, in the end, about budgets and data and information and numbers. That is important, but that is the means to the end. It should be about not every day do we meet this objective, but it should be about and must be about people. Today, we have a real example of that, a real living example of real people's lives. ''Witness to Hunger'' reminds us that the programs we advocate for and work on and new initiatives in Washington that affect people's lives are what we must be about. There is no better investment, in my judgment, than in the future of our children.

I also believe every child in America—every single child—is born with a light inside them. For some, that light will be boundless or scintillating or incandescent. Pick your word. There are no limits to the potential some children have; because of intellect or circumstance or otherwise, their future is indeed boundless. For other children, that light is a little more limited because of those same circumstances. But I also believe, at the same time, no matter whether that light inside a child is boundless or much more limited, it is our obligation to do everything we can to make sure that child's potential—that bright light—is given the opportunity to shine as brightly as possible.

Kids in school right now will be the workforce that will help us build new industries and jobs and transform our economy into the future. The good news is we have already passed some important pieces of legislation that are improving children's lives. Last year, the farm bill included a very strong nutrition section to increase access and benefits for people who use food stamps, now called by the acronym SNAP, but food stamps and other nutrition programs. The Children's Health Insurance Program is another example which will bring the number of children in America who have the benefit of this good program—this time-tested, effective program—to almost 11 million American children. We will have an opportunity to do more because, despite the advancements we have made in children's health insurance, there are still 5 million more children, even when we get to the 10.5 million, 11 million children, 5 million more with no health insurance.

I have a bill on prekindergarten education, and I will be working on that to make sure children have an opportunity for early learning; nutrition programs which also include not just food stamps, as I mentioned before, but the school lunch program, the Women, Infants, and Children Program, and on and on. One of the most important endeavors we will be working on in the near term is the Child Nutrition Act, critically important to make sure children get a healthy start in life.

When we talk about that light inside a child, I do believe we have—all of us in both parties, in both Houses of Congress, and in the administration—all of us have an obligation to make sure that light shines as brightly as possible for each and every child. We do that by doing a number of things. One is to make sure the children have access to early learning, that they have nutrition in the early years of their life, and that they also have health care. If we at least provide that opportunity for every child—nutrition, health care, and early learning—not only will that child be better off, we are all going to be better off in terms of the kind of economy and, therefore, the kind of workforce that is the foundation of that economy we build into the future.

I hope my colleagues and their staffs have a chance to view this exhibit ''Witness to Hunger.'' I also believe it is in keeping with and is consistent with that commitment to make sure the light in every child burns as brightly as possible for each and every child in his or her family. I know that is my obligation as a Senator from Pennsylvania, and I believe it is all our obligations as Senators.

Mr. President, thank you very much. I yield the floor.

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

Mr. GREGG. Mr. President, is the vote at 10:30?

The ACTING PRESIDENT pro tempore. I believe it is 10:40.

Mr. GREGG. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

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

AUTOMOBILE INDUSTRY

Mr. GREGG. Mr. President, I rise to speak about the continuing effort to address the issue of our automobile manufacturers—specifically, Chrysler and General Motors, and especially where the taxpayer ends up in this effort, whether the taxpayer ends up as a winner or a loser.

On the Chrysler bailout proposal, it is pretty clear that if the administration's initiative is followed through, some very significant events will occur that will adversely affect the taxpayer. In fact, instead of getting a brandnew car, the taxpayer is going to let a lemon.

What is being proposed by the administration—or what was proposed prior to the bankruptcy being filed and which is now being pushed by the administration into bankruptcy, as I understand it—is that the three different classes of basic players, relative to the reorganization of Chrysler, would get significantly different treatment. For example, the taxpayer, who has already put $4 billion into Chrysler—the American taxpayer—would have to forgive all of that; all $4 billion would be lost, 100 percent lost under the administration's proposal, and then they would be asked to put another $8 billion into the pot as Chrysler comes out of bankruptcy. In exchange for forgiving the first $4 billion, the taxpayer would get 8 percent of the new Chrysler, the Chrysler that came out of bankruptcy. This was the proposal. I don't think that sounds like a great deal for the taxpayer, to have put $4 billion in and get none of it back—and remember, we just put the $4 billion in—and then to be asked to put another $8 billion in and get an 8-percent stake. It especially doesn't make a lot of sense when you look at what is proposed—well, let's go to the bondholders next, though.

The bondholders would be asked to essentially take an even more significant reduction in their position, which may be legitimate. They would be asked to forgive, I believe—well, I am not absolutely sure of the number they would be asked to forgive, but I think it would be in the multiple-billion-dollar range, and they would be asked to forgive it, even though they may be secured bondholders. So they would be basically wiped out in this process or their interests would be reduced dramatically.

The practical implications of that are that the bondholders had invested poorly, obviously, and specifically, they would have to forgive, I believe, $4 billion of their $6.8 billion of debt, and they would get $2 billion back. But that would be a big haircut, and that is probably reasonable. They made a bad investment. But interestingly enough, even though they are secured creditors, in many instances, or have a higher priority of bond debt than, for example, the UAW debt or maybe even the taxpayer debt, their position would be treated more detrimentally than the taxpayer or the UAW. That doesn't bother me all that much, from the standpoint of the taxpayer. Obviously, we should be treated better than anybody else in this process.

It does bother me a little bit from the standpoint of how you prioritize debt. If we look at what is happening with the UAW in the deal, as proposed by the administration, they would have to forgive, I believe, approximately $6 billion of their outstanding responsibility—outstanding debt—which is about 57 percent of the obligation of Chrysler to the UAW. But in exchange for forgiving that $6 billion, they would get a 55-percent stake in the new company.

So to review this situation, the UAW would forgive 57 percent of their debt owed them by the company—or $6 billion—and they would get 55 percent of the new company. The taxpayer would have to forgive 100 percent of what was just put into Chrysler and would get 8 percent of the new company. The senior bondholders would have to forgive all of their debt, and in exchange they would get $2 billion back. That doesn't make a lot of sense.

Basically, what is happening is, the UAW, the union, is being put in a far superior position than the bondholders, who are secure, or the American taxpayer, who basically was asked to put up $4 billion, and then has that wiped out in exchange for 8 percent of the new company, and then is being asked to put in another $8 billion.

This has two fairly significant implications. First, the taxpayer is buying a lemon, getting a bad deal. We, the taxpayers, are getting a bad deal. Second, the unions are getting a great deal. They are getting a higher status as secured debtors. They are getting a significantly higher return—which is 55 percent versus 8 percent of the new company—than the taxpayer. The process is basically turning on its head the traditional legal order under which people are repaid out of a bankruptcy estate. The taxpayer usually comes first out of a bankruptcy estate. Usually, it is the IRS in that case, then comes senior debt, then comes the issue of debt owed to pension funds, obligations which the unions have, and then comes the common equity. In this structure, it is just the opposite. Well, that change sends a very serious signal to the marketplace that is not good because if people don't know the prioritization of debt, then they don't know how to lend money and what the cost of the money they lend should be.

That is going to affect interest rates and create uncertainty and basically undermine what is an established rule of law that we have in this Nation relative to the prioritization of how people get paid off when somebody goes into bankruptcy. It is a very important issue, one of the things that makes our commercial system different than, say, a place like Russia, where you have no idea what is going to happen when you go into a court system because it is totally arbitrary. In ours, we have a structured proposal, an orderly way of approaching things. Everybody knows what is going to happen if an investment should go south. Everybody knows what their order of priority is in being paid out. In a bankruptcy situation, it is pretty clear.

Yet now comes the administration, and for what appears to be purely political reasons, not economic reasons, because the economic issue is how you basically take a company such as Chrysler and make it competitive again so it can produce cars that people want to buy at a price people can afford—that is the economic issue—and keep it viable to the extent that it is viable. No, this is a political decision to reorder who the winners and losers are in a structure—what amounts to an attempt to structure a bankruptcy before it occurs. That was the administration's initiative.

This is a serious issue. When we start putting politics in place of the law in any area in our Nation, but obviously in the area of commercial activity—when we start picking winners and losers based on the political party's implied interest or interest in seeing a certain segment of the society be the winner versus another segment they see as being less deserving, then we undermine the essence of our commercial activity in this Nation, which is to have knowable, identifiable, ascertainable results, as a result of having a legal system that defines people's property rights.

Yet this administration, in a very cavalier way, has suggested that the UAW should be a huge winner compared to the taxpayers and the bondholders in a manner which has no relationship to what has been the historical priority of status relative to distributing and reorganizing a company—distributing a bankruptcy estate and reorganizing a company.

Why would it occur that this administration would, in a very arbitrary way, try to set aside the rules of priority of ownership and property rights to benefit one group over another group outside of what has been the historical and legal way things have been structured? It is obvious. It doesn't take much to recognize that. The UAW has a huge political influence in this administration and in this Congress. They used that political influence to make sure this deal was structured in a way that most significantly benefitted them. But who is the loser? The loser is the real stakeholders and people to whom we are supposed to have primary responsibility as a government, and that is the taxpayers. The taxpayers are the losers on the face of it, when we

only get 8 percent and the unions get 55 percent of the new company, and we are paying $4 billion and they are paying $6 billion, and then we are putting in another $8 billion on top of our $4 billion. So it ends up being $12 billion, and we only get 8 percent. The unions will put in $6 billion to get 55 percent.

That is not right. It is not appropriate, and it is not fair to the taxpayers of America. But that was the proposal and what is trying to be strong-armed through this system. It is not fair to the taxpayers. It also sets a dangerous precedent of trying to reorganize the stated priority of status relative to the right to recover under a bankruptcy situation or pursuant to secure property issues in a way that could be translated into, significantly, other parts of the economy.

People will now question the status of their debt and inevitably have to charge more in order to try to ensure over the unpredictable consequences of the Government coming in and reordering the priority of the debt. That is dangerous in a commercial society that depends on law in order to set an established order of property rights.

This is a big issue. It hasn't been discussed much. Obviously, the bankruptcy courts have now stepped in because some of the secured parties have said they wouldn't accept the deal. But still the administration pushes this concept of having the taxpayer take a vastly significant, reduced position compared to the UAW, while putting in much more money than the UAW and, at the same time, reordering the priority of property rights.

I hope people will begin to focus on this issue, and I hope our bankruptcy courts will stick with what is the order of the law and not the order of politics.

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

The PRESIDING OFFICER (Mr. BENNET). The clerk will call the roll.

The assistant bill clerk (Adam Gottlieb) proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 896, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 896) to prevent mortgage foreclosures and enhance mortgage credit availability.

Pending:

Dodd/Shelby amendment No. 1018, in the nature of a substitute.

Dodd (for Grassley/Baucus) modified amendment No. 1020 (to amendment No. 1018), to enhance the oversight authority of the Comptroller General of the United States with respect to expenditures under the Troubled Asset Relief Program.

Dodd (for Grassley/Baucus) modified amendment No. 1021 (to amendment No. 1018), to amend chapter 7 of title 31, United States Code, to provide the Comptroller General additional audit authorities relating to the Board of Governors of the Federal Reserve System.

Dodd (for Kerry) modified amendment No. 1036 (to amendment No. 1018), to protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property.

Reed/Bond amendment No.1040 (to amendment No. 1018), to amend the McKinney-Vento Homeless Assistance Act to reauthorize the act.

Casey amendment No. 1033 (to amendment No. 1018), to enhance State and local neighborhood stabilization efforts by providing foreclosure prevention assistance to families threatened with foreclosure and permitting statewide funding competition in minimum allocation States.

Coburn amendment No. 1042 (to amendment No. 1040), to establish a pilot program for the expedited disposal of Federal real property.

Dodd (for Reed) modified amendment No. 1039 (to amendment No. 1018), to address impediments to liquidating warrants.

Dodd (for Boxer) amendment No. 1035 (to amendment No. 1018), to require notice to consumers when a mortgage loan has been sold, transferred, or assigned to a third party.

Dodd (for Schumer) modified amendment No. 1031 (to amendment No. 1018), to establish a multifamily mortgage resolution program.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am going to read a unanimous consent request which will list a lot of numbers, but these numbers relate to Members and the various amendments being offered and the sequencing of them. I say to my colleagues, Senator REED from Rhode Island, Senator BOXER, Senator CASEY, and Senator GRASSLEY, that if they would like a minute to be heard, this consent request includes giving them a minute to address their amendment. That order is: Senator REED, Senator BOXER, Senator CASEY, and Senator GRASSLEY.

Mr. President, I ask unanimous consent that the order for votes be changed as follows and that votes occur in relation to the amendments covered under the previous agreement; that it be in order to consider and agree to the following amendments, en bloc, and that the motions to reconsider be laid upon the table, en bloc: amendment No. 1039, as modified, amendment No. 1035, amendment No. 1033, and amendment No. 1020; that a Member with an amendment being accepted be accorded a minute; further, that the vote sequence now be amendment No. 1036, as modified, amendment No. 1031, as modified, amendment No. 1042, amendment No. 1040, and amendment No. 1021, as modified; further, that the remaining provisions of the previous order remain in effect.

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

The four amendments are agreed to en bloc.

The amendments (Nos. 1039, as modified, 1035, 1033, and 1020) were agreed to.

The PRESIDING OFFICER. The Senator from Rhode Island is entitled to 1 minute.

AMENDMENT NO. 1039, AS MODIFIED

Mr. REED. Mr. President, I thank the chairman.

My amendment makes it very clear that when financial institutions repay their TARP funds, the Secretary of the Treasury is not required to liquidate or surrender the warrants. Warrants were issued to the Department of Treasury in conjunction with the capital injections under TARP. They are valuable financial instruments. They are separate from the TARP funds. I think it is the responsibility of the Secretary of the Treasury to balance many factors, but one factor they must consider is obtaining a substantial return for the taxpayers because of their investment of funds. This will allow him the discretion to do that. It will be an important way in which the Treasury Department can recoup some of the investments of the taxpayers in this program.

I thank the chairman.

Mr. DODD. Mr. President, I strongly endorse the Reed amendment. It is a very strong contribution to the bill. I commend him for it.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 1035

Mrs. BOXER. Mr. President, I say thank you, particularly to Chairman DODD but also to Senator SHELBY, with whom I have discussed this amendment. It is very simple. It just says that if you have a mortgage on your home, you ought to know who holds that mortgage note. We say that if your mortgage is sold to someone else, the new party has to let you know who they are and how they can be contacted. This is very important. We have read stories where people cannot find out who holds their mortgage. Frankly, if you are in trouble and you want to renegotiate your mortgage, you need to sit down with the company that holds your note. That is all we do in this amendment.

I am very pleased. It seems like a no-brainer to me. Clearly, the law needs to be made explicit because, frankly, the people who hold the mortgages seem to go into hiding and you cannot find them when you want to find them.

Again, my deepest thanks. I appreciate it.

Mr. DODD. Mr. President, I thank Senator BOXER of California for this amendment. It is so reasonable, and yet so many people have had difficulty. Today, with the securitization of mortgages, that mortgage no longer stays at your bank for the length of that mortgage. Today, it is sold off very quickly. When homeowners want to

find out who actually has that mortgage, it is almost impossible to discover that. Senator BOXER's amendment makes that possible once again, and it is a very valuable contribution to the bill.

Mrs. BOXER. Will the Senator yield?

Mr. DODD. Yes.

Mrs. BOXER. Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed by several consumer organizations supporting this amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAY 4, 2009.

Chairman CHRISTOPHER DODD,
Senate Banking Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DODD: The undersigned representatives of homeowners strongly urge you to support the amendment offered by Senator Boxer which would only require that homeowners be informed of who owns their mortgage loans. This simple disclosure bill mandates that when a mortgage loan is transferred, the homeowner be informed of how to reach an agent of the new owner with the authority to act on its behalf.

There are many examples of homeowners who were unable to exercise their federal rights, unable to work out a reasonable solution to all parties, unable to avoid a foreclosure, even when the foreclosure will cost the investor money, just because the homeowner did not know, and could not find out the identity of the owner of their home mortgage.

A recent reported case in Pennsylvania illustrates the need for this straightforward amendment (Meyer v. Argent Mortgage Co. (In re Meyer), 379 B.R. 529 (Bankr. E.D. Pa. 2007).) James and Mary Meyer took out a high-rate home loan with Argent Mortgage in 2004. However, when they later attempted to exercise their rights under TILA to rescind that loan, their servicer, Countrywide, refused to identify the current holder. By the time the Meyers discovered that the current holder was Deutsche Bank, the deadline for rescinding the loan had passed. As a result, the court dismissed their claim, even though it found that there were grounds to rescind the loan. Had the Meyers known who their note holder was, they could have exercised their rights under TILA to rescind the loan and cancel the lien against their home.

Current law does require that homeowners be informed when the servicer is changed. Yet, servicers too often refuse to modify loans, because their remuneration will be greater if there is a foreclosure. And, federal law requires that servicers tell the homeowner the identity of the note holder. Yet this provision—15 U.S.C. 1641(f)(2)—has completely failed to protect homeowners because there is no private right of action, and no specific requirement to name a particular party with authority to act on behalf of the owner.

Senator Boxer's simple amendment provides borrowers with the basic right to know who owns their loan by requiring that within 30 days after a mortgage loan is transferred, the new owner would be required to provide the following information: the identity, address, and telephone number of the new creditor; the date of transfer; how to reach an agent or party having authority to act on behalf of the new creditor; the location of the place where the transfer is recorded; and any other relevant information regarding the new creditor.

This is merely a disclosure requirement—to bring a bit of clarity and transparency to the opaque mortgage market. The cost to the industry is small. The benefit to homeowners and communities would be tremendous.

Thank you for your consideration. Please contact Margot Saunders at the National Consumer Law Center with any questions—(202) 452 6252, ext. 104.

Sincerely,

CONSUMER ACTION.
CONSUMER FEDERATION OF AMERICA.
CONSUMERS UNION.
NATIONAL ASSOCIATION OF CONSUMER ADVOCATES.
NATIONAL ASSOCIATION OF NEIGHBORHOODS.
NATIONAL CONSUMER LAW CENTER.
NATIONAL COUNCIL OF LA RAZA.
NATIONAL FAIR HOUSING ALLIANCE.

Mrs. BOXER. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania has 1 minute.

AMENDMENT NO. 1033

Mr. CASEY. Mr. President, I thank Chairman DODD and Senator SHELBY, as well, and so many others who made it possible for a lot of these amendments to come together.

Our amendment is very simple. It sets aside up to 10 percent of the dollars allocated for the Neighborhood Stabilization Program, a very good program. We wanted to have some of those dollars used for counseling or for foreclosure prevention and mitigation. This allows that to happen. It is a very good result for people struggling with the terrible problem of foreclosure.

I thank the chairman for his work.

Mr. DODD. I thank the Senator. Having authored the neighborhood stabilization bill, those dollars going back to the communities have been a great asset in order to deal with foreclosed properties and to mitigate. Bridgeport, CT, in my State, is one example. I think all of our colleagues can cite examples. Allowing for the allocation of some of these resources along the lines the Senator from Pennsylvania suggests is a terrific contribution as well. I thank him for it.

AMENDMENT NO. 1020

Senator GRASSLEY was the other admendment. I commend Senator GRASSLEY for his amendment. It is a good amendment, in my view, and one worthy of our support. I am not sure he is going to be able to be here to make a comment. It is a good amendment. I urge my colleagues to support it. We worked on it yesterday, and Senator GRASSLEY is to be commended for his efforts.

AMENDMENT NO. 1036, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 1036, as modified, offered by the Senator from Massachusetts, Mr. KERRY.

Mr. KERRY. Mr. President, we have taken a lot of effort to try to help troubled borrowers in communities that have foreclosed properties. Here is the problem that exists. If you are a renter and living in a property that has been foreclosed on, you have nothing to do with the foreclosure, you are paying rent, you have a lease, but a lot of these people are getting kicked out of their apartments, out of their homes.

What we want to do is provide them with a provision where they will have 90 days—if the people who foreclosed are going to use that residence as a primary residence. If the residence is going to continue to be a multiple-party residence where they have a number of people renting and they will continue to use it as such, we want to leave those leases in effect until the end of the lease. We are protecting legitimate, low- to moderate-income folks in America who do not get protections otherwise from being just booted out on the street, which is literally what has happened in the absence of this protection.

This provision will sunset in the year 2012 and only applies to properties with legitimate leases.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KERRY. I know colleagues will support it.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I believe this is not a good proposal. This changes the law, as we understand it. It has been working a long time. It will cause all kinds of problems. Once a property is foreclosed, what do you do with it next? It delays it.

I ask my colleagues to oppose the Kerry amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 39, as follows:

[Rollcall Vote No. 182 Leg.]

YEAS—57

Akaka	Feingold	Merkley
Baucus	Feinstein	Mikulski
Bayh	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Inouye	Pryor
Boxer	Kaufman	Reed
Brown	Kerry	Reid
Burris	Klobuchar	Sanders
Byrd	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Snowe
Carper	Leahy	Specter
Casey	Levin	Stabenow
Conrad	Lieberman	Tester
Dodd	Lincoln	
Dorgan	McCaskill	
Durbin	Menendez	

Udall (CO)	Warner	Whitehouse
Udall (NM)	Webb	Wyden

NAYS—39

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

NOT VOTING—3

Johnson	Kennedy	Rockefeller

The amendment (No. 1036), as modified, was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. KERRY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 1039, AS MODIFIED

Mr. DODD. Mr. President, not withstanding its adoption, I ask unanimous consent the Reed amendment, No. 1039, be modified with the change at the desk.

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

The amendment, as modified, is as follows:

At the appropriate place, insert the following:

SEC. 126. REMOVAL OF REQUIREMENT TO LIQUIDATE WARRANTS UNDER THE TARP.

Section 111(g) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(g)) is amended by striking ''shall liquidate warrants associated with such assistance at the current market price'' and inserting '', at the market price, may liquidate warrants associated with such assistance''.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, let me notify my colleagues here, there will be no more votes at this moment. There will be some votes around 1:30. The pending matter is the Schumer amendment. There is some effort being made to see if some agreement can be reached on that. There is an outstanding issue. After that would be Senator COBURN, Senator JACK REED, and Senator GRASSLEY. I know we intended to have two or three votes but, because of these problems, we cannot at this moment, so I leave it to the leadership—1:45, I am now being told, is when the next vote will occur.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Ms. STABENOW. I ask unanimous consent that the Senate proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

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

The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that after Senator STABENOW is finished, I then be recognized and then Senator MCCAIN be recognized to offer our statements introducing the bill which will be called up after the final passage of the pending legislation.

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

Mr. REID. I did not hear the Senator's request.

Mr. LEVIN. The suggestion was that we make our opening statements during this lull time. That is fine with Senator MCCAIN and me.

Mr. REID. Mr. President, that would be wonderful. I have spoken to the Republican leader. We can come back and start voting at 1:45. I would ask that be the order.

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

Mr. REID. The problem now is, the Republican leader and I did not know about a problem. So we will come back about 2.

I yield to my distinguished colleague.

SOJOURNER TRUTH

Ms. STABENOW. Mr. President, I rise to salute an outstanding woman who spent the final days of her life in Michigan and will be buried in Battle Creek, MI. It is appropriate that my partner and colleague and friend, Senator LEVIN, is on the floor as well.

I rise to salute a woman who was a pioneer, a patriot, a champion for equal rights, and a proud citizen of Michigan for the last 26 years of her life, Sojourner Truth. Last week she was honored with a bronze bust, a beautiful sculpture by Artis Lane, in Emancipation Hall in the Capitol Visitor Center.

Sojourner Truth was an activist, someone we might call today a community organizer. She was active for civil rights and for women's rights. She was also a mother and a proud American.

Born into slavery, as a young girl she learned only Dutch because that was the language that was spoken by her plantation owner. When she was only 9 years old, she was sold with a flock of sheep for $100 at an auction. Her new owner did not speak Dutch and beat her severely until she learned English. She did learn English, and quickly, but carried a subtle Dutch accent for the rest of her life.

Eventually, she was married, not the man of her choice but the man of her master's choice, and had several children. Sojourner had secured a commitment from the plantation owner that if she worked hard and faithfully, she would be freed. When the State of New York, where she was at the time, began the process of emancipation, she approached the owner and asked him to honor her agreement. He refused.

Infuriated, she went to work. She worked hard until she felt she had upheld her end of the bargain and then she walked away. She said: ''I did not run off, for I thought that wicked, but I walked off, believing that to be all right.''

She began working to free the rest of her family from slavery. When New York finally emancipated all of the slaves, Sojourner found, to her horror, that her 5-year-old son Peter had been illegally sold to a plantation in Alabama. She turned to her faith in God, as she had done when she endured the lash and as she would do as she continued her fight for equal rights.

She turned to her friends in the religious community, especially the Quakers, who offered her comfort and counsel. She turned to the law, to that great promise of America, that liberty and justice are accessible to everyone.

When her son, this little 5-year-old boy, her precious child, walked into the courtroom, Sojourner was stunned. Her tiny son had been abused with such cruelty; he had scars from head to toe. She cried out:

See my poor child. Oh, Lord, render unto them double for all of this!

She won her case, a Black woman against a wealthy White man, a rare occurrence. Less than a year later, that same slaveholder, apparently without little Peter to beat up on, beat and killed his wife. On hearing the news, Sojourner was devastated. She realized her prayer had been answered, but she did not rejoice. She said: ''I did not mean quite so much, God.''

Such character in this woman. Sojourner Truth stands out as someone who has been devoted to values we hold dear today: liberty, equality, justice, and also a deep compassion and sympathy for the suffering of others.

She truly embodied the Christian principles of hope, love, and charity. She eventually came to live in a small religious community called Harmonia, located just outside Battle Creek, MI. There she preached the gospel and traveled around the country, giving speeches and fighting for the abolition of slavery and the rights of women.

Sojourner helped recruit Black troops for the Union Army to end the scourge of slavery. She was a leader in her community, an elder, and a source of inspiration. She was a humanitarian, traveling to Kansas in her eighties to help the refugees who were fleeing discrimination in the South.

She never lost her faith in God or in the inherent goodness of all people, no matter how awful they acted, no matter what terrible things they had done to her. In these trying times, she is truly an example of the kind of person we should all wish to be.

I am proud she chose to make Michigan her home for the last 26 years of her life and her final resting place. We are a State full of fighters, with a spirit that gets us through tough times, which we certainly are facing today.

I am pleased that as visitors come to the Capitol, as they enter Emancipation Hall, they can see Sojourner Truth as she was: A fighter, a spirited woman, a passionate civil rights leader, and a mother filled with compassion, a patriot, and the embodiment of the American ideal.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that the pending unanimous consent agreement be modified so Senator DURBIN can be recognized in morning business.

The PRESIDING OFFICER (Mrs. GILLIBRAND.) Without objection, it is so ordered.

MORTGAGE FORECLOSURES

Mr. DURBIN. Madam President, there was a debate last week on the floor of the Senate about the mortgage foreclosure crisis facing America. It was estimated a year ago we were going to lose 2 million homes to mortgage foreclosure.

The new estimate from Moody's is 8 million homes. What does that mean? It means one out of every six home mortgages will face foreclosure. That is a national crisis. It is at the heart of this recession.

The problem, of course, is that those people who have loaned money on these mortgages are content to see them go all the way through foreclosure and become vacant eyesores in neighborhoods across America.

That is not good for the family who lost the home, it is certainly not good for the neighbors next door who watch their real estate values plummet. It turns out, it is not good for the bank. A bank in foreclosure will lose some $50,000 in the process, with all the fees that are associated with it, and then end up with an empty house.

Some 99 percent of homes in foreclosure go back to the bank, and they sit there as eyesores because banks are not landlords; they do not cut the grass, they do not worry about whether the flowers are going to be planted in the spring. They are waiting for something to change economically. While they are waiting, that neighborhood is changing because of that foreclosed home.

A foreclosed home in your neighborhood is going to bring down your property values. We offered the banks this option: We said to the banks and those who hold the mortgages: If you will invite in the borrowers at least 45 days before they would file for bankruptcy, have them bring the legal documents in and calculate what it would take to offer them a mortgage to stay in the home, if you make them the offer of a renegotiated mortgage and they turn it down, then they go to bankruptcy court and, frankly, have no recourse there to turn to, because, you see, bankruptcy courts will not change the mortgage on your home, even if you are in bankruptcy facing foreclosure.

They will change the mortgage on your vacation home, your farm or your ranch but not your primary residence. I literally negotiated with banks for months to try to find out some way we could protect these homeowners to give them a second chance, if, in fact, they had an income and they could, in fact, pay a mortgage, and say to the banks: You have the last word if someone ends up in bankruptcy.

Well, we went through months of negotiations. In the end, virtually all the banks, all the banks except Citigroup, picked up and walked out of the negotiation. They said: We are not interested in negotiating. So the amendment was defeated last week.

I did not receive a single vote on the other side of the aisle and lost several votes on the Democratic side. Some of the people who watched this debate said: Well, why did you call up this measure? It was not going to pass. I called it up for the same reason this year as I did last year. This crisis is getting worse. I have met these people who have lost their homes in foreclosure. I feel a responsibility to them to make an effort so they have a chance to save their homes.

Three of them came to a press conference in Chicago on Monday, each one of them telling a heartbreaking story of a home they worked hard for, and because of some deception in their mortgage or being misled by a mortgage broker or being given a stack of papers they could not possibly absorb and understand, these people were going to lose their homes, many of them in tears after being in these homes for years. Their neighbors came and talked about the same problem. What is it going to mean with this empty house in foreclosure?

So now we find that many of the same people who opposed the idea of dealing directly with mortgage foreclosure are now coming forward when it comes to the bankruptcy of the Chrysler Automobile Corporation.

This morning in the Washington Post, Harold Meyerson had an article entitled: ''What's Good for Chrysler.'' He tells the story of a court hearing. The court hearing is over the potential bankruptcy of Chrysler. The attorneys representing the hedge funds have come out in opposition to the Chrysler bankruptcy workout.

Judge Arthur Gonzalez noted, and I quote from the story, in denying the request of the attorneys for the hedge funds:

> Blocking the loan—
>
> Which is being asked for—
>
> would force Chrysler (and, he could have added, many of its suppliers and dealers) to liquidate—throwing tens (perhaps hundreds) of thousands of Americans out of work during the most serious recession since the 1930s and terminating medical benefits to tens of thousands of Chrysler retirees.
>
> Liquidation—
>
> Which is what the hedge fund attorneys are asking for in Court—
>
> would also compel the American public [the taxpayers] to write off the loans the government has made to the company, rather than become shareholders in the slimmed-down Chrysler, as the Treasury's plan suggests.

What the Department of the Treasury and the workers are trying to do is to save the car company. They understand they have to make massive concessions. They have to change the way they do business. But their ultimate goal is to see Chrysler survive so that jobs will be protected and so that retirees' health benefits will not disappear. So, ultimately, the taxpayers of America who loaned money to Chrysler will be paid back. The hedge funds, many of them also involved in the mortgage crisis, have turned the same deaf ear to Chrysler's situation as they did to mortgage foreclosures. They are in it for one reason—to make a buck, take the profit and go home. They don't care about the ultimate consequence.

The ultimate consequence of Chrysler liquidating is, of course, misfortune for the workers and retirees, but more burdens on taxpayers. What happens to workers who lose their jobs at Chrysler? They draw unemployment benefits, benefits paid for, some by the company and others by taxpayers. What happens to retirees who lose health care benefits? They become more dependent on government programs to help them survive.

Once again, this part of our economy, the financial industry, has shown an insensitivity to the reality of the recession. Whether it is mortgages in Albany Park in the city of Chicago foreclosed upon, changing that neighborhood, or whether it is the Chrysler employees and retirees fighting for their economic lives, the hedge funds on Wall Street have said: We are going to turn a blind eye. We are not going to get involved. We will not make a commitment.

There will come a time, and I hope soon, when there will be a reckoning—it didn't happen last week; it may happen soon—when the Senate stands up for a lot of people who need a voice in this Chamber, many of whom can't afford a lobbyist in the hallway, many of whom are just struggling, hardworking families. Whether they are in Michigan, where Senator LEVIN represents the State, as does Senator STABENOW, or in the State of Illinois which I represent, these people need folks who will stand up and fight for them. It won't be easy.

For those who are prepared to stand up and fight, also be prepared to lose. I

lost on my amendment last week. But I am not going to give up. The defeat of the amendment on mortgage foreclosure is postponing the inevitable. The inevitable is that we are going to have to reckon with the financial institutions in this country and the fact that they do not have the national interest in their hearts when it comes to some of these basic decisions that need to be made.

It is time for us to work with the will of the people of this country and to establish some order that gives working families and homeowners across America a fighting chance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, before the Senator from Illinois leaves the floor, I thank him. He has been a voice, indeed, for people who don't have a voice. He has done that throughout his career both here and in the House. It is a pleasure listening to him.

I believe I asked unanimous consent to have my statement on S. 454 printed in the RECORD immediately after our legislation is called up this afternoon, and with the permission of Senator MCCAIN, I ask unanimous consent to have his statement also printed in the RECORD at that time.

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

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from New York is recognized.

HELPING MOTHERS AND CHILDREN

Mrs. GILLIBRAND. Madam President, I rise today to talk about a bill that I will be introducing called the Elimination of the Single Parent Tax Act.

When I came to the Senate, I reflected often on some of the work I did in the House. As a Congresswoman, I spent a lot of time in my community doing ''Congress on York corner.'' I would go to a local book shop or a senior center or a grocery store and meet with folks and listen to their concerns. I would try very hard to turn those concerns into legislative ideas.

One of the last ones I did as a House Member was in Warren County. A woman said to me:

> Congresswoman, I received a bill from the Federal Government and I need you to do something about it.

She was very visibly upset. She also said to me:

> This is a bill for $25. I am a single mom and I earn about $20,000 a year. I have 3 boys. The Federal Government is billing me because I receive child support. I cannot handle another bill, and while $25 may not seem like a lot to you, it is to me, because $25 is what I spend for my boys for lunch for a week. Please do something about this.

I looked into the issue, and I found out it was part of the Bush administration's Deficit Reduction Act of 2005. It occurred to me, why in the world are we trying to balance the Federal budget on the backs of single parents, particularly those who need that money to provide for their kids? On average, 30 percent of the income that single parents receive is from their child support. So it goes a long way to providing basic needs for their kids, whether it is for diapers, baby formula, food, education, or health care. So I wrote this bill to address this problem. I think it should not be paid by the single parents, or the States, and that, in fact, the overhead should be covered.

This penalty raises only $65 million per year. That is a cost I think we should include as we begin to look at the Deficit Reduction Act this year.

Interestingly enough, in the Deficit Reduction Act, under the Bush administration, they also cut more than $4 billion of incentive payments the Federal Government had made to States to help encourage them to improve child support programs. This funding is crucial to how our single parents provide for their kids.

As we begin to look at Mother's Day, which is right around the corner and it is a time when we all reflect on how much our mothers have done for us and how much we love them, I think we as Federal legislators should do what we can do to protect our mothers and to stand up for them and help them take care of their kids.

If we can pass this bill, it will make a difference for many families in New York State. There are more than 200,000 families who are affected by this tax. For example, over 13,000 single parents in western New York; over 14,000 single parents in Rochester and the Finger Lakes region; over 11,000 single parents in central New York; over 8,000 single parents in the southern tier; over 18,000 single parents in the capital region; over 7,000 single parents in the north country; and over 25,000 single parents in the Hudson Valley.

Right now there are 27 States across the country that are charging this single parent penalty tax. This could make a difference all across our great Nation.

I am going to work very hard with the Finance Committee chairman to strike this fee from the Deficit Reduction Act when it is reviewed by the committee in the coming months.

As we reflect on Mother's Day, we have to do our part to make a difference for our mothers. One other issue that is near and dear to my heart that will make a difference for our moms is the Paycheck Fairness Act. If we look at the statistics, it is pretty unbelievable. For every dollar a man earns, a woman earns only 78 cents. If you are a woman of color, it is even worse. If you are an African-American woman, you will earn 62 cents. If you are Latino, you will earn 53 cents. That is unacceptable and unfair because when women earn more money, they can bring more money home to their families and better provide for their kids. All the statistics show when women earn their fair share, children have better access to education, health care, and opportunities.

As we celebrate Mother's Day, let's do something for our mothers and fight for them so they can protect and provide for their children.

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

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

Mr. ENSIGN. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. The Senator has that right.

CELEBRATING THE ACHIEVEMENTS OF WEST PREP

Mr. ENSIGN. Madam President, I rise to honor the leaders, visionaries, students, faculty, and the parents at West Prep in North Las Vegas, NV. At a time when disappointing and depressing news seems to fill our days, there is a light of promise beaming from a very unlikely place in my State.

Just a few short years ago, the writing was on the chalkboard for West Middle School. The school was persistently dangerous and consistently the lowest performing middle school in southern Nevada. Madam President, 100 percent of the students are from low-income households, and 92 percent of them are Hispanic or Black. These children had not just been left behind, their futures were sort of swept under the rug for someone else to deal with at another time.

Fortunately, there are educators who will never settle for that. Associate superintendent Dr. Ed Goldman asked if he could take the school over. He hired a young, brash, hungry principal named Dr. Mike Barton and made sure the school had empowerment-level funding. He also gave Dr. Barton tremendous reign over the school. That was in April 2006.

Today, West Prep is a study in education innovation. They extended the school day and provided a third semester as summer school. Forty percent of the children have voluntarily signed up for this summer school. Now they have begun a transition to a full K–12 campus. There is afterschool tutoring. The students wear uniforms. There is a newcomer track for students new to the United States. Science and math classes are divided by gender. There is a law enforcement class that collaborates with the FBI and a Men Mentoring Men program, both of which are keeping kids out of the dean's office. Students feel safe now when they go to this school. Most importantly, they are finally learning.

I had the opportunity to visit this school and observe the students throughout the school. When an adult walks into the classrooms, all of the children stand, say good morning, sit back down, and continue their lesson. They are taught to respect elders.

When I visited that school, I had the opportunity to observe a chemistry class. They were performing a chemistry experiment. I asked one of the students—she was an African-American young lady who had attended the school before Dr. Barton took over: What is the biggest difference between then and now? What was happening now, as opposed to before educators shook things up? She had a very simple reply. She said: Now I get to learn.

It seems like such a simple thing, to be able to learn, almost shocking that those kinds of words would come out of her mouth. But these students had been robbed of that opportunity. We are the greatest Nation on earth, and we have not figured out how to make it so all our kids can learn. Give a child an education—an education that teaches and inspires—and there is no limit to their potential. The test results at West Prep are proof.

This school has seen phenomenal test score growth. Recently, we learned how phenomenal that growth is. Three years ago, only 17 percent at what was then West Middle School could read or perform math at grade level. Only 17 percent. Today, 97 percent of juniors are proficient in reading, 73 percent are proficient in math, and 64 percent are proficient in science. About 80 percent of the juniors were enrolled at the school 3 years ago when Dr. Barton took over. Isn't that amazing?

I am so proud of what Dr. Goldman and Dr. Barton have done, but I am especially proud of the students, the teachers, and the parents at West Prep. Together they have turned the tide. Every day we see at West Prep what quality education can accomplish.

There is still work to do, but there is a can-do feeling that has spread throughout the community, and you feel it when you walk onto the campus. See, Dr. Barton was given freedom to lead that school. He isn't tied down by bureaucracy. He spends most of his time in the school, when a lot of the other principals today go to school district meetings, spend time on bureaucracy. The other thing is, he can fire teachers who are not performing. In fact, when he came onboard, he replaced a majority of the teachers. Remember, he is recruiting teachers into one of, what most people would describe in southern Nevada, the least desirable places to live or teach in southern Nevada. But now he has a team in place that he knows will motivate his students and help them reach their potential. This formula is working.

In 2006, nobody imagined this school could ever reach the level of success it has in such a short period of time. Instead, the school will graduate its first senior class next year. It is raising the bar every day as it shakes up traditional education. Most importantly, the students of West Prep are learning and reaching their full potential.

Congratulations, West Prep. We are all so proud of you and what you have accomplished.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. I ask unanimous consent that the order for the quorum call be rescinded.

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

EXPRESSIONS OF APPRECIATION

Mr. DODD. Madam President, I am going to read a unanimous consent request in a moment, but before then, because I don't have any time at the conclusion of the last vote before the vote on final passage, I wish to take a minute to thank the majority leader, Senator REID, for making it possible for this bill to be before the Senate this week. I am grateful to him and his staff.

I thank my staff, who have done a terrific job: Jonathan Miller, principally, from my Banking Committee staff, as well as many others from the Banking Committee staff who worked very hard to bring this bill together and to create the opportunity for our colleagues to offer as many as 20 different amendments, most of them in direct relation to the bill but others to add items which will strengthen the bill. I want to specifically thank Colin McGinnis, Beth Cooper, Dean Shahinian, Julie Chon, Brian Filipowich, Misha Mintz-Roth, Deborah Katz, Matt Green, Amy Widestrom, Ella Humphry, and James Bair.

I thank Senator SHELBY and his staff as well—Bill Duhnke, Mark Oesterle, Andrew Olmem, Peggy Kuhn, Hester Pierce, and Jim Johnson. We worked very cooperatively. While there were some differences of opinion on a couple matters involved with this legislation, overall we had great cooperation, as we have had over the past 2 years I have been chairman of the committee. I am grateful to him and his staff for the cooperation they have with my office.

We have a strong committee of some 23 members. Almost a quarter of this body serves on the Banking Committee. They add great value to the process. I am grateful to them.

This is an important matter, not just for financial institutions but, more importantly—I say that with some caution—to open up lines of credit. We need to have an increase in deposit insurance. We need to have an increase in the borrowing authority. Sheila Bair, for whom most of us have great respect, is Chairperson of the Federal Department Insurance Corporation and is doing a wonderful job. This bill includes that.

We have provisions in here to provide a safe harbor for servicers—a key component of the legislation designed to get servicers to pursue loan modifications more aggressively. I thank Senator MARTINEZ of Florida for his contribution to this provision.

I see Senator ENSIGN in the Chamber, who, working with Senator BOXER, added value to this bill as well, making it possible for homeowners to determine who actually holds their mortgages.

Senator GRASSLEY added contributions, as well, to accountability and transparency. Senator REED of Rhode Island has done a great deal in providing greater flexibility in terms of warrants, which I think is going to strengthen the bill as well. Senator REED also contributed groundbreaking legislation to fight homelessness along with Senator BOND.

Invariably, when I start doing this without a note in front of me, I am going to forget some Member and their contribution to the bill. So I will reserve the ability to amend these remarks to make sure I include others who have contributed to this legislation.

But this bill includes the kinds of steps we need to be taking in order to get our economy moving, to increase that confidence and optimism so critical to economic recovery.

Madam President, 10,000 foreclosures a day is unacceptable. This bill will now provide the opportunity for us to be able to reduce that number. Some estimates are that as many as 1.7 million to 2 million homeowners could be positively affected by what we are doing today with this legislation. That is no small number when you consider the total numbers that could be adversely affected. Our hope is that will do just that, to make that kind of a difference, in addition to the other matters I have already mentioned that were added by amendment or included in the underlying bill. So while this is not going to change everything, it is not going to solve every problem, it is a major step in the right direction in terms of this economic recovery we are all interested in.

There is not a Member in this Chamber—regardless of the differences we may have on how to get there—who does not want to do everything in their power to see to it that our country once again has that sense of confidence that has been the hallmark of America for more than two centuries. Certainly, we are going through a difficult time. Individually, people understand it; they know it. We have an administration under President Obama that is working hard to do everything possible to see to it that we move in the right direction.

So I am grateful to my colleagues who have shown a lot of patience over the last several days to get to this point. I thank them for that. Senator KERRY, Senator CASEY, Senator FEINGOLD—I mentioned Senator ENSIGN—

Senator SNOWE, Senator BOND, and Senator PRYOR have all either been sponsors or cosponsors of major amendments on this bill, and I express my gratitude to all of them.

CONCLUSION OF MORNING BUSINESS

Mr. DODD. Madam President, I ask that morning business be closed.

The PRESIDING OFFICER. Morning business is closed.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009—Continued

Mr. DODD. Madam President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending bill is S. 896.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 1031, as modified, offered by the Senator from New York, Mr. SCHUMER.

Mr. DODD. Madam President, before we get to that, I would like to report to Members that we are inching closer to completing action on this legislation. Four amendments remain in order, and votes with respect to these amendments will occur shortly. Those that remain are Schumer amendment No. 1031, as modified; Coburn second-degree amendment No. 1042; Reed of Rhode Island amendment No. 1040, as amended, if amended; and Grassley amendment No. 1021, as modified. Once we have disposed of these four amendments, then the only matter remaining is adoption of the substitute, as amended, and, finally, passage of S. 896. Since there is no time in between, I have given my closing remarks on the value of the legislation.

With that, I guess we turn to Senator SCHUMER.

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

AMENDMENT NO. 1031, AS MODIFIED

Mr. SCHUMER. Mr. President, first, I wish to salute, praise the chairman of our Banking Committee, Chairman DODD, for doing a great job on this bill. I thank him for the good work he has done, and so many others who have worked long and hard on this legislation; Senator SHELBY as well.

Mr. President, I ask unanimous consent that my amendment be modified with the changes at the desk.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. CHAMBLISS. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. SCHUMER. Mr. President, we are asking for a simple change that in no way affects the amendment, in no way affects whether it is going to cost anything. The purpose of the underlying amendment is to ensure that tenants of multifamily housing across the country benefit from the same attention and support of this Government as single-family homeowners will.

We have literally millions of tenants—millions—who, because the homes which they rent are foreclosed, are in very bad shape. They can be removed from their homes. Their homes can deteriorate. Once a home is in foreclosure, often it is not kept up. This is not just in big cities such as New York but around the country. In fact, States such as Tennessee and so many others are on the list which I listed of 15 States that are most affected because it affects not only big multiple dwellings but garden apartments and other residential units. It is unfortunate that the objection is going to stand in the way of helping these tenants.

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

AMENDMENT NO. 1031, AS MODIFIED, WITHDRAWN

Mr. SCHUMER. Mr. President, I ask unanimous consent to withdraw the amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, and I will not object, I wish to commend my colleague from New York. I say this through the Chair. We will come back to this issue. I understand an objection has been voiced, but I want to thank our colleague from New York. He raises a very important issue and one that needs to be addressed. I commend him for it. There will be other opportunities, I hope, shortly to come back to this issue.

Mr. SCHUMER. Mr. President, I appreciate that.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, the amendment is withdrawn.

AMENDMENT NO. 1042

Mr. DODD. Mr. President, I believe the next item is the amendment offered by our colleague, Senator COBURN, from Oklahoma.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I have a second-degree amendment to the Reed amendment. What it says is we create a pilot study. We have 69,000 pieces of property we cannot get rid of. It represents $83 billion in assets to us as a government and to the American people. It is $83 billion we would not have.

What we set up is a pilot program that manages 150 pieces of property a year to dispose of them. It gives 20 percent to the agency, 80 percent back to the Government. It creates a way, in a pilot project, for us to do real property reform.

We have gone through and we have created 250 homeless shelters out of 30,000 properties at a cost of $300 million. We are spending over $8 billion a year just maintaining properties we do not want, do not need, yet we cannot get rid of.

This is a simple, straightforward amendment that is common sense. There is no reason why we should not accept this amendment.

With that, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, on behalf of Senator JACK REED of Rhode Island, in a moment I will make a point of order. But Senator COBURN and I, last night, had a short colloquy. He raises a very legitimate point on a larger issue, and he talked about it last evening at some length. I expressed to him then—and I am very sincere about it—that I would like to work with him. We have a lot of properties out there for which it takes too much money to care for them each year. A lot of them probably ought to be destroyed, as the Senator has pointed out. So I want him to know that the point of order being raised here should not reflect the underlying issue he has raised, and I am committed to work with him on that. I think it is a very good idea and one we ought to be aggressive about.

But having said that, Mr. President, on behalf of Senator JACK REED, I raise a point of order that the pending amendment violates section 201 of S. Con. Res. 21, the concurrent resolution on the budget for fiscal year 2008.

Mr. COBURN. Mr. President, I move to waive the budget point of order, and ask for the yeas and nays.

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

There appears to be a sufficient second.

The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota, (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The ACTINIG PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 50, nays 46, as follows:

[Rollcall Vote No. 183 Leg.]

YEAS—50

Alexander	Dorgan	McCaskill
Barrasso	Ensign	McConnell
Bayh	Enzi	Murkowski
Bennett	Graham	Nelson (NE)
Brownback	Grassley	Pryor
Bunning	Gregg	Risch
Burr	Hatch	Roberts
Carper	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Klobuchar	Vitter
Conrad	Kyl	Voinovich
Corker	Lincoln	Warner
Cornyn	Lugar	Webb
Crapo	Martinez	Wicker
DeMint	McCain	

NAYS—46

Akaka	Bond	Cantwell
Baucus	Boxer	Cardin
Begich	Brown	Casey
Bennet	Burris	Dodd
Bingaman	Byrd	Durbin

Feingold	Leahy	Schumer
Feinstein	Levin	Shaheen
Gillibrand	Lieberman	Specter
Hagan	Menendez	Stabenow
Harkin	Merkley	Tester
Inouye	Mikulski	Udall (CO)
Kaufman	Murray	Udall (NM)
Kerry	Nelson (FL)	Whitehouse
Kohl	Reed	Wyden
Landrieu	Reid	
Lautenberg	Sanders	

NOT VOTING—3

Johnson	Kennedy	Rockefeller

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 50, the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

The Senator from Connecticut is recognized.

AMENDMENT NO. 1040

Mr. DODD. Mr. President, what is the pending business before the Senate?

The ACTING PRESIDENT pro tempore. The amendment of the Senator from Rhode Island.

Mr. DODD. Have the yeas and nays been ordered?

The ACTING PRESIDENT pro tempore. No.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, this is a bipartisan effort to reform our homeless programs. This amendment would simplify the application process, give greater flexibility and accountability at the local level. It would also provide additional resources to prevent homelessness. We are in the midst of a huge crisis in terms of people who literally cannot find housing. We have pictures in newspapers of tent cities sprouting up all across the country. We need to act.

This amendment is bipartisan and is supported by Senator BOND and, before him, Senator ALLARD, and Senators BOXER, COLLINS, DURBIN, KERRY, LAUTENBERG, LIEBERMAN, SCHUMER, and WHITEHOUSE. It is good, sensible reform legislation that will make our programs more effective and, hopefully, prevent people from losing their homes and keep them away from these tent cities that are sprouting up. I urge its passage.

Mr. DODD. Mr. President, I strongly endorse this amendment. The Senator deserves a lot of credit, along with Senator BOND.

AMENDMENT NO. 1040

Mr. BOND. Mr. President, I rise to speak in strong support of the Reed-Bond amendment No. 1040. This amendment provides critical and cost-effective tools to reform federal programs that address homelessness. It is identical to S. 808, the Homeless Emergency Assistance and Rapid Transition to Housing Act or HEARTH Act, which I was very proud to cosponsor. The HEARTH Act is a bipartisan bill that builds on and expands programs that have been demonstrated to end and prevent the tragedy of homelessness that afflicts many American individuals and families.

Before I offer some comments on the amendment, I praise Senator JACK REED for his long-term commitment and hard work on addressing homelessness. Senator REED has been a longtime leader in housing issues and I value the strong partnership we have had over the past several years. I also recognize the work of our former colleague, Senator Wayne Allard, who also was heavily involved in this legislation before he retired from this Chamber.

Over 20 years ago, the Federal Government took its first major step in addressing the plight of homelessness through the enactment of the Stewart B. McKinney Homeless Assistance Act. But despite billions of private and public dollars spent on the homeless, millions of veterans, families, disabled, and children have and continue to experience the sad tragedy of homelessness.

Fortunately, through innovative efforts that focused on permanent supportive housing, we have learned that being homeless is no longer a hopeless situation. As the former chair and current ranking member of the Senate Appropriations subcommittee that funds most of the Federal homeless programs through the Department of Housing and Urban Development, I have worked with my colleagues on both sides of the aisle—especially Senators BARBARA MIKULSKI and PATTY MURRAY—to ensure resources were being provided to the appropriate programs. Through this bipartisan partnership, we have protected affordable housing units, boosted resources to help homeless veterans through the HUD-VASH program, and revitalized distressed public housing through the HOPE VI program.

In terms of HUD's homeless assistance grant programs, I can confidently say that these funds have been well-spent as demonstrated by the dramatic drop in homelessness. HUD's national data found that between 2005 and 2007 the number of homeless people experiencing chronic homelessness—our most vulnerable and disabled neighbors—dropped from nearly 176,000 to fewer than 124,000, a decrease of 52,000 or 30 percent. This is clear evidence that through this tried-and-true approach of permanent supportive housing, we can stop the cycle of homelessness.

Under the ''housing first'' approach, we learned that providing permanent supportive housing was the key component in solving homelessness, especially those considered to be chronically homeless. Before we implemented the housing first approach, many homeless people were served through the revolving door of local emergency systems, which interfered with their treatment regimen and resulted in costly hospital and jail stays.

Local emergency systems became clogged with permanent users, reducing their ability to address the more temporary problems of families and individuals. Putting a greater emphasis and resources on permanent supportive housing has become the most critical change over the past several years. Based on recent studies and results I have seen in my home State of Missouri, it has worked.

To implement this approach, I worked with Senator MIKULSKI to include a provision, beginning in the fiscal year 1999 VA–HUD Appropriations Act and carried every year thereafter, to require that at least 30 percent of the Department of Housing and Urban Development's—HUD—homeless assistance grants be used for permanent housing. Focusing a significant amount of funds towards permanent housing helped reverse the revolving door for the homeless using local emergency systems.

We also learned the importance of gathering data and analyzing the characteristics of our homeless population to design and target funds to programs needed to serve the homeless. That is why we established the homeless management information systems or HMIS through appropriations. This not only ensures that local providers have the information to address their particular homeless populations; it ensures that taxpayer funds are being spent effectively and efficiently.

Finally, we learned that despite the involvement of several Federal agencies in serving the homeless, there were gaps in services and coordination was lacking. To address this issue, the U.S. Interagency Council on Homelessness was reactivated to improve Federal, State, and local coordination of homeless programs.

The HEARTH Act codifies these important provisions that have been carried in appropriations and builds on our work over the past several years. It also includes a number of other important provisions that assist rural communities help the homeless, increase local flexibility by combining HUD's competitive grant programs, and provide incentives to house rapidly homeless families.

Homelessness is a national walking around Washington, DC, St. Louis, and other towns and cities across the Nation. But by working together with advocates, the private sector, and government, we can solve homelessness. The HEARTH Act is a prime example of that partnership and greatly advances our ability to end homelessness.

Updating and improving our homeless programs is even more critical as more Americans face the prospects of homelessness due to the economic downturn. The housing crisis has already displaced many families and individuals creating more strain on our social safety net and homeless programs.

Before closing, I offer some concerns about the Federal Housing Administration, FHA. As I have repeatedly stated, the FHA is a powder keg that may explode, leaving taxpayers on the hook if Congress and the administration continue to overburden the government agency.

That is why I have strong reservations about provisions in the Helping Families Save Their Homes Act that loosen the eligibility requirements for the FHA Hope for Homeowners program.

FHA is already showing signs of stress as defaults and foreclosures have been increasing endangering homeowners and communities across the Nation. I also am alarmed by the increasing signs of fraud, which is reportedly rising and at levels comparable or higher than during the subprime boom.

With an agency that is understaffed and challenged by long-standing management and oversight problems, the combination of these factors along with a struggling housing market and economy is a recipe for disaster.

It is critical that the Congress and the administration recognize these problems and not make HUD Secretary Donovan's job harder by placing more risk on FHA until the problems are fixed or the agency will crash and taxpayers will be footing another multi-billion-dollar bailout. While I understand the importance of FHA in many markets where lending is tight, an overburdened FHA does not benefit borrowers, neighbors, and communities if FHA continues to be provide poorly underwritten loans or loans serviced by bad actors.

I urge my colleagues, especially Banking Committee Chairman DODD and Ranking Member SHELBY, to conduct vigorous oversight of FHA and take additional legislative actions to address the agency's weaknesses.

Let me say that again—because this is important—if we continue to overburden FHA this powder keg will explode!

The ACTING PRESIDENT pro tempore. Who yields time in opposition?

Mr. DODD. Mr. President, I urge that we move to the vote and yield back the time.

The ACTING PRESIDENT pro tempore. Is there objection?

All time is yielded back.

Mr. DODD. Mr. President, I ask for a voice vote.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 1040) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1021, AS MODIFIED

Mr. DODD. Mr. President, the pending matter is the Grassley amendment, is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Who yields time on the Grassley amendment?

Mr. DODD. Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, my colleague, Senator GRASSLEY, the Senator from Iowa, has offered a very good amendment. I strongly support the Grassley amendment. It increases accountability of transparency at the Federal Reserve. Let me defer to my colleague to explain the amendment.

Mr. GRASSLEY. Before we do that, if the Senator is for it, can we adopt it on a voice vote?

Mr. DODD. I am happy to.

Mr. GRASSLEY. I will use my time.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. GRASSLEY. Mr. President, then let me speak off the cuff. What we have here is following on the President's promise for more transparency in Government—a promise to put everything dealing with bailouts on the Internet. There is more money involved with Federal Reserve and bailouts and stabilizing the economy than even in what we appropriate. So this is to bring transparency to what the Federal Reserve is doing, without affecting monetary policy whatsoever.

I ask us to agree to this amendment to bring transparency because the public's business ought to be public, including taxpayers' money spent by the Federal Reserve.

In March, the Finance Committee held a hearing on the progress and oversight of the Troubled Assets Relief Program, TARP. At that hearing the Government Accountability Office—GAO—testified that it is not just firms that take taxpayer money under TARP who can say ''no'' to GAO's requests for information, prior to my other amendment on this bill. The Federal Reserve can also refuse to cooperate.

The GAO's ability to audit the Federal Reserve is restricted by law. Perhaps those restrictions could be defended back when the Federal Reserve focused only on monetary policy. However, today it is routinely exercising extraordinary emergency powers to subsidize financial firms far above the levels Congress is willing to authorize through legislation. The Federal Reserve is taking on more and more risk in complicated and unprecedented ways. That risk is ultimately borne by the American taxpayer.

Congress authorized $700 billion in funds under TARP. However, the total projected assistance in various initiatives by the Federal Reserve could be up to $3.4 trillion by GAO estimates.

This modified version of the amendment does not give GAO authority to look at all of that additional taxpayer risk. It is much narrower than the one I originally filed, but it is a reasonable step in the right direction, and it does not threaten monetary policy independence.

Although I would have preferred to include all of the Fed's emergency actions under 13(3), in consultation with Senator SHELBY I agreed to limit my amendment to actions aimed at specific companies. I will ask to submit for the RECORD a list of those actions currently covered by the new language, according to Federal Reserve staff. Future actions of the same sort would also be subject to GAO audit.

The goal of this amendment is extend GAO authority to cover the Federal Reserve's emergency actions that are most similar to the TARP—in other words actions aimed at specific companies like Bear Stearns and AIG.

I appreciate the support of Senators SHELBY and DORGAN who are cosponsoring this amendment. I urge my colleagues to support amendment No. 1021. Let's not give GAO an important mission to do with a blindfold on. Let's take off the blindfold get a good hard look at what the Federal Reserve is doing.

I ask unanimous consent that the actions currently covered by the new language to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

According to Federal Reserve staff, the following is a list of 13(3) emergency actions covered by the ''single and specific'' language of amendment No. 1021 to S. 896:

Actions related to Bear Stearns and its acquisition by JP Morgan Chase, including:

a. Loan To Facilitate the Acquisition of The Bear Stearns Companies, Inc. by JPMorgan Chase & Co. (Maiden Lane I)

b. Bridge Loan to The Bear Stearns Companies Inc. Through JPMorgan Chase Bank, N.A.

2. Bank of America—Authorization to Provide Residual Financing to Bank of America Corporation Relating to a Designated Asset Pool (taken in conjunction with FDIC and Treasury)

3. Citigroup—Authorization to Provide Residual Financing to Citigroup, Inc., for a Designated Asset Pool (taken in conjunction with FDIC and Treasury)

4. Various actions to stabilize American International Group (AIG), including a revolving line of credit provided by the Federal Reserve as well as several credit facilities (listed below). AIG has also received equity from Treasury, through the TARP, which would also be captured in amendment #1020.

a. Secured Credit Facility Authorized for American International Group, Inc., on September 16, 2008

b. Restructuring of the Government's Financial Support to American International Group, Inc., on November 10, 2008 (Maiden Lane II and Maiden Lane III)

c. Restructuring of the Government's Financial Support to American International Group, Inc., on March 2, 2009

5. TALF—finally, amendment No. 1020 would expand GAO's authority to oversee the TARP, including the joint Federal Reserve-Treasury Term Asset-Backed Securities Loan Facility (TALF)

Neither amendment No. 1021 nor No. 1020 would include short-term liquidity facilities:

1. Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility

2. (AMLF)

3. Commercial Paper Funding Facility (CPFF)

4. Money Market Investor Funding Facility (MMIFF)
5. Primary Dealer Credit Facility and Other Credit for Broker-Dealers (PDCF)
6. Term Securities Lending Facility (TSLF)

Mr. DODD. Mr. President, I strongly support the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. GRASSLEY. Mr. President, I ask for the yeas——

Mrs. HUTCHISON. Mr. President, I move that we vitiate a rollcall vote on this amendment.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

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

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 1, as follows:

[Rollcall Vote No. 184 Leg.]

YEAS—95

Akaka	Ensign	Menendez
Barrasso	Enzi	Merkley
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murkowski
Begich	Gillibrand	Murray
Bennet	Graham	Nelson (NE)
Bennett	Grassley	Nelson (FL)
Bingaman	Gregg	Pryor
Bond	Hagan	Reed
Boxer	Harkin	Reid
Brown	Hatch	Risch
Brownback	Hutchison	Roberts
Bunning	Inhofe	Sanders
Burr	Inouye	Schumer
Burris	Isakson	Sessions
Byrd	Johanns	Shaheen
Cantwell	Kaufman	Shelby
Cardin	Kerry	Snowe
Carper	Klobuchar	Specter
Casey	Kohl	Stabenow
Chambliss	Kyl	Tester
Coburn	Landrieu	Thune
Cochran	Lautenberg	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	Levin	Vitter
Corker	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Crapo	Lugar	Webb
DeMint	Martinez	Whitehouse
Dodd	McCain	Wicker
Dorgan	McCaskill	Wyden
Durbin	McConnell	

NAYS—1

Alexander

NOT VOTING—3

Johnson	Kennedy	Rockefeller

The amendment (No. 1021), as modified, was agreed to.

Mr. DODD. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. Under the previous order, the substitute amendment is agreed to and the motion to reconsider is considered made and laid upon the table.

The amendment (No. 1018), as amended, was agreed to.

PREDATORY LENDING

Ms. KLOBUCHAR. Mr. President, I would like to thank Senator DODD for his efforts to provide solutions to our neighborhoods and middle-class families to address the subprime and foreclosure crisis.

As the Nation struggles to deal with the fallout from subprime lending and the credit crunch, it is critical that families have access to safe, fair and affordable mortgages. Borrower protections, like those we have in Minnesota, should be national policy to help safeguard families across the country.

A decade ago, just 5 percent of mortgage loan originations were subprime—meaning that they were made to borrowers who would not qualify for regular mortgages. By 2005, 20 percent of new mortgages were subprime. This may have expanded access to home ownership, at least temporarily, for some people; but it also greatly increased the risk our system. In Minnesota, in 2000, there were 8,347 subprime mortgages issued. By 2005, it had increased more than fivefold to more than 47,000 subprime mortgages.

However, we now know that between 60 percent-65 percent of people who ended up with subprime mortgages actually qualified for traditional mortgages. We need to make sure this doesn't happen again.

That is why I have introduced the Homeowner Fairness Act, which is comprehensive housing reform legislation that proposes tough new national standards based on the successes of the Minnesota mortgage lending law passed in 2007.

The bill would put in place a number of key reforms. It would require all mortgage originators to verify a borrower's ability to repay a mortgage before giving loan approval. In addition, the bill would require mortgage brokers to have a minimum net worth of $500,000 while also subjecting them to fiduciary duties obligating them to act in the best interest of their clients. It further bans prepayment penalties and limits up-front fees to no more than 5 percent of the initial principal of the loan. Importantly, the bill prohibits ''steering,'' which is the act of approving a loan at a higher rate than that for which a borrower qualifies.

We need to make sure that abusive and exploitative mortgage practices come to an end. For far too long, subprime lenders have put the homes and home equity of Americans at unnecessary risk. These commons sense protections, modeled after Minnesota law, are essential to restoring our economy and preventing a future crisis in the housing market.

Mr. DODD. I thank my colleague from Minnesota for raising this very important issue. I point out that home ownership rates for African Americans, who were disproportionately steered into subprime loans, have actually dropped to levels below where they were prior to the explosion of subprime lending. While I agree that subprime lending can be helpful to borrowers with some credit problems, this lending must be properly regulated, as it so clearly has not been over the past decade.

I appreciate the work Senator KLOBUCHAR has done on this issue. Her bill is based on the Minnesota law, which I understand is one of the more progressive laws in the Nation. I look forward to working with her on this issue as we move forward.

FORECLOSURE SCAM NOTIFICATION

Mr. KOHL. Mr. President, I rise to engage in a colloquy with my colleague from Connecticut and the chairman of the Banking Committee, Senator DODD. As the chairman is aware, I have offered an amendment to S. 896, the helping families save their homes, which would require mortgage servicing companies to issue warnings to homeowners about foreclosure rescue scams. Foreclosure rescue scams have become more prevalent as more and more homeowners lose their homes. These financial predators claim to help desperate homeowners and often, walk away with their home and money.

The issuing of a simple disclosure from a mortgage servicing company would make it easier for people to identify the difference between scam artists and legitimate help. The disclosure requirement would provide the homeowner with a HUD hotline identifying the counseling agencies in their area and would give them a phone number in order to contact their lender. A simple disclosure will provide homeowners with relevant contact information so they can better understand their options and avoid scam artists. I hope that I can work with the chairman on this important issue as the Banking Committee moves forward with future legislation on financial reform.

Mr. DODD. I thank the Senator for raising this important issue. I will work with him to address this issue in future legislation so we can help homeowners avoid foreclosure rescue scams and make sure they get the necessary information to find real help.

Mr. KOHL. I thank the chairman of the Banking Committee for all his help and engaging in this colloquy.

DEFINITION OF HOMELESSNESS

Mrs. MURRAY. Mr. President, I thank my colleague Senator REED for his hard work on this bill. Unfortunately, our homeless shelters and our schools are seeing an increasing number of families and children experiencing homelessness and seeking services. This bill comes at an important time. And I am particularly pleased with the emphasis placed on prevention and rapid rehousing, and efforts to better serve homeless individuals, such as victims of domestic violence.

Mr. President, I would like to inquire of my colleagues Senator REED and

Chairman DODD regarding the definition of homelessness in HEARTH Act and amendment No. 1040.

Mr. REED. Certainly, Mr. President.

Mrs. MURRAY. I thank the Senator. As you know, this amendment contains a new definition of homelessness. Homelessness is an issue I have long been concerned about both the immediate consequences of not having housing, as well as the adverse effects it can have on the broader success of children and families. For example, children that experience homelessness are more likely to fall behind in school and to experience social and emotional difficulties that hinder their academic and workplace success. Therefore, the Federal Government not only helps provide housing services for youth and families, but also education services through the McKinney-Vento Education for Homeless Children and Youths program at the Department of Education.

I appreciate the efforts to broaden the definition of homelessness in the HEARTH Act. It is an important step forward. However, I want to ensure that this new definition of homelessness does not inadvertently cause a lapse in services or cause confusion with the definition of homelessness included in the McKinney Vento Education of Homeless Children and Youth program.

Is it the Senators' intent that the definition of homelessness in the HEARTH Act, which covers homeless youth as well as families, should ever replace or change the definition of homelessness under the McKinney-Vento Education for Homeless Children and Youths program at the U.S. Department of Education?

Mr. REED. I thank the Senator for her important question. The definition of homelessness in the HEARTH Act in no way seeks to replace or change the definition of homelessness in any other statute. The definition of homelessness in the Education for Homeless Children and Youths program is critical to ensuring that homeless students have access to supports and services for their success in school. The definition of homelessness in the HEARTH Act does not and should not change or replace that education definition.

Mr. DODD. I would concur with my colleague, Mr. REED. The definition of homelessness in the HEARTH Act is to apply to matters of housing under the Department of Housing and Urban Development. In fact, the amendment expressly states that the HUD homelessness definition is in no way meant to replace or change the definition of homelessness under the McKinney-Vento Education for Homeless Children and Youths program.

Mrs. MURRAY. I thank the Senators. I have also worked hard on helping to encourage collaboration between the Department of Housing and Urban Development and the Department of Education to ensure the best services possible for homeless youth. Is it the Senators' intent that the Department of Housing and Urban Development should do everything in its power to coordinate with the Department of Education on serving homeless youth, and to ensure that no lapse in services under the Education of Homeless Children and Youths program occurs for students as any new HEARTH Act definition of homelessness is implemented?

Mr. REED. Yes, that is my intent, and it is the intent of the amendment. We continue to work on, particularly with your leadership, encouraging strong communication and coordination between the Department of Housing and Urban Development and the Department of Education on the issue of serving homeless youth. It is my intent to continue to encourage that collaboration and to work to the utmost degree, not just to prevent lapses, but to strengthen education services for homeless students while implementing the HEARTH Act.

Mr. DODD. It is also our intent that the Interagency Council on Homelessness provide increased leadership, coordination, and information on this growing issue of children, youth, and families threatened with homelessness. The amendment requires the Interagency Council to develop a government-wide plan to end homelessness, promote State planning efforts, and of course promote interagency cooperation. We will continue to work with the Council to ensure that the needs of families, children, and youth figure prominently in their efforts.

Mrs. MURRAY. This amendment will broaden HUD's definition of homelessness to include a subset of children and youth who meet the definition of homelessness used by other federal statutes. I appreciate the inclusion of these children and believe it is a step in the right direction. In particular, it covers those children and youth who: (1) have experienced a long-term period without living stably or independently in permanent housing; (2) have experienced persistent instability; and (3) who are likely to continue to do so because of disability or other barriers.

Since these concepts, such as the term ''long term period,'' are open to interpretation, is it the Senators' intent that HUD should consider the needs of children and the effects of instability on their developmental and academic progress when developing the regulations for this provision?

Mr. DODD. Yes, the committee recognizes that the expansion of the definition of homelessness to include these children and families was carried out with the intent of addressing the housing needs and challenges of children and youth who are homeless.

Mrs. MURRAY. Mr. President, by including language that acknowledges the various definitions of homeless in other Federal statutes, is it the Senators' intention that HUD funded homeless providers should be encouraged to engage with homeless providers receiving funds from other Federal agencies to utilize their assessments and counsel in making eligibility determinations.

Mr. DODD. Yes. Federal programs must work together to meet the needs of families and unaccompanied youth, and that collaboration should include information needed for eligibility decisions.

Mrs. MURRAY. I look forward to working with my colleagues and the committee on improving services for students. Lastly, I understand that this amendment prohibits the Secretary from requiring that communities conduct actual counts of families and youth who are newly added to the HUD definition in HUD-mandated homelessness counts. Am I correct that this provision does not prohibit the Secretary from requiring communities to provide estimates of those who are newly added to the definition, so that communities may have a better sense of the shelter and housing needs of all families, children, and youth who will be considered homeless by HUD under this legislation?

Mr. REED. Yes, that is the case. We are open to finding ways to quantify the number of individuals and families experiencing housing instability and look forward to working with the Senator and the administration to do so.

I thank the Senator for her questions, and I look forward to working together on improving the prevention of homelessness and the provision of services to homeless individuals and families in order to break the cycle of homelessness.

Mr. DODD. I also thank the Senator for her questions, and I would be happy to continue working on to address the issue of homelessness with her.

Mrs. MURRAY. I thank the Senators, and I look forward to continuing to work on these issues.

Mr. REID. Mr. President, I received recently a letter from Linda Frazier, a single mom who lives in Las Vegas with her three teen-aged children and at times has had to work two jobs that paid hourly wages.

Linda told me how in recent years, both her income and the value of her house have plummeted. She now fears hers will become the latest Nevada family swallowed up by this devastating housing crisis.

Her story is distressing. It is unacceptable that a hardworking American like Linda wakes up worried every morning about whether she can put a roof over her children's heads. But what struck me most is that she wrote to me: ''I'm about to lose my house, which is the way it is.''

It doesn't have to be the way it is. In a Nation this great and this strong, a family shouldn't have to lose its home when it plays by the rules. And that family certainly shouldn't surrender to thinking that having the American dream vanish is simply ''the way it is.''

But stories like hers happen every day, in every State. The victims of foreclosure include families who did everything right—they put money down

on their new home and took out a responsible mortgage, not one of those interest-only gimmicks.

Nevadans like Linda Frazier have endured an appalling number of foreclosures over the past few years. Just last month, about 20,000 Nevada families received a foreclosure notice. Last year, not a single state had a worse foreclosure rate than Nevada's—this crisis hit one in 14 households.

One of the most underappreciated side effects of this crisis is that the victims of foreclosure aren't just those who live in the foreclosed-upon house.

Vacant homes drive crime up and property values down. Just try putting up a sign that says ''for sale'' next to one that says ''foreclosed.'' The average price of a home in Las Vegas went down more than 31 percent between last February and this February, and more than 40 percent since prices peaked in 2006.

Last fall I walked with Mayor Oscar Goodman of Las Vegas through the hardest-hit neighborhood in the hardest-hit city in the hardest-hit state in the country. A resident there came up to us and told us that the value of her home dropped more than $100,000. She will never get back what she paid for it.

Unfortunately, her situation is now the rule, not the exception. The numbers are shocking: Two out of every three homeowners in Las Vegas owe more on their home than it's worth. The same is true for more than half of homeowners in Nevada, and for one in five across the country.

American homeowners are underwater, and it is our job to help them to dry land.

Last year, after a long struggle, we passed legislation that will help those at risk of losing their homes and prevent foreclosures from happening. We reformed the mortgage-finance industry and helped homeowners get mortgage counseling. We had to file cloture on 7 filibusters. I wish we could have done more.

Democrats insisted that last fall's rescue legislation gave the administration the authority to design other ways to help families, which led to the Obama Administration's Making Home Affordable program. That program continues to be improved, and I am hopeful that many Nevadans will take advantage of it.

Last week, we passed a bill to prevent and prosecute scam artists from preying on homeowners desperate for help. The Nevada Bureau of Consumer Protection receives nearly 100 complaints each month from consumers complaining of possible mortgage scams. The number of fraud cases reported nationwide has almost quadrupled in the past seven years: in 2001 there were 18,000; last year there were 65,000. In the Hispanic community, the number of fraud victims has been disproportionately high.

We will continue to do more to protect the victims of these scams and all struggling homeowners.

I want to thank Chairman DODD for his tireless work in leading the Senate's response to the housing crisis. He shepherded major legislation through the Congress last year, and has done so again with the important bill we are about to pass.

So far, very few have participated in the Hope for Homeowners program, but thanks to Chairman DODD's leadership, this bill improves it by lowering fees for home owners and lenders alike. It also gives lenders greater incentives to encourage their participation. More home owners whose mortgages are underwater could be placed in FHA-guaranteed mortgages.

This bill also gives the Department of Housing and Urban Development the resources it needs to help vulnerable and at-risk home owners. I am grateful to Chairman DODD for incorporating into the underlying bill an amendment I authored that will stop mortgage scams.

I wish more Senators would have followed Senator DURBIN's extraordinary lead and stood up to the banking industry so that we could have done more to help homeowners get relief through bankruptcy. It is simply unfair that struggling homeowners cannot access a bankruptcy court to climb out of a housing crisis like this, but owners of vacation properties can.

Just as our Nation's housing crisis is the root of our nation's economic crisis, these problems in Nevada have inflamed economic challenges in the State.

It is important that we be realistic. Neither these proposals nor any other piece of legislation will solve all of our problems. Forces outside the control of any legislature—whether State or Federal—will always combine to affect housing supply, prices and foreclosures.

Given the size and scope of the struggles too many Nevadans and Americans endure, it will take more time before housing normalizes again. But with this bill, we are working to hasten that day so that no family will ever accept losing its home as ''the way it is.''

Mr. LEVIN. Mr. President, I support the Helping Families Save Their Homes Act of 2009.

The foreclosure situation in my State of Michigan continues to be dire. According to data released by real estate firm RealtyTrac, even though there are less foreclosure filings than this time last year, there were still over 11,000 Michigan foreclosure filings in January 2009 alone. That is 1 foreclosure filing for every 397 households in just 1 month, which puts Michigan's foreclosure rate at the seventh highest in the Nation. Nationwide, foreclosure filings are up 18 percent compared to this time last year.

Unfortunately, homeowners facing foreclosure are not the only ones being impacted by this crisis. Property values have dropped significantly in many areas, due in large part to the increased number of abandoned and foreclosed homes. These losses in property values also decrease State and local revenue from property taxes, creating shortfalls in revenues and reducing funding for important State and local programs and services.

Over the past year, Congress has taken a number of steps to help reduce the effects of this crisis. Today, the Senate is set to pass legislation that will further expand the tools available to homeowners facing foreclosure and increase access to these important programs. This legislation will expand access to the hope for homeowners program by providing incentives for servicers and lenders who participate in the program and streamlining borrower certification requirements. It will also expand the ability of FHA and Rural Housing to modify loans in order to help a homeowner avoid foreclosure and authorize additional funding for foreclosure prevention activities, including housing counseling and additional fair housing field workers.

Importantly, this act also creates additional enforcement tools to ensure the Department of Housing and Urban Development—HUD—is able to go after bad lenders who break the rules or misuse these programs.

In addition to these improvements, the act makes a number of changes to ensure the safety of depositors' savings, and improve the health of the banks and credit unions that are essential to our economic recovery.

Last year, we increased deposit insurance coverage from $100,000 to $250,000. That provision is set to expire at the end of this year. This act will extend the additional coverage for another 4 years. The act will also increase the borrowing authority of the FDIC to $100 billion and of the National Credit Union Administration to $6 billion. Collectively, these changes will help ensure the security of deposits for years to come.

The act also helps banks and credit unions that may be struggling to pay special assessments for their deposit insurance coverage. Due to the economic downturn, the insurance funds for these institutions are seeking additional funding through special assessments. And for many of these institutions, these assessments are at the absolute worst time—while they are trying to stabilize their capital positions. The act responsibly spreads out the period over which the insurance funds may seek these assessments, thereby giving the banks and credit unions the ability to preserve and more effectively use their precious capital. Lastly, the act creates a temporary corporate credit union stabilization fund to help ensure the stability and security of those who rely upon corporate credit unions.

This bill includes many improvements to current programs that will help the country dig out of this foreclosure crisis. To do so will require the efforts of Federal, State, and local governments, as well as community and neighborhood organizations, lenders,

brokers, and borrowers. This act will bring much-needed help to many of our homeowners who are trying desperately to save their homes as well as ensure that their savings are protected, and it deserves my support.

Mr. BEGICH. Mr. President, I commend Senators REED and BOND for bringing up the HEARTH Act in the form of their amendment, and for all the commitment they have shown to addressing homelessness in our Nation. While this amendment seeks to protect the homeless by expanding the definition of homelessness used by the Department of Housing and Urban Development, HUD, to a certain degree, it also places many unfortunate limitations on people living in several circumstances common to those who find themselves or their families temporarily without permanent lodging.

For instance, the definition proposed by my colleagues, Senators REED and BOND, would seem to exclude those who are sharing the housing of others due to loss of housing, economic hardship, or similar reasons, and those who are staying in motels due to the lack of adequate alternative accommodations. It would include people staying in motels if they only have enough money to stay for 14 days, and people in doubled-up situations only if there is ''credible evidence'' that the owner/renter of the housing will not then stay for more than 14 days. More troubling is the fact that children, youth, and families who meet other federal definitions of homelessness are included in the HUD definition only if they have been without permanent housing for a long period of time, and have moved frequently over that time, and can be expected to stay without permanent housing due to numerous barriers.

Over 70 percent of the homeless children and youth identified by public schools across the country last year—more than 500,000 students—were doubled-up or in motels, and therefore ineligible for HUD Homeless Assistance. In my home State of Alaska, the Anchorage School District, the largest in our State, has seen a quantum leap this school year in one category for which no school superintendent or resident can be proud: The number of school children in this State of being ''doubled-up'' numbers have increased 100 percent over last school year. Don't think for a moment that doubled-up families have more stable housing than those in shelters. Doubled-up families change locations 3–12 times in the course of a school year. Families are in shelters generally for 30–90 days.

The Reed-Bond amendment would have the unfortunate effect of continuing to exclude most of these children and youth from HUD services and attention. The failure of the HUD definition to include these families and youth compounds educational problems and makes the task of providing a stable education much more difficult. I hope we can continue to work on this issue to ensure that HUD adopts a definition of homelessness that matches the reality of homelessness among families and youth, and is similar to definitions used by the U.S. Department of Education, the U.S. Department of Health and Human Services, and the U.S. Department of Justice.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Mr. DODD. I ask for the yeas and nays.

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

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that if present and voting, the Senator from West Virginia (Mr. ROCKEFELLER) would vote ''yea.''

The PRESIDING OFFICER (Mr. MERKLEY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 5, as follows:

[Rollcall Vote No. 185 Leg.]

YEAS—91

Akaka	Enzi	Mikulski
Alexander	Feingold	Murkowski
Barrasso	Feinstein	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Graham	Nelson (FL)
Begich	Grassley	Pryor
Bennet	Hagan	Reed
Bennett	Harkin	Reid
Bingaman	Hatch	Risch
Bond	Hutchison	Roberts
Boxer	Inouye	Sanders
Brown	Isakson	Schumer
Brownback	Johanns	Sessions
Burr	Kaufman	Shaheen
Burris	Kerry	Shelby
Byrd	Klobuchar	Snowe
Cantwell	Kohl	Specter
Cardin	Kyl	Stabenow
Carper	Landrieu	Tester
Casey	Lautenberg	Thune
Chambliss	Leahy	Udall (CO)
Cochran	Levin	Udall (NM)
Collins	Lieberman	Vitter
Conrad	Lincoln	Voinovich
Corker	Lugar	Warner
Cornyn	Martinez	Webb
Crapo	McCain	Whitehouse
Dodd	McCaskill	Wicker
Dorgan	McConnell	Wyden
Durbin	Menendez	
Ensign	Merkley	

NAYS—5

Bunning	DeMint	Inhofe
Coburn	Gregg	

NOT VOTING—3

Johnson	Kennedy	Rockefeller

The bill (S. 896), as amended, was passed, as follows:

S. 896

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Helping Families Save Their Homes Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is the following:

Sec. 1. Short title; table of contents.

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

Sec. 101. Guaranteed rural housing loans.
Sec. 102. Modification of housing loans guaranteed by the Department of Veterans Affairs.
Sec. 103. Additional funding for HUD programs to assist individuals to better withstand the current mortgage crisis.
Sec. 104. Mortgage modification data collecting and reporting.
Sec. 105. Neighborhood Stabilization Program Refinements.

TITLE II—FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

Sec. 201. Servicer safe harbor for mortgage loan modifications.
Sec. 202. Changes to HOPE for Homeowners Program.
Sec. 203. Requirements for FHA-approved mortgagees.
Sec. 204. Enhancement of liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures.
Sec. 205. Application of GSE conforming loan limit to mortgages assisted with TARP funds.
Sec. 206. Mortgages on certain homes on leased land.
Sec. 207. Sense of Congress regarding mortgage revenue bond purchases.

TITLE III—MORTGAGE FRAUD TASK FORCE

Sec. 301. Sense of the Congress on establishment of a Nationwide Mortgage Fraud Task Force.

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

Sec. 401. Sense of the Congress on foreclosures.
Sec. 402. Public-Private Investment Program; Additional Appropriations for the Special Inspector General for the Troubled Asset Relief Program.
Sec. 403. Removal of requirement to liquidate warrants under the TARP.
Sec. 404. Notification of sale or transfer of mortgage loans.

TITLE V—FARM LOAN RESTRUCTURING

Sec. 501. Congressional Oversight Panel special report.

TITLE VI—ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM

Sec. 601. Enhanced oversight of the Troubled Asset Relief Program.

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT

Sec. 701. Short title.
Sec. 702. Effect of foreclosure on preexisting tenancy.
Sec. 703. Effect of foreclosure on section 8 tenancies.
Sec. 704. Sunset.

TITLE VIII—COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES

Sec. 801. Comptroller General additional audit authorities.

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

SEC. 101. GUARANTEED RURAL HOUSING LOANS.

(a) GUARANTEED RURAL HOUSING LOANS.—Section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (12) the following new paragraphs:

''(13) LOSS MITIGATION.—Upon default or imminent default of any mortgage guaranteed under this subsection, mortgagees shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure (including actions such as special forbearance, loan modification, pre-foreclosure sale, deed in lieu of foreclosure, as required, support for borrower housing counseling, subordinate lien resolution, and borrower relocation), as provided for by the Secretary.

''(14) PAYMENT OF PARTIAL CLAIMS AND MORTGAGE MODIFICATIONS.—The Secretary may authorize the modification of mortgages, and establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence, for mortgages that are in default or face imminent default, as defined by the Secretary. Any payment under such program directed to the mortgagee shall be made at the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

''(A) the amount of the partial claim payment shall be in an amount determined by the Secretary, and shall not exceed an amount equivalent to 30 percent of the unpaid principal balance of the mortgage and any costs that are approved by the Secretary;

''(B) the amount of the partial claim payment shall be applied first to any outstanding indebtedness on the mortgage, including any arrearage, but may also include principal reduction;

''(C) the mortgagor shall agree to repay the amount of the partial claim to the Secretary upon terms and conditions acceptable to the Secretary;

''(D) expenses related to a partial claim or modification are not to be charged to the borrower;

''(E) the Secretary may authorize compensation to the mortgagee for lost income on monthly mortgage payments due to interest rate reduction;

''(F) the Secretary may reimburse the mortgagee from the appropriate guaranty fund in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary;

''(G) the Secretary may authorize payments to the mortgagee on behalf of the borrower, under such terms and conditions as are defined by the Secretary, based on successful performance under the terms of the mortgage modification, which shall be used to reduce the principal obligation under the modified mortgage; and

''(H) the Secretary may authorize the modification of mortgages with terms extended up to 40 years from the date of modification.

''(15) ASSIGNMENT.—

''(A) PROGRAM AUTHORITY.—The Secretary may establish a program for assignment to the Secretary, upon request of the mortgagee, of a mortgage on a 1- to 4-family residence guaranteed under this chapter.

''(B) PROGRAM REQUIREMENTS.—

''(i) IN GENERAL.—The Secretary may encourage loan modifications for eligible delinquent mortgages or mortgages facing imminent default, as defined by the Secretary, through the payment of the guaranty and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved under this section.

''(ii) ACCEPTANCE OF ASSIGNMENT.—The Secretary may accept assignment of a mortgage under a program under this subsection only if—

''(I) the mortgage is in default or facing imminent default;

''(II) the mortgagee has modified the mortgage or qualified the mortgage for modification sufficient to cure the default and provide for mortgage payments the mortgagor is reasonably able to pay, at interest rates not exceeding current market interest rates; and

''(III) the Secretary arranges for servicing of the assigned mortgage by a mortgagee (which may include the assigning mortgagee) through procedures that the Secretary has determined to be in the best interests of the appropriate guaranty fund.

''(C) PAYMENT OF GUARANTY.—Under the program under this paragraph, the Secretary may pay the guaranty for a mortgage, in the amount determined in accordance with paragraph (2), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage, as defined by the Secretary.

''(D) DISPOSITION.—After modification of a mortgage pursuant to this paragraph, and assignment of the mortgage, the Secretary may provide guarantees under this subsection for the mortgage. The Secretary may subsequently—

''(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

''(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

''(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

''(E) LOAN SERVICING.—In carrying out the program under this subsection, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (D)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.''.

(b) TECHNICAL AMENDMENTS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) in paragraph (5)(A), by striking ''(as defined in paragraph (13)'' and inserting ''(as defined in paragraph (17)''; and

(2) in paragraph (18)(E)(as so redesignated by subsection (a)(2)), by—

(A) striking ''paragraphs (3), (6), (7)(A), (8), and (10)'' and inserting ''paragraphs (3), (6), (7)(A), (8), (10), (13), and (14)''; and

(B) striking ''paragraphs (2) through (13)'' and inserting ''paragraphs (2) through (15)''.

(c) PROCEDURE.—

(1) IN GENERAL.—The promulgation of regulations necessitated and the administration actions required by the amendments made by this section shall be made without regard to—

(A) the notice and comment provisions of section 553 of title 5, United States Code;

(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(C) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(2) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, and the amendments made by this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

SEC. 102. MODIFICATION OF HOUSING LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) MATURITY OF HOUSING LOANS.—Section 3703(d)(1) of title 38, United States Code, is amended by inserting ''at the time of origination'' after ''loan''.

(b) IMPLEMENTATION.—The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

SEC. 103. ADDITIONAL FUNDING FOR HUD PROGRAMS TO ASSIST INDIVIDUALS TO BETTER WITHSTAND THE CURRENT MORTGAGE CRISIS.

(a) ADDITIONAL APPROPRIATIONS FOR ADVERTISING TO INCREASE PUBLIC AWARENESS OF MORTGAGE SCAMS AND COUNSELING ASSISTANCE.—In addition to any amounts that may be appropriated for each of the fiscal years 2010 and 2011 for such purpose, there is authorized to be appropriated to the Secretary of Housing and Urban Development, to remain available until expended, $10,000,000 for each of the fiscal years 2010 and 2011 for purposes of providing additional resources to be used for advertising to raise awareness of mortgage fraud and to support HUD programs and approved counseling agencies, provided that such amounts are used to advertise in the 100 metropolitan statistical areas with the highest rate of home foreclosures, and provided, further that up to $5,000,000 of such amounts are used for advertisements designed to reach and inform broad segments of the community.

(b) ADDITIONAL APPROPRIATIONS FOR THE HOUSING COUNSELING ASSISTANCE PROGRAM.—In addition to any amounts that may be appropriated for each of the fiscal years 2010 and 2011 for such purpose, there is authorized to be appropriated to the Secretary of Housing and Urban Development, to remain available until expended, $50,000,000 for each of the fiscal years 2010 and 2011 to carry out the Housing Counseling Assistance Program established within the Department of Housing and Urban Development, provided that such amounts are used to fund HUD-certified housing-counseling agencies located in the 100 metropolitan statistical areas with the highest rate of home foreclosures for the purpose of assisting homeowners with inquiries regarding mortgage-modification assistance and mortgage scams.

(c) ADDITIONAL APPROPRIATIONS FOR PERSONNEL AT THE OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY.—In addition to any amounts that may be appropriated for each of the fiscal years 2010 and 2011 for such purpose, there is authorized to be appropriated to the Secretary of Housing and Urban Development, to remain available until expended, $5,000,000 for each of the fiscal years 2010 and 2011 for purposes of hiring additional personnel at the Office of Fair Housing and Equal Opportunity within the Department of Housing and Urban Development, provided that such amounts are used to hire personnel at the local branches of such Office located in the 100 metropolitan statistical areas with the highest rate of home foreclosures.

SEC. 104. MORTGAGE MODIFICATION DATA COLLECTING AND REPORTING.

(a) REPORTING REQUIREMENTS.—Not later than 120 days after the date of the enactment of this Act, and quarterly thereafter, the Comptroller of the Currency and the Director of the Office of Thrift Supervision, shall jointly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives on the volume of mortgage modifications reported to the Office of the Comptroller of the Currency and the Office of Thrift Supervision, under the mortgage metrics program of each such Office, during the previous quarter, including the following:

(1) A copy of the data collection instrument currently used by the Office of the Comptroller of the Currency and the Office of Thrift Supervision to collect data on loan modifications.

(2) The total number of mortgage modifications resulting in each of the following:

(A) Additions of delinquent payments and fees to loan balances.

(B) Interest rate reductions and freezes.

(C) Term extensions.

(D) Reductions of principal.

(E) Deferrals of principal.

(F) Combinations of modifications described in subparagraph (A), (B), (C), (D), or (E).

(3) The total number of mortgage modifications in which the total monthly principal and interest payment resulted in the following:

(A) An increase.

(B) Remained the same.

(C) Decreased less than 10 percent.

(D) Decreased between 10 percent and 20 percent.

(E) Decreased 20 percent or more.

(4) The total number of loans that have been modified and then entered into default, where the loan modification resulted in—

(A) higher monthly payments by the homeowner;

(B) equivalent monthly payments by the homeowner;

(C) lower monthly payments by the homeowner of up to 10 percent;

(D) lower monthly payments by the homeowner of between 10 percent to 20 percent; or

(E) lower monthly payments by the homeowner of more than 20 percent.

(b) DATA COLLECTION.—

(1) REQUIRED.—

(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision, shall issue mortgage modification data collection and reporting requirements to institutions covered under the reporting requirement of the mortgage metrics program of the Comptroller or the Director.

(B) INCLUSIVENESS OF COLLECTIONS.—The requirements under subparagraph (A) shall provide for the collection of all mortgage modification data needed by the Comptroller of the Currency and the Director of the Office of Thrift Supervision to fulfill the reporting requirements under subsection (a).

(2) REPORT.—The Comptroller of the Currency shall report all requirements established under paragraph (1) to each committee receiving the report required under subsection (a).

SEC. 105. NEIGHBORHOOD STABILIZATION PROGRAM REFINEMENTS.

(a) IN GENERAL.—Section 2301 of the Foreclosure Prevention Act of 2008 (42 U.S.C. 5301 note) is amended—

(1) in subsection (b), by adding at the end the following:

''(5) DISTRIBUTION OF FUNDS IN CERTAIN STATES; COMPETITION FOR FUNDS.—Each State that receives the minimum allocation of amounts pursuant to the requirement under section 2302 shall be permitted to use such amounts to address statewide concerns, provided that such amounts are made available for an eligible use described under paragraphs (3) and (4) of subsection (c).''; and

(2) in subsection (c), by adding at the end the following:

''(4) FORECLOSURE PREVENTION AND MITIGATION.—

''(A) IN GENERAL.—Each State and unit of general local government that receives an allocation of any covered amounts, as such amounts are distributed pursuant to section 2302, may use up to 10 percent of such amounts for foreclosure prevention programs, activities, and services, foreclosure mitigation programs, activities, and services, or both, as such programs, activities, and services are defined by the Secretary.

''(B) DEFINITION OF COVERED AMOUNTS.—For purposes of this paragraph, the term 'covered amount' means any amounts appropriated—

''(i) under this section as in effect on the date of enactment of this section; and

''(ii) under the heading 'Community Development Fund' of title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217).''.

(b) RETROACTIVE EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on the date of enactment of the Foreclosure Prevention Act of 2008 (Public Law 110–289).

TITLE II—FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

SEC. 201. SERVICER SAFE HARBOR FOR MORTGAGE LOAN MODIFICATIONS.

(a) CONGRESSIONAL FINDINGS.—Congress finds the following:

(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given—

(A) authorization to—

(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008; and

(ii) refinance mortgage loans under the Hope for Homeowners program; and

(B) a safe harbor to enable such servicers to exercise these authorities.

(b) SAFE HARBOR.—Section 129A of the Truth in Lending Act (15 U.S.C. 1639a) is amended to read as follows:

''SEC. 129. DUTY OF SERVICERS OF RESIDENTIAL MORTGAGES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, whenever a servicer of residential mortgages agrees to enter into a qualified loss mitigation plan with respect to 1 or more residential mortgages originated before the date of enactment of the Helping Families Save Their Homes Act of 2009, including mortgages held in a securitization or other investment vehicle—

''(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties; and

''(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the following criteria:

''(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008.

''(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

''(C) The servicer reasonably determined, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures.

''(b) NO LIABILITY.—A servicer that is deemed to be acting in the best interests of all investors or other parties under this section shall not be liable to any party who is owed a duty under subsection (a)(1), and shall not be subject to any injunction, stay, or other equitable relief to such party, based solely upon the implementation by the servicer of a qualified loss mitigation plan.

''(c) STANDARD INDUSTRY PRACTICE.—The qualified loss mitigation plan guidelines issued by the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008 shall constitute standard industry practice for purposes of all Federal and State laws.

''(d) SCOPE OF SAFE HARBOR.—Any person, including a trustee, issuer, and loan originator, shall not be liable for monetary damages or be subject to an injunction, stay, or other equitable relief, based solely upon the cooperation of such person with a servicer when such cooperation is necessary for the servicer to implement a qualified loss mitigation plan that meets the requirements of subsection (a).

''(e) REPORTING.—Each servicer that engages in qualified loss mitigation plans under this section shall regularly report to the Secretary of the Treasury the extent, scope, and results of the servicer's modification activities. The Secretary of the Treasury shall prescribe regulations or guidance specifying the form, content, and timing of such reports.

''(f) DEFINITIONS.—As used in this section—

''(1) the term 'qualified loss mitigation plan' means—

''(A) a residential loan modification, workout, or other loss mitigation plan, including to the extent that the Secretary of the Treasury determines appropriate, a loan sale, real property disposition, trial modification, pre-foreclosure sale, and deed in lieu of foreclosure, that is described or authorized in guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008; and

''(B) a refinancing of a mortgage under the Hope for Homeowners program;

''(2) the term 'servicer' means the person responsible for the servicing for others of residential mortgage loans(including of a pool of residential mortgage loans); and

''(3) the term 'securitization vehicle' means a trust, special purpose entity, or other legal structure that is used to facilitate the issuing of securities, participation certificates, or similar instruments backed by or referring to a pool of assets that includes residential mortgages (or instruments that are related to residential mortgages such as credit-linked notes).''.

SEC. 202. CHANGES TO HOPE FOR HOMEOWNERS PROGRAM.

(a) PROGRAM CHANGES.—Section 257 of the National Housing Act (12 U.S.C. 1715z–23) is amended—

(1) in subsection (c)—

(A) in the heading for paragraph (1), by striking ''THE BOARD'' and inserting ''SECRETARY'';

(B) in paragraph (1), by striking ''Board'' inserting ''Secretary, after consultation with the Board,'';

(C) in paragraph (1)(A), by inserting ''consistent with section 203(b) to the maximum extent possible'' before the semicolon; and

(D) by adding after paragraph (2) the following:

''(3) DUTIES OF BOARD.—The Board shall advise the Secretary regarding the establishment and implementation of the HOPE for Homeowners Program.'';

(2) by striking ''Board'' each place such term appears in subsections (e), (h)(1), (h)(3), (j), (l), (n), (s)(3), and (v) and inserting ''Secretary'';

(3) in subsection (e)—

(A) by striking paragraph (1) and inserting the following:

''(1) BORROWER CERTIFICATION.—

''(A) NO INTENTIONAL DEFAULT OR FALSE INFORMATION.—The mortgagor shall provide a certification to the Secretary that the mortgagor has not intentionally defaulted on the existing mortgage or mortgages or any other substantial debt within the last 5 years and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining the eligible mortgage to be insured and has not been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

''(B) LIABILITY FOR REPAYMENT.—The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Secretary any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made by the mortgagor in the certifications and documentation required under this paragraph, subject to the discretion of the Secretary.

''(C) CURRENT BORROWER DEBT-TO-INCOME RATIO.—As of the date of application for a commitment to insure or insurance under this section, the mortgagor shall have had, or thereafter is likely to have, due to the terms of the mortgage being reset, a ratio of mortgage debt to income, taking into consideration all existing mortgages of that mortgagor at such time, greater than 31 percent (or such higher amount as the Secretary determines appropriate).'';

(B) in paragraph (4)—

(i) in subparagraph (A), by striking '', subject to standards established by the Board under subparagraph (B),''; and

(ii) in subparagraph (B)(i), by striking ''shall'' and inserting ''may''; and

(C) in paragraph (7), by striking ''; and provided that'' and all that follows through ''new second lien'';

(D) in paragraph (9)—

(i) by striking ''by procuring (A) an income tax return transcript of the income tax return of the mortgagor, or (B)'' and inserting ''in accordance with procedures and standards that the Secretary shall establish (provided that such procedures and standards are consistent with section 203(b) to the maximum extent possible) which may include requiring the mortgagee to procure''; and

(ii) by striking ''and by any other method, in accordance with procedures and standards that the Board shall establish'';

(E) in paragraph (10)—

(i) by striking ''The mortgagor shall not'' and inserting the following:

''(A) PROHIBITION.—The mortgagor shall not''; and

(ii) by adding at the end the following:

''(B) DUTY OF MORTGAGEE.—The duty of the mortgagee to ensure that the mortgagor is in compliance with the prohibition under subparagraph (A) shall be satisfied if the mortgagee makes a good faith effort to determine that the mortgagor has not been convicted under Federal or State law for fraud during the period described in subparagraph (A).'';

(F) in paragraph (11), by inserting before the period at the end the following: '', except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property''; and

(G) by adding at the end:

''(12) BAN ON MILLIONAIRES.—The mortgagor shall not have a net worth, as of the date the mortgagor first applies for a mortgage to be insured under the Program under this section, that exceeds $1,000,000.'';

(4) in subsection (h)(2), by striking ''The Board shall prohibit the Secretary from paying'' and inserting ''The Secretary shall not pay''; and

(5) in subsection (i)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(B) in the matter preceding subparagraph (A), as redesignated by this paragraph, by striking ''For each'' and inserting the following:

''(1) PREMIUMS.—For each'';

(C) in subparagraph (A), as redesignated by this paragraph, by striking ''equal to 3 percent'' and inserting ''not more than 3 percent''; and

(D) in subparagraph (B), as redesignated by this paragraph, by striking ''equal to 1.5 percent'' and inserting ''not more than 1.5 percent'';

(E) by adding at the end the following:

''(2) CONSIDERATIONS.—In setting the premium under this subsection, the Secretary shall consider—

''(A) the financial integrity of the HOPE for Homeowners Program; and

''(B) the purposes of the HOPE for Homeowners Program described in subsection (b).'';

(6) in subsection (k)—

(A) by striking the subsection heading and inserting ''EXIT FEE'';

(B) in paragraph (1), in the matter preceding subparagraph (A), by striking ''such sale or refinancing'' and inserting ''the mortgage being insured under this section''; and

(C) in paragraph (2), by striking ''and the mortgagor'' and all that follows through the end and inserting ''may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with the holder of the existing senior mortgage on the eligible mortgage, the holder of any existing subordinate mortgage on the eligible mortgage, or both.'';

(7) in the heading for subsection (n), by striking ''THE BOARD'' and inserting ''SECRETARY'';

(8) in subsection (p), by striking ''Under the direction of the Board, the'' and inserting ''The'';

(9) in subsection (s)—

(A) in the first sentence of paragraph (2), by striking ''Board of Directors of'' and inserting ''Advisory Board for''; and

(B) in paragraph (3)(A)(ii), by striking ''subsection (e)(1)(B) and such other'' and inserting ''such'';

(10) in subsection (v), by inserting after the period at the end the following: ''The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 203(b) to the maximum extent possible consistent with the requirements of this section.''; and

(11) by adding at the end the following new subsections:

''(x) PAYMENTS TO SERVICERS AND ORIGINATORS.—The Secretary may establish a payment to the—

''(1) servicer of the existing senior mortgage for every loan insured under the HOPE for Homeowners Program; and

''(2) originator of each new loan insured under the HOPE for Homeowners Program.

''(y) AUCTIONS.—The Secretary, with the concurrence of the Board, shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.''.

(b) REDUCING TARP FUNDS TO OFFSET COSTS OF PROGRAM CHANGES.—Paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting '', as such amount is reduced by $2,316,000,000,'' after ''$700,000,000,000''.

(c) TECHNICAL CORRECTION.—The second section 257 of the National Housing Act (Public Law 110–289; 122 Stat. 2839; 12 U.S.C. 1715z–24) is amended by striking the section heading and inserting the following:

''SEC. 258. PILOT PROGRAM FOR AUTOMATED PROCESS FOR BORROWERS WITHOUT SUFFICIENT CREDIT HISTORY.''.

SEC. 203. REQUIREMENTS FOR FHA-APPROVED MORTGAGEES.

(a) MORTGAGEE REVIEW BOARD.—

(1) IN GENERAL.—Section 202(c)(2) of the National Housing Act (12 U.S.C. 1708(c)) is amended—

(A) in subparagraph (E), by inserting ''and'' after the semicolon;

(B) in subparagraph (F), by striking ''; and'' and inserting ''or their designees.''; and

(C) by striking subparagraph (G).

(2) PROHIBITION AGAINST LIMITATIONS ON MORTGAGEE REVIEW BOARD'S POWER TO TAKE ACTION AGAINST MORTGAGEES.—Section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) is amended by adding at the end the following new paragraph:

''(9) PROHIBITION AGAINST LIMITATIONS ON MORTGAGEE REVIEW BOARD'S POWER TO TAKE ACTION AGAINST MORTGAGEES.—No State or local law, and no Federal law (except a Federal law enacted expressly in limitation of this subsection after the effective date of this sentence), shall preclude or limit the exercise by the Board of its power to take any action authorized under paragraphs (3) and (6) of this subsection against any mortgagee.''.

(b) LIMITATIONS ON PARTICIPATION AND MORTGAGEE APPROVAL AND USE OF NAME.—Section 202 of the National Housing Act (12 U.S.C. 1708) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(2) by inserting after subsection (c) the following new subsection:

''(d) LIMITATIONS ON PARTICIPATION IN ORIGINATION AND MORTGAGEE APPROVAL.—

''(1) REQUIREMENT.—Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary.

''(2) ELIGIBILITY FOR APPROVAL.—In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the applicant mortgagee who is—

''(A) currently suspended, debarred, under a limited denial of participation (LDP), or

otherwise restricted under part 25 of title 24 of the Code of Federal Regulations, 2 Code of Federal Regulations, part 180 as implemented by part 2424, or any successor regulations to such parts, or under similar provisions of any other Federal agency;

''(B) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;

''(C) subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;

''(D) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

''(E) convicted of, or who has pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry—

''(i) during the 7-year period preceding the date of the application for licensing and registration; or

''(ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

''(F) in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of State law; or

''(G) in violation of any other requirement as established by the Secretary.

''(3) RULEMAKING AND IMPLEMENTATION.—The Secretary shall conduct a rulemaking to carry out this subsection. The Secretary shall implement this subsection not later than the expiration of the 60-day period beginning upon the date of the enactment of this subsection by notice, mortgagee letter, or interim final regulations, which shall take effect upon issuance.''; and

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

''(h) USE OF NAME.—The Secretary shall, by regulation, require each mortgagee approved by the Secretary for participation in the FHA mortgage insurance programs of the Secretary—

''(1) to use the business name of the mortgagee that is registered with the Secretary in connection with such approval in all advertisements and promotional materials, as such terms are defined by the Secretary, relating to the business of such mortgagee in such mortgage insurance programs; and

''(2) to maintain copies of all such advertisements and promotional materials, in such form and for such period as the Secretary requires.''.

(c) PAYMENT FOR LOSS MITIGATION.—Section 204(a)(2) of the National Housing Act (12 U.S.C. 1710(a)(2)) is amended—

(1) by inserting ''or faces imminent default, as defined by the Secretary'' after ''default'';

(2) by inserting ''support for borrower housing counseling, partial claims, borrower incentives, preforeclosure sale,'' after ''loan modification,''; and

(3) by striking ''204(a)(1)(A)'' and inserting ''subsection (a)(1)(A) or section 203(c)''.

(d) PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.—

(1) ADDITIONAL LOSS MITIGATION ACTIONS.—Section 230(a) of the National Housing Act (12 U.S.C. 1715u(a)) is amended—

(A) by inserting ''or imminent default, as defined by the Secretary'' after ''default'';

(B) by striking ''loss'' and inserting ''loan'';

(C) by inserting ''preforeclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives,'' after ''loan modification,'';

(D) by inserting ''as required,'' after ''deeds in lieu of foreclosure,''; and

(E) by inserting ''or section 230(c),'' before ''as provided''.

(2) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—Section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)) is amended to read as follows:

''(b) PAYMENT OF PARTIAL CLAIM.—

''(1) ESTABLISHMENT OF PROGRAM.—The Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default or faces imminent default, as defined by the Secretary.

''(2) PAYMENTS AND EXCEPTIONS.—Any payment of a partial claim under the program established in paragraph (1) to a mortgagee shall be made in the sole discretion of the Secretary and on terms and conditions acceptable to the Secretary, except that—

''(A) the amount of the payment shall be in an amount determined by the Secretary, not to exceed an amount equivalent to 30 percent of the unpaid principal balance of the mortgage and any costs that are approved by the Secretary;

''(B) the amount of the partial claim payment shall first be applied to any arrearage on the mortgage, and may also be applied to achieve principal reduction;

''(C) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary;

''(D) the Secretary may permit compensation to the mortgagee for lost income on monthly payments, due to a reduction in the interest rate charged on the mortgage;

''(E) expenses related to the partial claim or modification may not be charged to the borrower;

''(F) loans may be modified to extend the term of the mortgage to a maximum of 40 years from the date of the modification; and

''(G) the Secretary may permit incentive payments to the mortgagee, on the borrower's behalf, based on successful performance of a modified mortgage, which shall be used to reduce the amount of principal indebtedness.

''(3) PAYMENTS IN CONNECTION WITH CERTAIN ACTIVITIES.—The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.''.

(3) ASSIGNMENT.—Section 230(c) of the National Housing Act (12 U.S.C. 1715u(c)) is amended—

(A) by inserting ''(1)'' after ''(c)'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(C) in paragraph (1)(B) (as so redesignated)—

(i) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(ii) in the matter preceding clause (i) (as so redesignated), by striking ''under a program under this subsection'' and inserting ''under this paragraph''; and

(iii) in clause (i) (as so redesignated), by inserting ''or facing imminent default, as defined by the Secretary'' after ''default'';

(D) in paragraph (1)(C) (as so redesignated), by striking ''under a program under this subsection'' and inserting ''under this paragraph''; and

(E) by adding at the end the following:

''(2) ASSIGNMENT AND LOAN MODIFICATION.—

''(A) AUTHORITY.—The Secretary may encourage loan modifications for eligible delinquent mortgages or mortgages facing imminent default, as defined by the Secretary, through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

''(B) PAYMENT OF BENEFITS AND ASSIGNMENT.—In carrying out this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with section 204(a)(5), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of section 204(a)(1)(A).

''(C) DISPOSITION.—After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently—

''(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

''(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

''(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

''(D) LOAN SERVICING.—In carrying out this paragraph, the Secretary may require the existing servicer of a mortgage assigned to the Secretary to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage, provided that the Secretary compensates the existing servicer appropriately, as such compensation is determined by the Secretary consistent, to the maximum extent possible, with section 203(b). If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.''.

(4) IMPLEMENTATION.—The Secretary of Housing and Urban Development may implement the amendments made by this subsection through notice or mortgagee letter.

(e) CHANGE OF STATUS.—The National Housing Act is amended by striking section 532 (12 U.S.C. 1735f–10) and inserting the following new section:

''SEC. 532. CHANGE OF MORTGAGEE STATUS.

''(a) NOTIFICATION.—Upon the occurrence of any action described in subsection (b), an approved mortgagee shall immediately submit to the Secretary, in writing, notification of such occurrence.

''(b) ACTIONS.—The actions described in this subsection are as follows:

''(1) The debarment, suspension or a Limited Denial of Participation (LDP), or application of other sanctions, other exclusions, fines, or penalties applied to the mortgagee or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the mortgagee pursuant to applicable provisions of State or Federal law.

''(2) The revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any other similar declaration of ineligibility pursuant to State law.''.

(f) CIVIL MONEY PENALTIES.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''or any of its owners, officers, or directors'' after ''mortgagee or lender'';

(ii) in subparagraph (H), by striking ''title I'' and all that follows through ''under this Act.'' and inserting ''title I or II of this Act, or any implementing regulation, handbook, or mortgagee letter that is issued under this Act.''; and

(iii) by inserting after subparagraph (J) the following:

''(K) Violation of section 202(d) of this Act (12 U.S.C. 1708(d)).

''(L) Use of 'Federal Housing Administration', 'Department of Housing and Urban Development', 'Government National Mortgage Association', 'Ginnie Mae', the acronyms 'HUD', 'FHA', or 'GNMA', or any official seal or logo of the Department of Housing and Urban Development, except as authorized by the Secretary.'';

(B) in paragraph (2)—

(i) in subparagraph (B), by striking ''or'' at the end;

(ii) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(iii) by adding at the end the following new subparagraph:

''(D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.''; and

(C) by amending paragraph (3) to read as follows:

''(3) PROHIBITION AGAINST MISLEADING USE OF FEDERAL ENTITY DESIGNATION.—The Secretary may impose a civil money penalty, as adjusted from time to time, under subsection (a) for any use of 'Federal Housing Administration', 'Department of Housing and Urban Development', 'Government National Mortgage Association', 'Ginnie Mae', the acronyms 'HUD', 'FHA', or 'GNMA', or any official seal or logo of the Department of Housing and Urban Development, by any person, party, company, firm, partnership, or business, including sellers of real estate, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers, except as authorized by the Secretary.''; and

(2) in subsection (g), by striking ''The term'' and all that follows through the end of the sentence and inserting ''For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.''.

(g) EXPANDED REVIEW OF FHA MORTGAGEE APPLICANTS AND NEWLY APPROVED MORTGAGEES.—Not later than the expiration of the 3-month period beginning upon the date of the enactment of this Act, the Secretary of Housing and Urban Development shall—

(1) expand the existing process for reviewing new applicants for approval for participation in the mortgage insurance programs of the Secretary for mortgages on 1- to 4-family residences for the purpose of identifying applicants who represent a high risk to the Mutual Mortgage Insurance Fund; and

(2) implement procedures that, for mortgagees approved during the 12-month period ending upon such date of enactment—

(A) expand the number of mortgages originated by such mortgagees that are reviewed for compliance with applicable laws, regulations, and policies; and

(B) include a process for random reviews of such mortgagees and a process for reviews that is based on volume of mortgages originated by such mortgagees.

SEC. 204. ENHANCEMENT OF LIQUIDITY AND STABILITY OF INSURED DEPOSITORY INSTITUTIONS TO ENSURE AVAILABILITY OF CREDIT AND REDUCTION OF FORECLOSURES.

(a) TEMPORARY INCREASE IN DEPOSIT INSURANCE EXTENDED.—Section 136 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5241) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''December 31, 2009'' and inserting ''December 31, 2013'';

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2); and

(D) in paragraph (2), as so redesignated, by striking ''December 31, 2009'' and inserting ''December 31, 2013''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''December 31, 2009'' and inserting ''December 31, 2013'';

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2); and

(D) in paragraph (2), as so redesignated, by striking ''December 31, 2009'' and inserting ''December 31, 2013''; and

(b) EXTENSION OF RESTORATION PLAN PERIOD.—Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking ''5-year period'' and inserting ''8-year period''.

(c) FDIC AND NCUA BORROWING AUTHORITY.—

(1) FDIC.—Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)) is amended—

(A) by striking ''$30,000,000,000'' and inserting ''$100,000,000,000'';

(B) by striking ''The Corporation is authorized'' and inserting the following:

''(1) IN GENERAL.—The Corporation is authorized'';

(C) by striking ''There are hereby'' and inserting the following:

''(2) FUNDING.—There are hereby''; and

(D) by adding at the end the following:

''(3) TEMPORARY INCREASES AUTHORIZED.—

''(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on the date of enactment of this paragraph and ending on December 31, 2010, if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the $100,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed $500,000,000,000.

''(B) REPORT REQUIRED.—If the borrowing authority of the Corporation is increased above $100,000,000,000 pursuant to subparagraph (A), the Corporation shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

''(C) RESTRICTION ON USAGE.—The Corporation may not borrow pursuant to subparagraph (A) to fund obligations of the Corporation incurred as a part of a program established by the Secretary of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 to purchase or guarantee assets.''.

(2) NCUA.—Section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)) is amended to read as follows:

''(1) If, in the judgment of the Board, a loan to the insurance fund, or to the stabilization fund described in section 217 of this title, is required at any time for purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $6,000,000,000 outstanding at any one time. Except as otherwise provided in this subsection, section 217, and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.''.

(3) TEMPORARY INCREASES OF BORROWING AUTHORITY FOR NCUA.—Section 203(d) of the Federal Credit Union Act (12 U.S.C. 1783(d)) is amended by adding at the end the following:

''(4) TEMPORARY INCREASES AUTHORIZED.—

''(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on the date of enactment of this paragraph and ending on December 31, 2010, if, upon the written recommendation of the Board (upon a vote of not less than two-thirds of the members of the Board) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the $6,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed $30,000,000,000.

''(B) REPORT REQUIRED.—If the borrowing authority of the Board is increased above $6,000,000,000 pursuant to subparagraph (A), the Board shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.''.

(d) EXPANDING SYSTEMIC RISK SPECIAL ASSESSMENTS.—Section 13(c)(4)(G)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended to read as follows:

''(ii) REPAYMENT OF LOSS.—

''(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

''(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

''(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.''.

(e) ESTABLISHMENT OF A NATIONAL CREDIT UNION SHARE INSURANCE FUND RESTORATION PLAN PERIOD.—Section 202(c)(2) of the Federal Credit Union Act (12 U.S.C. 1782(c)(2)) is amended by adding at the end the following new subparagraph:

''(D) FUND RESTORATION PLANS.—

''(i) IN GENERAL.—Whenever—

''(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

''(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under sub-clause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

''(ii) REQUIREMENTS OF RESTORATION PLAN.—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

''(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.''.

(f) TEMPORARY CORPORATE CREDIT UNION STABILIZATION FUND.—

(1) ESTABLISHMENT OF STABILIZATION FUND.—Title II of the Federal Credit Union Act (12 U.S.C. 1781 et seq.) is amended by adding at the end the following new section:

''SEC. 217. TEMPORARY CORPORATE CREDIT UNION STABILIZATION FUND.

''(a) ESTABLISHMENT OF STABILIZATION FUND.—There is hereby created in the Treasury of the United States a fund to be known as the 'Temporary Corporate Credit Union Stabilization Fund.' The Board will administer the Stabilization Fund as prescribed by section 209.

''(b) EXPENDITURES FROM STABILIZATION FUND.—Money in the Stabilization Fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments for the purposes described in section 203(a), subject to the following additional limitations:

''(1) All payments other than administrative payments shall be connected to the conservatorship, liquidation, or threatened conservatorship or liquidation, of a corporate credit union.

''(2) Prior to authorizing each payment the Board shall—

''(A) certify that, absent the existence of the Stabilization Fund, the Board would have made the identical payment out of the National Credit Union Share Insurance Fund (Insurance Fund); and

''(B) report each such certification to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''(c) AUTHORITY TO BORROW.—

''(1) IN GENERAL.—The Stabilization Fund is authorized to borrow from the Secretary of the Treasury from time-to-time as deemed necessary by the Board. The maximum outstanding amount of all borrowings from the Treasury by the Stabilization Fund and the National Credit Union Share Insurance Fund, combined, is limited to the amount provided for in section 203(d)(1), including any authorized increases in that amount.

''(2) REPAYMENT OF ADVANCES.—

''(A) IN GENERAL.—The advances made under this section shall be repaid by the Stabilization Fund, and interest on such advance shall be paid, to the General fund of the Treasury.

''(B) VARIABLE RATE OF INTEREST.—The Secretary of the Treasury shall make the first rate determination at the time of the first advance under this section and shall reset the rate again for all advances on each anniversary of the first advance. The interest rate shall be equal to the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity equal to 12 months.

''(3) REPAYMENT SCHEDULE.—The Stabilization Fund shall repay the advances on a first-in, first-out basis, with interest on the amount repaid, at times and dates determined by the Board at its discretion. All advances shall be repaid not later than the date of the seventh anniversary of the first advance to the Stabilization Fund, unless the Board extends this final repayment date. The Board shall obtain the concurrence of the Secretary of the Treasury on any proposed extension, including the terms and conditions of the extended repayment.

''(d) ASSESSMENT TO REPAY ADVANCES.—At least 90 days prior to each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment, the Board shall assess each federally insured credit union a special premium due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment. The premium charge for each credit union shall be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage shall be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 202.

''(e) DISTRIBUTIONS FROM INSURANCE FUND.—At the end of any calendar year in which the Stabilization Fund has an outstanding advance from the Treasury, the Insurance Fund is prohibited from making the distribution to insured credit unions described in section 202(c)(3). In lieu of the distribution described in that section, the Insurance Fund shall make a distribution to the Stabilization Fund of the maximum amount possible that does not reduce the Insurance Fund's equity ratio below the normal operating level and does not reduce the Insurance Fund's available assets ratio below 1.0 percent.

''(f) INVESTMENT OF STABILIZATION FUND ASSETS.—The Board may request the Secretary of the Treasury to invest such portion of the Stabilization Fund as is not, in the Board's judgment, required to meet the current needs of the Stabilization Fund. Such investments shall be made by the Secretary of the Treasury in public debt securities, with maturities suitable to the needs of the Stabilization Fund, as determined by the Board, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

''(g) REPORTS.—The Board shall submit an annual report to Congress on the financial condition and the results of the operation of the Stabilization Fund. The report is due to Congress within 30 days after each anniversary of the first advance made under subsection (c)(1). Because the Fund will use advances from the Treasury to meet corporate stabilization costs with full repayment of borrowings to Treasury at the Board's discretion not due until 7 years from the initial advance, to the extent operating expenses of the Fund exceed income, the financial condition of the Fund may reflect a deficit. With planned and required future repayments, the Board shall resolve all deficits prior to termination of the Fund.

''(h) CLOSING OF STABILIZATION FUND.—Within 90 days following the seventh anniversary of the initial Stabilization Fund advance, or earlier at the Board's discretion, the Board shall distribute any funds, property, or other assets remaining in the Stabilization Fund to the Insurance Fund and shall close the Stabilization Fund. If the Board extends the final repayment date as permitted under subsection (c)(3), the mandatory date for closing the Stabilization Fund shall be extended by the same number of days.''.

(2) CONFORMING AMENDMENT.—Section 202(c)(3)(A) of the Federal Credit Union Act (12 U.S.C. 1782(c)(3)(A)) is amended by inserting '', subject to the requirements of section 217(e),'' after ''The Board shall''.

SEC. 205. APPLICATION OF GSE CONFORMING LOAN LIMIT TO MORTGAGES ASSISTED WITH TARP FUNDS.

In making any assistance available to prevent and mitigate foreclosures on residential properties, including any assistance for mortgage modifications, using any amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008, the Secretary shall provide that the limitation on the maximum original principal obligation of a mortgage that may be modified, refinanced, made, guaranteed, insured, or otherwise assisted, using such amounts shall not be less than the dollar amount limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation that is in effect, at the time that the mortgage is modified, refinanced, made, guaranteed, insured, or otherwise assisted using such amounts, for the area in which the property involved in the transaction is located.

SEC. 206. MORTGAGES ON CERTAIN HOMES ON LEASED LAND.

Section 255(b)(4) of the National Housing Act (12 U.S.C. 1715z–20(b)(4)) is amended by striking subparagraph (B) and inserting:

''(B) under a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.''.

SEC. 207. SENSE OF CONGRESS REGARDING MORTGAGE REVENUE BOND PURCHASES.

It is the sense of the Congress that the Secretary of the Treasury should use amounts made available in this Act to purchase mortgage revenue bonds for single-family housing issued through State housing finance agencies and through units of local government and agencies thereof.

TITLE III—MORTGAGE FRAUD TASK FORCE

SEC. 301. SENSE OF CONGRESS ON ESTABLISHMENT OF A NATIONWIDE MORTGAGE FRAUD TASK FORCE.

(a) IN GENERAL.—It is the sense of the Congress that the Department of Justice establish a Nationwide Mortgage Fraud Task Force (hereinafter referred to in this section as the ''Task Force'') to address mortgage fraud in the United States.

(b) SUPPORT.—If the Department of Justice establishes the Task Force referred to in

subsection (a), it is the sense of the Congress that the Attorney General should provide the Task Force with the appropriate staff, administrative support, and other resources necessary to carry out the duties of the Task Force.

(c) MANDATORY FUNCTIONS.—If the Department of Justice establishes the Task Force referred to in subsection (a), it is the sense of the Congress that the Attorney General should—

(1) establish coordinating entities, and solicit the voluntary participation of Federal, State, and local law enforcement and prosecutorial agencies in such entities, to organize initiatives to address mortgage fraud, including initiatives to enforce State mortgage fraud laws and other related Federal and State laws;

(2) provide training to Federal, State, and local law enforcement and prosecutorial agencies with respect to mortgage fraud, including related Federal and State laws;

(3) collect and disseminate data with respect to mortgage fraud, including Federal, State, and local data relating to mortgage fraud investigations and prosecutions; and

(4) perform other functions determined by the Attorney General to enhance the detection of, prevention of, and response to mortgage fraud in the United States.

(d) OPTIONAL FUNCTIONS.—If the Department of Justice establishes the Task Force referred to in subsection (a), it is the sense of the Congress that the Task Force should—

(1) initiate and coordinate Federal mortgage fraud investigations and, through the coordinating entities described under subsection (c), State and local mortgage fraud investigations;

(2) establish a toll-free hotline for—

(A) reporting mortgage fraud;

(B) providing the public with access to information and resources with respect to mortgage fraud; and

(C) directing reports of mortgage fraud to the appropriate Federal, State, and local law enforcement and prosecutorial agency, including to the appropriate branch of the Task Force established under subsection (d);

(3) create a database with respect to suspensions and revocations of mortgage industry licenses and certifications to facilitate the sharing of such information by States;

(4) make recommendations with respect to the need for and resources available to provide the equipment and training necessary for the Task Force to combat mortgage fraud; and

(5) propose legislation to Federal, State, and local legislative bodies with respect to the elimination and prevention of mortgage fraud, including measures to address mortgage loan procedures and property appraiser practices that provide opportunities for mortgage fraud.

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

SEC. 401. SENSE OF THE CONGRESS ON FORECLOSURES.

(a) IN GENERAL.—It is the sense of the Congress that mortgage holders, institutions, and mortgage servicers should not initiate a foreclosure proceeding or a foreclosure sale on any homeowner until the foreclosure mitigation provisions, like the Hope for Homeowners program, as required under title II, and the President's ''Homeowner Affordability and Stability Plan'' have been implemented and determined to be operational by the Secretary of Housing and Urban Development and the Secretary of the Treasury.

(b) SCOPE OF MORATORIUM.—The foreclosure moratorium referred to in subsection (a) should apply only for first mortgages secured by the owner's principal dwelling.

(c) FHA-REGULATED LOAN MODIFICATION AGREEMENTS.—If a mortgage holder, institution, or mortgage servicer to which subsection (a) applies reaches a loan modification agreement with a homeowner under the auspices of the Federal Housing Administration before any plan referred to in such subsection takes effect, subsection (a) shall cease to apply to such institution as of the effective date of the loan modification agreement.

(d) DUTY OF CONSUMER TO MAINTAIN PROPERTY.—Any homeowner for whose benefit any foreclosure proceeding or sale is barred under subsection (a) from being instituted, continued , or consummated with respect to any homeowner mortgage should not, with respect to any property securing such mortgage, destroy, damage, or impair such property, allow the property to deteriorate, or commit waste on the property.

(e) DUTY OF CONSUMER TO RESPOND TO REASONABLE INQUIRIES.—Any homeowner for whose benefit any foreclosure proceeding or sale is barred under subsection (a) from being instituted, continued, or consummated with respect to any homeowner mortgage should respond to reasonable inquiries from a creditor or servicer during the period during which such foreclosure proceeding or sale is barred.

SEC. 402. PUBLIC-PRIVATE INVESTMENT PROGRAM; ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Public-Private Investment Program Improvement and Oversight Act of 2009''.

(b) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Trouble Asset Relief Program (in this section referred to as the ''Special Inspector General''), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the ''Secretary'') that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private investment fund to identify for the Secretary each investor that, individually or together with its affiliates, directly or indirectly holds equity interests in the fund acquired as a result of—

(i) any investment by such investor or any of its affiliates in a vehicle formed for the purpose of directly or indirectly investing in the fund; or

(ii) any other investment decision by such investor or any of its affiliates to directly or indirectly invest in the fund that, in the aggregate, equal at least 10 percent of the equity interests in such fund.

(2) INTERACTION BETWEEN PUBLIC-PRIVATE INVESTMENT FUNDS AND THE TERM-ASSET BACKED SECURITIES LOAN FACILITY.—The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) REPORT.—Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL.—

(1) IN GENERAL.—Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), $15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) PRIORITIES.—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under the Public Private Investment Program established by the Secretary of the Treasury or the Term Asset Loan Facility established by the Board of Governors of the Federal Reserve System (including any successor thereto or any other similar program established by the Secretary or the Board), to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insurance Corporation in connection with insured depository institutions, as described in section 13(c)(2)(B) of the Federal Deposit Insurance Act.

(e) DEFINITION.—In this section, the term ''public-private investment fund'' means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or

funds appropriated under the Emergency Economic Stabilization Act of 2008.

(f) OFFSET OF COSTS OF PROGRAM CHANGES.—Notwithstanding the amendment made by section 202(b) of this Act, paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting '', as such amount is reduced by $2,331,000,000,'' after ''$700,000,000,000''.

SEC. 403. REMOVAL OF REQUIREMENT TO LIQUIDATE WARRANTS UNDER THE TARP.

Section 111(g) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(g)) is amended by striking ''shall liquidate warrants associated with such assistance at the current market price'' and inserting '', at the market price, may liquidate warrants associated with such assistance''.

SEC. 404. NOTIFICATION OF SALE OR TRANSFER OF MORTGAGE LOANS.

(a) IN GENERAL.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following:

''(g) NOTICE OF NEW CREDITOR.—

''(1) IN GENERAL.—In addition to other disclosures required by this title, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

''(A) the identity, address, telephone number of the new creditor;

''(B) the date of transfer;

''(C) how to reach an agent or party having authority to act on behalf of the new creditor;

''(D) the location of the place where transfer of ownership of the debt is recorded; and

''(E) any other relevant information regarding the new creditor.

''(2) DEFINITION.—As used in this subsection, the term 'mortgage loan' means any consumer credit transaction that is secured by the principal dwelling of a consumer.''.

(b) PRIVATE RIGHT OF ACTION.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended by inserting ''subsection (f) or (g) of section 131,'' after ''section 125,''.

TITLE V—FARM LOAN RESTRUCTURING

SEC. 501. CONGRESSIONAL OVERSIGHT PANEL SPECIAL REPORT.

Section 125(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5233(b)) is amended by adding at the end the following:

''(3) SPECIAL REPORT ON FARM LOAN RESTRUCTURING.—Not later than 60 days after the date of enactment of this paragraph, the Oversight Panel shall submit a special report on farm loan restructuring that—

''(A) analyzes the state of the commercial farm credit markets and the use of loan restructuring as an alternative to foreclosure by recipients of financial assistance under the Troubled Asset Relief Program; and

''(B) includes an examination of and recommendation on the different methods for farm loan restructuring that could be used as part of a foreclosure mitigation program for farm loans made by recipients of financial assistance under the Troubled Asset Relief Program, including any programs for direct loan restructuring or modification carried out by the Farm Service Agency of the Department of Agriculture, the farm credit system, and the Making Home Affordable Program of the Department of the Treasury.''.

TITLE VI—ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM

SEC. 601. ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM.

Section 116 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5226) is amended—

(1) in subsection (a)(1)(A)—

(A) in clause (iii), by striking ''and'' at the end;

(B) in clause (iv), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(v) public accountability for the exercise of such authority, including with respect to actions taken by those entities participating in programs established under this Act.''; and

(2) in subsection (a)(2)—

(A) by redesignating subparagraph (C) as subparagraph (F); and

(B) by striking subparagraphs (A) and (B) and inserting the following:

''(A) DEFINITION.—In this paragraph, the term 'governmental unit' has the meaning given under section 101(27) of title 11, United States Code, and does not include any insured depository institution as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 8113).

''(B) GAO PRESENCE.—The Secretary shall provide the Comptroller General with appropriate space and facilities in the Department of the Treasury as necessary to facilitate oversight of the TARP until the termination date established in section 5230 of this title.

''(C) ACCESS TO RECORDS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, and for purposes of reviewing the performance of the TARP, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the TARP, any entity established by the Secretary under this Act, any entity that is established by a Federal reserve bank and receives funding from the TARP, or any entity (other than a governmental unit) participating in a program established under the authority of this Act, and to the officers, employees, directors, independent public accountants, financial advisors and any and all other agents and representatives thereof, at such time as the Comptroller General may request.

''(ii) VERIFICATION.—The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by, among others, depositories, fiscal agents, and custodians.

''(iii) COPIES.—The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.

''(D) AGREEMENT BY ENTITIES.—Each contract, term sheet, or other agreement between the Secretary or the TARP (or any TARP vehicle, officer, director, employee, independent public accountant, financial advisor, or other TARP agent or representative) and an entity (other than a governmental unit) participating in a program established under this Act shall provide for access by the Comptroller General in accordance with this section.

''(E) RESTRICTION ON PUBLIC DISCLOSURE.—

''(i) IN GENERAL.—The Comptroller General may not publicly disclose proprietary or trade secret information obtained under this section.

''(ii) EXCEPTION FOR CONGRESSIONAL COMMITTEES.—This subparagraph does not limit disclosures to congressional committees or members thereof having jurisdiction over a private or public entity referred to under subparagraph (C).

''(iii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or amend the prohibitions against the disclosure of trade secrets or other information prohibited by section 1905 of title 18, United States Code, section 714(c) of title 31, United States Code, or other applicable provisions of law.''.

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 701. SHORT TITLE.

This title may be cited as the ''Protecting Tenants at Foreclosure Act of 2009''.

SEC. 702. EFFECT OF FORECLOSURE ON PRE-EXISTING TENANCY.

(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; or

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

(c) DEFINITION.—For purposes of this section, the term ''federally-related mortgage loan'' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: ''and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the initial term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

''(i) will occupy the unit as a primary residence; and

''(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.''; and

(2) by inserting at the end of subparagraph (F) the following: ''In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to

the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.''.

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

TITLE VIII—COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES

SEC. 801. COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES.

(a) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking ''Federal Reserve Board,'' and inserting ''Board of Governors of the Federal Reserve System (in this section referred to as the 'Board'),''; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''Federal Reserve Board,'' and inserting ''Board''; and

(B) in paragraph (4), by striking ''of Governors''.

(b) CONFIDENTIAL INFORMATION.—Section 714(c) of title 31, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) Except as provided under paragraph (4), an officer or employee of the Government Accountability Office may not disclose to any person outside the Government Accountability Office information obtained in audits or examinations conducted under subsection (e) and maintained as confidential by the Board or the Federal reserve banks.

''(4) This subsection shall not—

''(A) authorize an officer or employee of an agency to withhold information from any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee; or

''(B) limit any disclosure by the Government Accountability Office to any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee.''.

(c) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (1), by inserting ''The Comptroller General shall have access to the officers, employees, contractors, and other agents and representatives of an agency and any entity established by an agency at any reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.'' after the first sentence;

(2) in paragraph (2), by inserting '', copies of any record,'' after ''records''; and

(3) by adding at the end the following:

''(3)(A) For purposes of conducting audits and examinations under subsection (e), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things or property belonging to or in use by—

''(i) any entity established by any action taken by the Board described under subsection (e);

''(ii) any entity receiving assistance from any action taken by the Board described under subsection (e), to the extent that the access and request relates to that assistance; and

''(iii) the officers, directors, employees, independent public accountants, financial advisors and any and all representatives of any entity described under clause (i) or (ii); to the extent that the access and request relates to that assistance;

''(B) The Comptroller General shall have access as provided under subparagraph (A) at such time as the Comptroller General may request.

''(C) Each contract, term sheet, or other agreement between the Board or any Federal reserve bank (or any entity established by the Board or any Federal reserve bank) and an entity receiving assistance from any action taken by the Board described under subsection (e) shall provide for access by the Comptroller General in accordance with this paragraph.''.

(d) AUDITS OF CERTAIN ACTIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsection (b), the Comptroller General may conduct audits, including onsite examinations when the Comptroller General determines such audits and examinations are appropriate, of any action taken by the Board under the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343); with respect to a single and specific partnership or corporation.''.

DIVISION B—HOMELESSNESS REFORM

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009''.

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

DIVISION B—HOMELESSNESS REFORM

Sec. 1001. Short title; table of contents.
Sec. 1002. Findings and purposes.
Sec. 1003. Definition of homelessness.
Sec. 1004. United States Interagency Council on Homelessness.

TITLE I—HOUSING ASSISTANCE GENERAL PROVISIONS

Sec. 1101. Definitions.
Sec. 1102. Community homeless assistance planning boards.
Sec. 1103. General provisions.
Sec. 1104. Protection of personally identifying information by victim service providers.
Sec. 1105. Authorization of appropriations.

TITLE II—EMERGENCY SOLUTIONS GRANTS PROGRAM

Sec. 1201. Grant assistance.
Sec. 1202. Eligible activities.
Sec. 1203. Participation in Homeless Management Information System.
Sec. 1204. Administrative provision.
Sec. 1205. GAO study of administrative fees.

TITLE III—CONTINUUM OF CARE PROGRAM

Sec. 1301. Continuum of care.
Sec. 1302. Eligible activities.
Sec. 1303. High performing communities.
Sec. 1304. Program requirements.
Sec. 1305. Selection criteria, allocation amounts, and funding.
Sec. 1306. Research.

TITLE IV—RURAL HOUSING STABILITY ASSISTANCE PROGRAM

Sec. 1401. Rural housing stability assistance.
Sec. 1402. GAO study of homelessness and homeless assistance in rural areas.

TITLE V—REPEALS AND CONFORMING AMENDMENTS

Sec. 1501. Repeals.
Sec. 1502. Conforming amendments.
Sec. 1503. Effective date.
Sec. 1504. Regulations.
Sec. 1505. Amendment to table of contents.

SEC. 1002. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) a lack of affordable housing and limited scale of housing assistance programs are the primary causes of homelessness; and

(2) homelessness affects all types of communities in the United States, including rural, urban, and suburban areas.

(b) PURPOSES.—The purposes of this division are—

(1) to consolidate the separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (consisting of the supportive housing program and related innovative programs, the safe havens program, the section 8 assistance program for single-room occupancy dwellings, and the shelter plus care program) into a single program with specific eligible activities;

(2) to codify in Federal law the continuum of care planning process as a required and integral local function necessary to generate the local strategies for ending homelessness; and

(3) to establish a Federal goal of ensuring that individuals and families who become homeless return to permanent housing within 30 days.

SEC. 1003. DEFINITION OF HOMELESSNESS.

(a) IN GENERAL.—Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d); and

(2) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—For purposes of this Act, the terms 'homeless', 'homeless individual', and 'homeless person' means—

''(1) an individual or family who lacks a fixed, regular, and adequate nighttime residence;

''(2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

''(3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);

''(4) an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;

''(5) an individual or family who—

''(A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by—

''(i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

''(ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or

''(iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;

''(B) has no subsequent residence identified; and

''(C) lacks the resources or support networks needed to obtain other permanent housing; and

''(6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who—

''(A) have experienced a long term period without living independently in permanent housing,

''(B) have experienced persistent instability as measured by frequent moves over such period, and

''(C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

''(b) DOMESTIC VIOLENCE AND OTHER DANGEROUS OR LIFE-THREATENING CONDITIONS.—Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.''.

(b) REGULATIONS.—Not later than the expiration of the 6-month period beginning upon the date of the enactment of this division, the Secretary of Housing and Urban Development shall issue regulations that provide sufficient guidance to recipients of funds under title IV of the McKinney-Vento Homeless Assistance Act to allow uniform and consistent implementation of the requirements of section 103 of such Act, as amended by subsection (a) of this section. This subsection shall take effect on the date of the enactment of this division.

(c) CLARIFICATION OF EFFECT ON OTHER LAWS.—This section and the amendments made by this section to section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) may not be construed to affect, alter, limit, annul, or supersede any other provision of Federal law providing a definition of ''homeless'', ''homeless individual'', or ''homeless person'' for purposes other than such Act, except to the extent that such provision refers to such section 103 or the definition provided in such section 103.

SEC. 1004. UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS.

(a) IN GENERAL.—Title II of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11311 et seq.) is amended—

(1) in section 201 (42 U.S.C. 11311), by inserting before the period at the end the following ''whose mission shall be to coordinate the Federal response to homelessness and to create a national partnership at every level of government and with the private sector to reduce and end homelessness in the nation while maximizing the effectiveness of the Federal Government in contributing to the end of homelessness'';

(2) in section 202 (42 U.S.C. 11312)—

(A) in subsection (a)—

(i) by redesignating paragraph (16) as paragraph (22); and

(ii) by inserting after paragraph (15) the following:

''(16) The Commissioner of Social Security, or the designee of the Commissioner.

''(17) The Attorney General of the United States, or the designee of the Attorney General.

''(18) The Director of the Office of Management and Budget, or the designee of the Director.

''(19) The Director of the Office of Faith-Based and Community Initiatives, or the designee of the Director.

''(20) The Director of USA FreedomCorps, or the designee of the Director.'';

(B) in subsection (c), by striking ''annually'' and inserting ''four times each year, and the rotation of the positions of Chairperson and Vice Chairperson required under subsection (b) shall occur at the first meeting of each year''; and

(C) by adding at the end the following:

''(e) ADMINISTRATION.—The Executive Director of the Council shall report to the Chairman of the Council.'';

(3) in section 203(a) (42 U.S.C. 11313(a))—

(A) by redesignating paragraphs (1), (2), (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), (9), (10), and (11), respectively;

(B) by inserting before paragraph (2), as so redesignated by subparagraph (A), the following:

''(1) not later than 12 months after the date of the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, develop, make available for public comment, and submit to the President and to Congress a National Strategic Plan to End Homelessness, and shall update such plan annually;'';

(C) in paragraph (5), as redesignated by subparagraph (A), by striking ''at least 2, but in no case more than 5'' and inserting ''not less than 5, but in no case more than 10'';

(D) by inserting after paragraph (5), as so redesignated by subparagraph (A), the following:

''(6) encourage the creation of State Interagency Councils on Homelessness and the formulation of jurisdictional 10-year plans to end homelessness at State, city, and county levels;

''(7) annually obtain from Federal agencies their identification of consumer-oriented entitlement and other resources for which persons experiencing homelessness may be eligible and the agencies' identification of improvements to ensure access; develop mechanisms to ensure access by persons experiencing homelessness to all Federal, State, and local programs for which the persons are eligible, and to verify collaboration among entities within a community that receive Federal funding under programs targeted for persons experiencing homelessness, and other programs for which persons experiencing homelessness are eligible, including mainstream programs identified by the Government Accountability Office in the reports entitled 'Homelessness: Coordination and Evaluation of Programs Are Essential', issued February 26, 1999, and 'Homelessness: Barriers to Using Mainstream Programs', issued July 6, 2000;

''(8) conduct research and evaluation related to its functions as defined in this section;

''(9) develop joint Federal agency and other initiatives to fulfill the goals of the agency;'';

(E) in paragraph (10), as so redesignated by subparagraph (A), by striking ''and'' at the end;

(F) in paragraph (11), as so redesignated by subparagraph (A), by striking the period at the end and inserting a semicolon;

(G) by adding at the end the following new paragraphs:

''(12) develop constructive alternatives to criminalizing homelessness and eliminate laws and policies that prohibit sleeping, feeding, sitting, resting, or lying in public spaces when there are no suitable alternatives, result in the destruction of a homeless person's property without due process, or are selectively enforced against homeless persons; and

''(13) not later than the expiration of the 6-month period beginning upon completion of the study requested in a letter to the Acting Comptroller General from the Chair and Ranking Member of the House Financial Services Committee and several other members regarding various definitions of homelessness in Federal statutes, convene a meeting of representatives of all Federal agencies and committees of the House of Representatives and the Senate having jurisdiction over any Federal program to assist homeless individuals or families, local and State governments, academic researchers who specialize in homelessness, nonprofit housing and service providers that receive funding under any Federal program to assist homeless individuals or families, organizations advocating on behalf of such nonprofit providers and homeless persons receiving housing or services under any such Federal program, and homeless persons receiving housing or services under any such Federal program, at which meeting such representatives shall discuss all issues relevant to whether the definitions of 'homeless' under paragraphs (1) through (4) of section 103(a) of the McKinney-Vento Homeless Assistance Act, as amended by section 1003 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, should be modified by the Congress, including whether there is a compelling need for a uniform definition of homelessness under Federal law, the extent to which the differences in such definitions create barriers for individuals to accessing services and to collaboration between agencies, and the relative availability, and barriers to access by persons defined as homeless, of mainstream programs identified by the Government Accountability Office in the two reports identified in paragraph (7) of this subsection; and shall submit transcripts of such meeting, and any majority and dissenting recommendations from such meetings, to each committee of the House of Representatives and the Senate having jurisdiction over any Federal program to assist homeless individuals or families not later than the expiration of the 60-day period beginning upon conclusion of such meeting.''.

(4) in section 203(b)(1) (42 U.S.C. 11313(b))—

(A) by striking ''Federal'' and inserting ''national'';

(B) by striking ''; and'' and inserting ''and pay for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made;'';

(5) in section 205(d) (42 U.S.C. 11315(d)), by striking ''property.'' and inserting ''property, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Council.''; and

(6) by striking section 208 (42 U.S.C. 11318) and inserting the following:

''SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this title $3,000,000 for fiscal year 2010 and such sums as may be necessary for fiscal years 2011. Any amounts appropriated to carry out this title shall remain available until expended.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on, and shall apply beginning on, the date of the enactment of this division.

TITLE I—HOUSING ASSISTANCE GENERAL PROVISIONS

SEC. 1101. DEFINITIONS.

Subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended—

(1) by striking the subtitle heading and inserting the following:

"Subtitle A—General Provisions";

(2) by redesignating sections 401 and 402 (42 U.S.C. 11361, 11362) as sections 403 and 406, respectively; and

(3) by inserting before section 403 (as so redesignated by paragraph (2) of this section) the following new section:

"SEC. 401. DEFINITIONS.

''For purposes of this title:

''(1) AT RISK OF HOMELESSNESS.—The term 'at risk of homelessness' means, with respect to an individual or family, that the individual or family—

''(A) has income below 30 percent of median income for the geographic area;

''(B) has insufficient resources immediately available to attain housing stability; and

''(C)(i) has moved frequently because of economic reasons;

''(ii) is living in the home of another because of economic hardship;

''(iii) has been notified that their right to occupy their current housing or living situation will be terminated;

''(iv) lives in a hotel or motel;

''(v) lives in severely overcrowded housing;

''(vi) is exiting an institution; or

''(vii) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

Such term includes all families with children and youth defined as homeless under other Federal statutes.

''(2) CHRONICALLY HOMELESS.—

''(A) IN GENERAL.—The term 'chronically homeless' means, with respect to an individual or family, that the individual or family—

''(i) is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter;

''(ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and

''(iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions.

''(B) RULE OF CONSTRUCTION.—A person who currently lives or resides in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital or other similar facility, and has resided there for fewer than 90 days shall be considered chronically homeless if such person met all of the requirements described in subparagraph (A) prior to entering that facility.

''(3) COLLABORATIVE APPLICANT.—The term 'collaborative applicant' means an entity that—

''(A) carries out the duties specified in section 402;

''(B) serves as the applicant for project sponsors who jointly submit a single application for a grant under subtitle C in accordance with a collaborative process; and

''(C) if the entity is a legal entity and is awarded such grant, receives such grant directly from the Secretary.

''(4) COLLABORATIVE APPLICATION.—The term 'collaborative application' means an application for a grant under subtitle C that—

''(A) satisfies section 422; and

''(B) is submitted to the Secretary by a collaborative applicant.

''(5) CONSOLIDATED PLAN.—The term 'Consolidated Plan' means a comprehensive housing affordability strategy and community development plan required in part 91 of title 24, Code of Federal Regulations.

''(6) ELIGIBLE ENTITY.—The term 'eligible entity' means, with respect to a subtitle, a public entity, a private entity, or an entity that is a combination of public and private entities, that is eligible to directly receive grant amounts under such subtitle.

''(7) FAMILIES WITH CHILDREN AND YOUTH DEFINED AS HOMELESS UNDER OTHER FEDERAL STATUTES.—The term 'families with children and youth defined as homeless under other Federal statutes' means any children or youth that are defined as 'homeless' under any Federal statute other than this subtitle, but are not defined as homeless under section 103, and shall also include the parent, parents, or guardian of such children or youth under subtitle B of title VII this Act (42 U.S.C. 11431 et seq.).

''(8) GEOGRAPHIC AREA.—The term 'geographic area' means a State, metropolitan city, urban county, town, village, or other nonentitlement area, or a combination or consortia of such, in the United States, as described in section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306).

''(9) HOMELESS INDIVIDUAL WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'homeless individual with a disability' means an individual who is homeless, as defined in section 103, and has a disability that—

''(i)(I) is expected to be long-continuing or of indefinite duration;

''(II) substantially impedes the individual's ability to live independently;

''(III) could be improved by the provision of more suitable housing conditions; and

''(IV) is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post traumatic stress disorder, or brain injury;

''(ii) is a developmental disability, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002); or

''(iii) is the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agency for acquired immunodeficiency syndrome.

''(B) RULE.—Nothing in clause (iii) of subparagraph (A) shall be construed to limit eligibility under clause (i) or (ii) of subparagraph (A).

''(10) LEGAL ENTITY.—The term 'legal entity' means—

''(A) an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of such Code;

''(B) an instrumentality of State or local government; or

''(C) a consortium of instrumentalities of State or local governments that has constituted itself as an entity.

''(11) METROPOLITAN CITY; URBAN COUNTY; NONENTITLEMENT AREA.—The terms 'metropolitan city', 'urban county', and 'nonentitlement area' have the meanings given such terms in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

''(12) NEW.—The term 'new' means, with respect to housing, that no assistance has been provided under this title for the housing.

''(13) OPERATING COSTS.—The term 'operating costs' means expenses incurred by a project sponsor operating transitional housing or permanent housing under this title with respect to—

''(A) the administration, maintenance, repair, and security of such housing;

''(B) utilities, fuel, furnishings, and equipment for such housing; or

''(C) coordination of services as needed to ensure long-term housing stability.

''(14) OUTPATIENT HEALTH SERVICES.—The term 'outpatient health services' means outpatient health care services, mental health services, and outpatient substance abuse services.

''(15) PERMANENT HOUSING.—The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and permanent housing without supportive services.

''(16) PERSONALLY IDENTIFYING INFORMATION.—The term 'personally identifying information' means individually identifying information for or about an individual, including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

''(A) a first and last name;

''(B) a home or other physical address;

''(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

''(D) a social security number; and

''(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information, would serve to identify any individual.

''(17) PRIVATE NONPROFIT ORGANIZATION.—The term 'private nonprofit organization' means an organization—

''(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

''(B) that has a voluntary board;

''(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

''(D) that practices nondiscrimination in the provision of assistance.

''(18) PROJECT.—The term 'project' means, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource.

''(19) PROJECT-BASED.—The term 'project-based' means, with respect to rental assistance, that the assistance is provided pursuant to a contract that—

''(A) is between—

''(i) the recipient or a project sponsor; and

''(ii) an owner of a structure that exists as of the date the contract is entered into; and

''(B) provides that rental assistance payments shall be made to the owner and that the units in the structure shall be occupied by eligible persons for not less than the term of the contract.

''(20) PROJECT SPONSOR.—The term 'project sponsor' means, with respect to proposed eligible activities, the organization directly responsible for carrying out the proposed eligible activities.

''(21) RECIPIENT.—Except as used in subtitle B, the term 'recipient' means an eligible entity who—

''(A) submits an application for a grant under section 422 that is approved by the Secretary;

''(B) receives the grant directly from the Secretary to support approved projects described in the application; and

''(C)(i) serves as a project sponsor for the projects; or

''(ii) awards the funds to project sponsors to carry out the projects.

''(22) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(23) SERIOUS MENTAL ILLNESS.—The term 'serious mental illness' means a severe and persistent mental illness or emotional impairment that seriously limits a person's ability to live independently.

''(24) SOLO APPLICANT.—The term 'solo applicant' means an entity that is an eligible entity, directly submits an application for a grant under subtitle C to the Secretary, and, if awarded such grant, receives such grant directly from the Secretary.

''(25) SPONSOR-BASED.—The term 'sponsor-based' means, with respect to rental assistance, that the assistance is provided pursuant to a contract that—

''(A) is between—

''(i) the recipient or a project sponsor; and

''(ii) an independent entity that—

''(I) is a private organization; and

''(II) owns or leases dwelling units; and

''(B) provides that rental assistance payments shall be made to the independent entity and that eligible persons shall occupy such assisted units.

''(26) STATE.—Except as used in subtitle B, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

''(27) SUPPORTIVE SERVICES.—The term 'supportive services' means services that address the special needs of people served by a project, including—

''(A) the establishment and operation of a child care services program for families experiencing homelessness;

''(B) the establishment and operation of an employment assistance program, including providing job training;

''(C) the provision of outpatient health services, food, and case management;

''(D) the provision of assistance in obtaining permanent housing, employment counseling, and nutritional counseling;

''(E) the provision of outreach services, advocacy, life skills training, and housing search and counseling services;

''(F) the provision of mental health services, trauma counseling, and victim services;

''(G) the provision of assistance in obtaining other Federal, State, and local assistance available for residents of supportive housing (including mental health benefits, employment counseling, and medical assistance, but not including major medical equipment);

''(H) the provision of legal services for purposes including requesting reconsiderations and appeals of veterans and public benefit claim denials and resolving outstanding warrants that interfere with an individual's ability to obtain and retain housing;

''(I) the provision of—

''(i) transportation services that facilitate an individual's ability to obtain and maintain employment; and

''(ii) health care; and

''(J) other supportive services necessary to obtain and maintain housing.

''(28) TENANT-BASED.—The term 'tenant-based' means, with respect to rental assistance, assistance that—

''(A) allows an eligible person to select a housing unit in which such person will live using rental assistance provided under subtitle C, except that if necessary to assure that the provision of supportive services to a person participating in a program is feasible, a recipient or project sponsor may require that the person live—

''(i) in a particular structure or unit for not more than the first year of the participation;

''(ii) within a particular geographic area for the full period of the participation, or the period remaining after the period referred to in subparagraph (A); and

''(B) provides that a person may receive such assistance and move to another structure, unit, or geographic area if the person has complied with all other obligations of the program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

''(29) TRANSITIONAL HOUSING.—The term 'transitional housing' means housing the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary.

''(30) UNIFIED FUNDING AGENCY.—The term 'unified funding agency' means a collaborative applicant that performs the duties described in section 402(g).

''(31) UNDERSERVED POPULATIONS.—The term 'underserved populations' includes populations underserved because of geographic location, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Secretary, as appropriate.

''(32) VICTIM SERVICE PROVIDER.—The term 'victim service provider' means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. Such term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

''(33) VICTIM SERVICES.—The term 'victim services' means services that assist domestic violence, dating violence, sexual assault, or stalking victims, including services offered by rape crisis centers and domestic violence shelters, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.''.

SEC. 1102. COMMUNITY HOMELESS ASSISTANCE PLANNING BOARDS.

Subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended by inserting after section 401 (as added by section 1101(3) of this division) the following new section:

''SEC. 402. COLLABORATIVE APPLICANTS.

''(a) ESTABLISHMENT AND DESIGNATION.—A collaborative applicant shall be established for a geographic area by the relevant parties in that geographic area to—

''(1) submit an application for amounts under this subtitle; and

''(2) perform the duties specified in subsection (f) and, if applicable, subsection (g).

''(b) NO REQUIREMENT TO BE A LEGAL ENTITY.—An entity may be established to serve as a collaborative applicant under this section without being a legal entity.

''(c) REMEDIAL ACTION.—If the Secretary finds that a collaborative applicant for a geographic area does not meet the requirements of this section, or if there is no collaborative applicant for a geographic area, the Secretary may take remedial action to ensure fair distribution of grant amounts under subtitle C to eligible entities within that area. Such measures may include designating another body as a collaborative applicant, or permitting other eligible entities to apply directly for grants.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to displace conflict of interest or government fair practices laws, or their equivalent, that govern applicants for grant amounts under subtitles B and C.

''(e) APPOINTMENT OF AGENT.—

''(1) IN GENERAL.—Subject to paragraph (2), a collaborative applicant may designate an agent to—

''(A) apply for a grant under section 422(c);

''(B) receive and distribute grant funds awarded under subtitle C; and

''(C) perform other administrative duties.

''(2) RETENTION OF DUTIES.—Any collaborative applicant that designates an agent pursuant to paragraph (1) shall regardless of such designation retain all of its duties and responsibilities under this title.

''(f) DUTIES.—A collaborative applicant shall—

''(1) design a collaborative process for the development of an application under subtitle C, and for evaluating the outcomes of projects for which funds are awarded under subtitle B, in such a manner as to provide information necessary for the Secretary—

''(A) to determine compliance with—

''(i) the program requirements under section 426; and

''(ii) the selection criteria described under section 427; and

''(B) to establish priorities for funding projects in the geographic area involved;

''(2) participate in the Consolidated Plan for the geographic area served by the collaborative applicant; and

''(3) ensure operation of, and consistent participation by, project sponsors in a community-wide homeless management information system (in this subsection referred to as 'HMIS') that—

''(A) collects unduplicated counts of individuals and families experiencing homelessness;

''(B) analyzes patterns of use of assistance provided under subtitles B and C for the geographic area involved;

''(C) provides information to project sponsors and applicants for needs analyses and funding priorities; and

''(D) is developed in accordance with standards established by the Secretary, including standards that provide for—

''(i) encryption of data collected for purposes of HMIS;

''(ii) documentation, including keeping an accurate accounting, proper usage, and disclosure, of HMIS data;

''(iii) access to HMIS data by staff, contractors, law enforcement, and academic researchers;

''(iv) rights of persons receiving services under this title;

''(v) criminal and civil penalties for unlawful disclosure of data; and

''(vi) such other standards as may be determined necessary by the Secretary.

''(g) UNIFIED FUNDING.—

''(1) IN GENERAL.—In addition to the duties described in subsection (f), a collaborative applicant shall receive from the Secretary and distribute to other project sponsors in the applicable geographic area funds for projects to be carried out by such other project sponsors, if—

''(A) the collaborative applicant—

''(i) applies to undertake such collection and distribution responsibilities in an application submitted under this subtitle; and

''(ii) is selected to perform such responsibilities by the Secretary; or

''(B) the Secretary designates the collaborative applicant as the unified funding agency in the geographic area, after—

''(i) a finding by the Secretary that the applicant—

''(I) has the capacity to perform such responsibilities; and

''(II) would serve the purposes of this Act as they apply to the geographic area; and

''(ii) the Secretary provides the collaborative applicant with the technical assistance necessary to perform such responsibilities as such assistance is agreed to by the collaborative applicant.

''(2) REQUIRED ACTIONS BY A UNIFIED FUNDING AGENCY.—A collaborative applicant that is either selected or designated as a unified funding agency for a geographic area under paragraph (1) shall—

''(A) require each project sponsor who is funded by a grant received under subtitle C to establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds awarded to the project sponsor under subtitle C in order to ensure that all financial transactions carried out under subtitle C are conducted, and records maintained, in accordance with generally accepted accounting principles; and

''(B) arrange for an annual survey, audit, or evaluation of the financial records of each project carried out by a project sponsor funded by a grant received under subtitle C.

''(h) CONFLICT OF INTEREST.—No board member of a collaborative applicant may participate in decisions of the collaborative applicant concerning the award of a grant, or provision of other financial benefits, to such member or the organization that such member represents.''.

SEC. 1103. GENERAL PROVISIONS.

Subtitle A of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended by inserting after section 403 (as so redesignated by section 1101(2) of this division) the following new sections:

''SEC. 404. PREVENTING INVOLUNTARY FAMILY SEPARATION.

''(a) IN GENERAL.—After the expiration of the 2-year period that begins upon the date of the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, and except as provided in subsection (b), any project sponsor receiving funds under this title to provide emergency shelter, transitional housing, or permanent housing to families with children under age 18 shall not deny admission to any family based on the age of any child under age 18.

''(b) EXCEPTION.—Notwithstanding the requirement under subsection (a), project sponsors of transitional housing receiving funds under this title may target transitional housing resources to families with children of a specific age only if the project sponsor—

''(1) operates a transitional housing program that has a primary purpose of implementing an evidence-based practice that requires that housing units be targeted to families with children in a specific age group; and

''(2) provides such assurances, as the Secretary shall require, that an equivalent appropriate alternative living arrangement for the whole family or household unit has been secured.

''SEC. 405. TECHNICAL ASSISTANCE.

''(a) IN GENERAL.—The Secretary shall make available technical assistance to private nonprofit organizations and other nongovernmental entities, States, metropolitan cities, urban counties, and counties that are not urban counties, to implement effective planning processes for preventing and ending homelessness, to improve their capacity to prepare collaborative applications, to prevent the separation of families in emergency shelter or other housing programs, and to adopt and provide best practices in housing and services for persons experiencing homeless.

''(b) RESERVATION.—The Secretary shall reserve not more than 1 percent of the funds made available for any fiscal year for carrying out subtitles B and C, to provide technical assistance under subsection (a).''.

SEC. 1104. PROTECTION OF PERSONALLY IDENTIFYING INFORMATION BY VICTIM SERVICE PROVIDERS.

Subtitle A of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), as amended by the preceding provisions of this title, is further amended by adding at the end the following new section:

''SEC. 407. PROTECTION OF PERSONALLY IDENTIFYING INFORMATION BY VICTIM SERVICE PROVIDERS.

''In the course of awarding grants or implementing programs under this title, the Secretary shall instruct any victim service provider that is a recipient or subgrantee not to disclose for purposes of the Homeless Management Information System any personally identifying information about any client. The Secretary may, after public notice and comment, require or ask such recipients and subgrantees to disclose for purposes of the Homeless Management Information System non-personally identifying information that has been de-identified, encrypted, or otherwise encoded. Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this subsection for victims of domestic violence, dating violence, sexual assault, or stalking.''.

SEC. 1105. AUTHORIZATION OF APPROPRIATIONS.

Subtitle A of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), as amended by the preceding provisions of this title, is further amended by adding at the end the following new section:

''SEC. 408. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this title $2,200,000,000 for fiscal year 2010 and such sums as may be necessary for fiscal year 2011.''.

TITLE II—EMERGENCY SOLUTIONS GRANTS PROGRAM

SEC. 1201. GRANT ASSISTANCE.

Subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.) is amended—

(1) by striking the subtitle heading and inserting the following:

''Subtitle B—Emergency Solutions Grants Program'';

(2) by striking section 417 (42 U.S.C. 11377);

(3) by redesignating sections 413 through 416 (42 U.S.C. 11373–6) as sections 414 through 417, respectively; and

(4) by striking section 412 (42 U.S.C. 11372) and inserting the following:

''SEC. 412. GRANT ASSISTANCE.

''The Secretary shall make grants to States and local governments (and to private nonprofit organizations providing assistance to persons experiencing homelessness or at risk of homelessness, in the case of grants made with reallocated amounts) for the purpose of carrying out activities described in section 415.

''SEC. 413. AMOUNT AND ALLOCATION OF ASSISTANCE.

''(a) IN GENERAL.—Of the amount made available to carry out this subtitle and subtitle C for a fiscal year, the Secretary shall allocate nationally 20 percent of such amount for activities described in section 415. The Secretary shall be required to certify that such allocation will not adversely affect the renewal of existing projects under this subtitle and subtitle C for those individuals or families who are homeless.

''(b) ALLOCATION.—An entity that receives a grant under section 412, and serves an area that includes 1 or more geographic areas (or portions of such areas) served by collaborative applicants that submit applications under subtitle C, shall allocate the funds made available through the grant to carry out activities described in section 415, in consultation with the collaborative applicants.''; and

(5) in section 414(b) (42 U.S.C. 11373(b)), as so redesignated by paragraph (3) of this section, by striking ''amounts appropriated'' and all that follows through ''for any'' and inserting ''amounts appropriated under section 408 and made available to carry out this subtitle for any''.

SEC. 1202. ELIGIBLE ACTIVITIES.

The McKinney-Vento Homeless Assistance Act is amended by striking section 415 (42 U.S.C. 11374), as so redesignated by section 1201(3) of this division, and inserting the following new section:

''SEC. 415. ELIGIBLE ACTIVITIES.

''(a) IN GENERAL.—Assistance provided under section 412 may be used for the following activities:

''(1) The renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters.

''(2) The provision of essential services related to emergency shelter or street outreach, including services concerned with employment, health, education, family support services for homeless youth, substance abuse services, victim services, or mental health services, if—

''(A) such essential services have not been provided by the local government during any part of the immediately preceding 12-month period or the Secretary determines that the local government is in a severe financial deficit; or

''(B) the use of assistance under this subtitle would complement the provision of those essential services.

''(3) Maintenance, operation, insurance, provision of utilities, and provision of furnishings related to emergency shelter.

''(4) Provision of rental assistance to provide short-term or medium-term housing to homeless individuals or families or individuals or families at risk of homelessness. Such rental assistance may include tenant-based or project-based rental assistance.

''(5) Housing relocation or stabilization services for homeless individuals or families or individuals or families at risk of homelessness, including housing search, mediation or outreach to property owners, legal services, credit repair, providing security or utility deposits, utility payments, rental assistance for a final month at a location, assistance with moving costs, or other activities that are effective at—

''(A) stabilizing individuals and families in their current housing; or

''(B) quickly moving such individuals and families to other permanent housing.

''(b) MAXIMUM ALLOCATION FOR EMERGENCY SHELTER ACTIVITIES.—A grantee of assistance provided under section 412 for any fiscal year may not use an amount of such assistance for activities described in paragraphs (1) through (3) of subsection (a) that exceeds the greater of—

''(1) 60 percent of the aggregate amount of such assistance provided for the grantee for such fiscal year; or

''(2) the amount expended by such grantee for such activities during fiscal year most recently completed before the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009.''.

SEC. 1203. PARTICIPATION IN HOMELESS MANAGEMENT INFORMATION SYSTEM.

Section 416 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11375), as so redesignated by section 1201(3) of this division, is amended by adding at the end the following new subsection:

''(f) PARTICIPATION IN HMIS.—The Secretary shall ensure that recipients of funds under this subtitle ensure the consistent participation by emergency shelters and homelessness prevention and rehousing programs in any applicable community-wide homeless management information system.''.

SEC. 1204. ADMINISTRATIVE PROVISION.

Section 418 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11378) is amended by striking ''5 percent'' and inserting ''7.5 percent''.

SEC. 1205. GAO STUDY OF ADMINISTRATIVE FEES.

Not later than the expiration of the 12-month period beginning on the date of the enactment of this division, the Comptroller General of the United States shall—

(1) conduct a study to examine the appropriate administrative costs for administering the program authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.); and

(2) submit to Congress a report on the findings of the study required under paragraph (1).

TITLE III—CONTINUUM OF CARE PROGRAM

SEC. 1301. CONTINUUM OF CARE.

The McKinney-Vento Homeless Assistance Act is amended—

(1) by striking the subtitle heading for subtitle C of title IV (42 U.S.C. 11381 et seq.) and inserting the following:

"Subtitle C—Continuum of Care Program"; and

(2) by striking sections 421 and 422 (42 U.S.C. 11381 and 11382) and inserting the following new sections:

"SEC. 421. PURPOSES.

''The purposes of this subtitle are—

''(1) to promote community-wide commitment to the goal of ending homelessness;

''(2) to provide funding for efforts by nonprofit providers and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to individuals, families, and communities by homelessness;

''(3) to promote access to, and effective utilization of, mainstream programs described in section 203(a)(7) and programs funded with State or local resources; and

''(4) to optimize self-sufficiency among individuals and families experiencing homelessness.

"SEC. 422. CONTINUUM OF CARE APPLICATIONS AND GRANTS.

''(a) PROJECTS.—The Secretary shall award grants, on a competitive basis, and using the selection criteria described in section 427, to carry out eligible activities under this subtitle for projects that meet the program requirements under section 426, either by directly awarding funds to project sponsors or by awarding funds to unified funding agencies.

''(b) NOTIFICATION OF FUNDING AVAILABILITY.—The Secretary shall release a notification of funding availability for grants awarded under this subtitle for a fiscal year not later than 3 months after the date of the enactment of the appropriate Act making appropriations for the Department of Housing and Urban Development for such fiscal year.

''(c) APPLICATIONS.—

''(1) SUBMISSION TO THE SECRETARY.—To be eligible to receive a grant under subsection (a), a project sponsor or unified funding agency in a geographic area shall submit an application to the Secretary at such time and in such manner as the Secretary may require, and containing such information as the Secretary determines necessary—

''(A) to determine compliance with the program requirements and selection criteria under this subtitle; and

''(B) to establish priorities for funding projects in the geographic area.

''(2) ANNOUNCEMENT OF AWARDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall announce, within 5 months after the last date for the submission of applications described in this subsection for a fiscal year, the grants conditionally awarded under subsection (a) for that fiscal year.

''(B) TRANSITION.—For a period of up to 2 years beginning after the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall announce, within 6 months after the last date for the submission of applications described in this subsection for a fiscal year, the grants conditionally awarded under subsection (a) for that fiscal year.

''(d) OBLIGATION, DISTRIBUTION, AND UTILIZATION OF FUNDS.—

''(1) REQUIREMENTS FOR OBLIGATION.—

''(A) IN GENERAL.—Not later than 9 months after the announcement referred to in subsection (c)(2), each recipient or project sponsor shall meet all requirements for the obligation of those funds, including site control, matching funds, and environmental review requirements, except as provided in subparagraphs (B) and (C).

''(B) ACQUISITION, REHABILITATION, OR CONSTRUCTION.—Not later than 24 months after the announcement referred to in subsection (c)(2), each recipient or project sponsor seeking the obligation of funds for acquisition of housing, rehabilitation of housing, or construction of new housing for a grant announced under subsection (c)(2) shall meet all requirements for the obligation of those funds, including site control, matching funds, and environmental review requirements.

''(C) EXTENSIONS.—At the discretion of the Secretary, and in compelling circumstances, the Secretary may extend the date by which a recipient or project sponsor shall meet the requirements described in subparagraphs (A) and (B) if the Secretary determines that compliance with the requirements was delayed due to factors beyond the reasonable control of the recipient or project sponsor. Such factors may include difficulties in obtaining site control for a proposed project, completing the process of obtaining secure financing for the project, obtaining approvals from State or local governments, or completing the technical submission requirements for the project.

''(2) OBLIGATION.—Not later than 45 days after a recipient or project sponsor meets the requirements described in paragraph (1), the Secretary shall obligate the funds for the grant involved.

''(3) DISTRIBUTION.—A recipient that receives funds through such a grant—

''(A) shall distribute the funds to project sponsors (in advance of expenditures by the project sponsors); and

''(B) shall distribute the appropriate portion of the funds to a project sponsor not later than 45 days after receiving a request for such distribution from the project sponsor.

''(4) EXPENDITURE OF FUNDS.—The Secretary may establish a date by which funds made available through a grant announced under subsection (c)(2) for a homeless assistance project shall be entirely expended by the recipient or project sponsors involved. The date established under this paragraph shall not occur before the expiration of the 24-month period beginning on the date that funds are obligated for activities described under paragraphs (1) or (2) of section 423(a). The Secretary shall recapture the funds not expended by such date. The Secretary shall reallocate the funds for another homeless assistance and prevention project that meets the requirements of this subtitle to be carried out, if possible and appropriate, in the same geographic area as the area served through the original grant.

''(e) RENEWAL FUNDING FOR UNSUCCESSFUL APPLICANTS.—The Secretary may renew funding for a specific project previously funded under this subtitle that the Secretary determines meets the purposes of this subtitle, and was included as part of a total application that met the criteria of subsection (c), even if the application was not selected to receive grant assistance. The Secretary may renew the funding for a period of not more than 1 year, and under such conditions as the Secretary determines to be appropriate.

''(f) CONSIDERATIONS IN DETERMINING RENEWAL FUNDING.—When providing renewal funding for leasing, operating costs, or rental assistance for permanent housing, the Secretary shall make adjustments proportional to increases in the fair market rents in the geographic area.

''(g) MORE THAN 1 APPLICATION FOR A GEOGRAPHIC AREA.—If more than 1 collaborative applicant applies for funds for a geographic area, the Secretary shall award funds to the collaborative applicant with the highest score based on the selection criteria set forth in section 427.

''(h) APPEALS.—

''(1) IN GENERAL.—The Secretary shall establish a timely appeal procedure for grant amounts awarded or denied under this subtitle pursuant to a collaborative application or solo application for funding.

''(2) PROCESS.—The Secretary shall ensure that the procedure permits appeals submitted by entities carrying out homeless housing and services projects (including emergency shelters and homelessness prevention programs), and all other applicants under this subtitle.

''(i) SOLO APPLICANTS.—A solo applicant may submit an application to the Secretary for a grant under subsection (a) and be awarded such grant on the same basis as such grants are awarded to other applicants based on the criteria described in section 427, but only if the Secretary determines that the solo applicant has attempted to participate in the continuum of care process but was not permitted to participate in a reasonable manner. The Secretary may award such grants directly to such applicants in a manner determined to be appropriate by the Secretary.

''(j) FLEXIBILITY TO SERVE PERSONS DEFINED AS HOMELESS UNDER OTHER FEDERAL LAWS.—

''(1) IN GENERAL.—A collaborative applicant may use not more than 10 percent of funds awarded under this subtitle (continuum of care funding) for any of the types of eligible activities specified in paragraphs (1) through (7) of section 423(a) to serve families with children and youth defined as homeless under other Federal statutes, or homeless families with children and youth defined as homeless under section 103(a)(6), but only if the applicant demonstrates that the use of such funds is of an equal or greater priority or is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B), especially with respect to children and unaccompanied youth.

''(2) LIMITATIONS.—The 10 percent limitation under paragraph (1) shall not apply to collaborative applicants in which the rate of homelessness, as calculated in the most recent point in time count, is less than one-tenth of 1 percent of total population.

''(3) TREATMENT OF CERTAIN POPULATIONS.—

''(A) IN GENERAL.—Notwithstanding section 103(a) and subject to subparagraph (B), funds awarded under this subtitle may be used for eligible activities to serve unaccompanied youth and homeless families and children defined as homeless under section 103(a)(6) only pursuant to paragraph (1) of this subsection and such families and children shall not otherwise be considered as homeless for purposes of this subtitle.

''(B) AT RISK OF HOMELESSNESS.—Subparagraph (A) may not be construed to prevent any unaccompanied youth and homeless families and children defined as homeless under section 103(a)(6) from qualifying for, and being treated for purposes of this subtitle as, at risk of homelessness or from eligibility for any projects, activities, or services carried out using amounts provided under this subtitle for which individuals or families that are at risk of homelessness are eligible.''.

SEC. 1302. ELIGIBLE ACTIVITIES.

The McKinney-Vento Homeless Assistance Act is amended by striking section 423 (42 U.S.C. 11383) and inserting the following new section:

''SEC. 423. ELIGIBLE ACTIVITIES.

''(a) IN GENERAL.—Grants awarded under section 422 to qualified applicants shall be used to carry out projects that serve homeless individuals or families that consist of one or more of the following eligible activities:

''(1) Construction of new housing units to provide transitional or permanent housing.

''(2) Acquisition or rehabilitation of a structure to provide transitional or permanent housing, other than emergency shelter, or to provide supportive services.

''(3) Leasing of property, or portions of property, not owned by the recipient or project sponsor involved, for use in providing transitional or permanent housing, or providing supportive services.

''(4) Provision of rental assistance to provide transitional or permanent housing to eligible persons. The rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. Project-based rental assistance, sponsor-based rental assistance, and operating cost assistance contracts carried out by project sponsors receiving grants under this section may, at the discretion of the applicant and the project sponsor, have an initial term of 15 years, with assistance for the first 5 years paid with funds authorized for appropriation under this Act, and assistance for the remainder of the term treated as a renewal of an expiring contract as provided in section 429. Project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families.

''(5) Payment of operating costs for housing units assisted under this subtitle or for the preservation of housing that will serve homeless individuals and families and for which another form of assistance is expiring or otherwise no longer available.

''(6) Supportive services for individuals and families who are currently homeless, who have been homeless in the prior six months but are currently residing in permanent housing, or who were previously homeless and are currently residing in permanent supportive housing.

''(7) Provision of rehousing services, including housing search, mediation or outreach to property owners, credit repair, providing security or utility deposits, rental assistance for a final month at a location, assistance with moving costs, or other activities that—

''(A) are effective at moving homeless individuals and families immediately into housing; or

''(B) may benefit individuals and families who in the prior 6 months have been homeless, but are currently residing in permanent housing.

''(8) In the case of a collaborative applicant that is a legal entity, performance of the duties described under section 402(f)(3).

''(9) Operation of, participation in, and ensuring consistent participation by project sponsors in, a community-wide homeless management information system.

''(10) In the case of a collaborative applicant that is a legal entity, payment of administrative costs related to meeting the requirements described in paragraphs (1) and (2) of section 402(f), for which the collaborative applicant may use not more than 3 percent of the total funds made available in the geographic area under this subtitle for such costs.

''(11) In the case of a collaborative applicant that is a unified funding agency under section 402(g), payment of administrative costs related to meeting the requirements of that section, for which the unified funding agency may use not more than 3 percent of the total funds made available in the geographic area under this subtitle for such costs, in addition to funds used under paragraph (10).

''(12) Payment of administrative costs to project sponsors, for which each project sponsor may use not more than 10 percent of the total funds made available to that project sponsor through this subtitle for such costs.

''(b) MINIMUM GRANT TERMS.—The Secretary may impose minimum grant terms of up to 5 years for new projects providing permanent housing.

''(c) USE RESTRICTIONS.—

''(1) ACQUISITION, REHABILITATION, AND NEW CONSTRUCTION.—A project that consists of activities described in paragraph (1) or (2) of subsection (a) shall be operated for the purpose specified in the application submitted for the project under section 422 for not less than 15 years.

''(2) OTHER ACTIVITIES.—A project that consists of activities described in any of paragraphs (3) through (12) of subsection (a) shall be operated for the purpose specified in the application submitted for the project under section 422 for the duration of the grant period involved.

''(3) CONVERSION.—If the recipient or project sponsor carrying out a project that provides transitional or permanent housing submits a request to the Secretary to carry out instead a project for the direct benefit of low-income persons, and the Secretary determines that the initial project is no longer needed to provide transitional or permanent housing, the Secretary may approve the project described in the request and authorize the recipient or project sponsor to carry out that project.

''(d) REPAYMENT OF ASSISTANCE AND PREVENTION OF UNDUE BENEFITS.—

''(1) REPAYMENT.—If a recipient or project sponsor receives assistance under section 422 to carry out a project that consists of activities described in paragraph (1) or (2) of subsection (a) and the project ceases to provide transitional or permanent housing—

''(A) earlier than 10 years after operation of the project begins, the Secretary shall require the recipient or project sponsor to repay 100 percent of the assistance; or

''(B) not earlier than 10 years, but earlier than 15 years, after operation of the project begins, the Secretary shall require the recipient or project sponsor to repay 20 percent of the assistance for each of the years in the 15-year period for which the project fails to provide that housing.

''(2) PREVENTION OF UNDUE BENEFITS.—Except as provided in paragraph (3), if any property is used for a project that receives assistance under subsection (a) and consists of activities described in paragraph (1) or (2) of subsection (a), and the sale or other disposition of the property occurs before the expiration of the 15-year period beginning on the date that operation of the project begins, the recipient or project sponsor who received the assistance shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient or project sponsor from unduly benefitting from such sale or disposition.

''(3) EXCEPTION.—A recipient or project sponsor shall not be required to make the repayments, and comply with the terms and conditions, required under paragraph (1) or (2) if—

''(A) the sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

''(B) all of the proceeds of the sale or disposition are used to provide transitional or permanent housing meeting the requirements of this subtitle;

''(C) project-based rental assistance or operating cost assistance from any Federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

''(D) there are no individuals and families in the geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

''(e) STAFF TRAINING.—The Secretary may allow reasonable costs associated with staff training to be included as part of the activities described in subsection (a).

''(f) ELIGIBILITY FOR PERMANENT HOUSING.—Any project that receives assistance under subsection (a) and that provides project-based or sponsor-based permanent housing for homeless individuals or families with a disability, including projects that meet the requirements of subsection (a) and subsection (d)(2)(A) of section 428 may also serve individuals who had previously met the requirements for such project prior to moving into a different permanent housing project.

''(g) ADMINISTRATION OF RENTAL ASSISTANCE.—Provision of permanent housing rental assistance shall be administered by a State, unit of general local government, or public housing agency.''.

SEC. 1303. HIGH PERFORMING COMMUNITIES.

The McKinney-Vento Homeless Assistance Act is amended by striking section 424 (42 U.S.C. 11384) and inserting the following:

''SEC. 424. INCENTIVES FOR HIGH-PERFORMING COMMUNITIES.

''(a) DESIGNATION AS A HIGH-PERFORMING COMMUNITY.—

''(1) IN GENERAL.—The Secretary shall designate, on an annual basis, which collaborative applicants represent high-performing communities.

''(2) CONSIDERATION.—In determining whether to designate a collaborative applicant as a high-performing community under paragraph (1), the Secretary shall establish criteria to ensure that the requirements described under paragraphs (1)(B) and (2)(B) of

subsection (d) are measured by comparing homeless individuals and families under similar circumstances, in order to encourage projects in the geographic area to serve homeless individuals and families with more severe barriers to housing stability.

''(3) 2-YEAR PHASE IN.—In each of the first 2 years after the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the Secretary shall designate not more than 10 collaborative applicants as high-performing communities.

''(4) EXCESS OF QUALIFIED APPLICANTS.—If, during the 2-year period described under paragraph (2), more than 10 collaborative applicants could qualify to be designated as high-performing communities, the Secretary shall designate the 10 that have, in the discretion of the Secretary, the best performance based on the criteria described under subsection (d).

''(5) TIME LIMIT ON DESIGNATION.—The designation of any collaborative applicant as a high-performing community under this subsection shall be effective only for the year in which such designation is made. The Secretary, on an annual basis, may renew any such designation.

''(b) APPLICATION.—

''(1) IN GENERAL.—A collaborative applicant seeking designation as a high-performing community under subsection (a) shall submit an application to the Secretary at such time, and in such manner as the Secretary may require.

''(2) CONTENT OF APPLICATION.—In any application submitted under paragraph (1), a collaborative applicant shall include in such application—

''(A) a report showing how any money received under this subtitle in the preceding year was expended; and

''(B) information that such applicant can meet the requirements described under subsection (d).

''(3) PUBLICATION OF APPLICATION.—The Secretary shall—

''(A) publish any report or information submitted in an application under this section in the geographic area represented by the collaborative applicant; and

''(B) seek comments from the public as to whether the collaborative applicant seeking designation as a high-performing community meets the requirements described under subsection (d).

''(c) USE OF FUNDS.—Funds awarded under section 422(a) to a project sponsor who is located in a high-performing community may be used—

''(1) for any of the eligible activities described in section 423; or

''(2) for any of the eligible activities described in paragraphs (4) and (5) of section 415(a).

''(d) DEFINITION OF HIGH-PERFORMING COMMUNITY.—For purposes of this section, the term 'high-performing community' means a geographic area that demonstrates through reliable data that all five of the following requirements are met for that geographic area:

''(1) TERM OF HOMELESSNESS.—The mean length of episodes of homelessness for that geographic area—

''(A) is less than 20 days; or

''(B) for individuals and families in similar circumstances in the preceding year was at least 10 percent less than in the year before.

''(2) FAMILIES LEAVING HOMELESSNESS.—Of individuals and families—

''(A) who leave homelessness, fewer than 5 percent of such individuals and families become homeless again at any time within the next 2 years; or

''(B) in similar circumstances who leave homelessness, the percentage of such individuals and families who become homeless again within the next 2 years has decreased by at least 20 percent from the preceding year.

''(3) COMMUNITY ACTION.—The communities that compose the geographic area have—

''(A) actively encouraged homeless individuals and families to participate in homeless assistance services available in that geographic area; and

''(B) included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance with this subsection.

''(4) EFFECTIVENESS OF PREVIOUS ACTIVITIES.—If recipients in the geographic area have used funding awarded under section 422(a) for eligible activities described under section 415(a) in previous years based on the authority granted under subsection (c), that such activities were effective at reducing the number of individuals and families who became homeless in that community.

''(5) FLEXIBILITY TO SERVE PERSONS DEFINED AS HOMELESS UNDER OTHER FEDERAL LAWS.—With respect to collaborative applicants exercising the authority under section 422(j) to serve homeless families with children and youth defined as homeless under other Federal statutes, effectiveness in achieving the goals and outcomes identified in subsection 427(b)(1)(F) according to such standards as the Secretary shall promulgate.

''(e) COOPERATION AMONG ENTITIES.—A collaborative applicant designated as a high-performing community under this section shall cooperate with the Secretary in distributing information about successful efforts within the geographic area represented by the collaborative applicant to reduce homelessness.''.

SEC. 1304. PROGRAM REQUIREMENTS.

Section 426 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11386) is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

''(a) SITE CONTROL.—The Secretary shall require that each application include reasonable assurances that the applicant will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance, unless the application proposes providing supportive housing assistance under section 423(a)(3) or housing that will eventually be owned or controlled by the families and individuals served. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If any recipient or project sponsor fails to obtain ownership or control of the site within 12 months after notification of an award for grant assistance, the grant shall be recaptured and reallocated under this subtitle.

''(b) REQUIRED AGREEMENTS.—The Secretary may not provide assistance for a proposed project under this subtitle unless the collaborative applicant involved agrees—

''(1) to ensure the operation of the project in accordance with the provisions of this subtitle;

''(2) to monitor and report to the Secretary the progress of the project;

''(3) to ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

''(4) to require certification from all project sponsors that—

''(A) they will maintain the confidentiality of records pertaining to any individual or family provided family violence prevention or treatment services through the project;

''(B) that the address or location of any family violence shelter project assisted under this subtitle will not be made public, except with written authorization of the person responsible for the operation of such project;

''(C) they will establish policies and practices that are consistent with, and do not restrict the exercise of rights provided by, subtitle B of title VII, and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

''(D) in the case of programs that provide housing or services to families, they will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of this Act(42 U.S.C. 11431 et seq.); and

''(E) they will provide data and reports as required by the Secretary pursuant to the Act;

''(5) if a collaborative applicant is a unified funding agency under section 402(g) and receives funds under subtitle C to carry out the payment of administrative costs described in section 423(a)(11), to establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, such funds in order to ensure that all financial transactions carried out with such funds are conducted, and records maintained, in accordance with generally accepted accounting principles;

''(6) to monitor and report to the Secretary the provision of matching funds as required by section 430;

''(7) to take the educational needs of children into account when families are placed in emergency or transitional shelter and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education; and

''(8) to comply with such other terms and conditions as the Secretary may establish to carry out this subtitle in an effective and efficient manner.'';

(2) by redesignating subsection (d) as subsection (c);

(3) in the first sentence of subsection (c) (as so redesignated by paragraph (2) of this subsection), by striking ''recipient'' and inserting ''recipient or project sponsor'';

(4) by striking subsection (e);

(5) by redesignating subsections (f), (g), and (h), as subsections (d), (e), and (f), respectively;

(6) in the first sentence of subsection (e) (as so redesignated by paragraph (5) of this section), by striking ''recipient'' each place it appears and inserting ''recipient or project sponsor'';

(7) by striking subsection (i); and

(8) by redesignating subsection (j) as subsection (g).

SEC. 1305. SELECTION CRITERIA, ALLOCATION AMOUNTS, AND FUNDING.

The McKinney-Vento Homeless Assistance Act is amended—

(1) by repealing section 429 (42 U.S.C. 11389); and

(2) by redesignating sections 427 and 428 (42 U.S.C. 11387, 11388) as sections 432 and 433, respectively; and

(3) by inserting after section 426 the following new sections:

''SEC. 427. SELECTION CRITERIA.

''(a) IN GENERAL.—The Secretary shall award funds to recipients through a national

competition between geographic areas based on criteria established by the Secretary.

''(b) REQUIRED CRITERIA.—

''(1) IN GENERAL.—The criteria established under subsection (a) shall include—

''(A) the previous performance of the recipient regarding homelessness, including performance related to funds provided under section 412 (except that recipients applying from geographic areas where no funds have been awarded under this subtitle, or under subtitles C, D, E, or F of title IV of this Act, as in effect prior to the date of the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, shall receive full credit for performance under this subparagraph), measured by criteria that shall be announced by the Secretary, that shall take into account barriers faced by individual homeless people, and that shall include—

''(i) the length of time individuals and families remain homeless;

''(ii) the extent to which individuals and families who leave homelessness experience additional spells of homelessness;

''(iii) the thoroughness of grantees in the geographic area in reaching homeless individuals and families;

''(iv) overall reduction in the number of homeless individuals and families;

''(v) jobs and income growth for homeless individuals and families;

''(vi) success at reducing the number of individuals and families who become homeless;

''(vii) other accomplishments by the recipient related to reducing homelessness; and

''(viii) for collaborative applicants that have exercised the authority under section 422(j) to serve families with children and youth defined as homeless under other Federal statutes, success in achieving the goals and outcomes identified in section 427(b)(1)(F);

''(B) the plan of the recipient, which shall describe—

''(i) how the number of individuals and families who become homeless will be reduced in the community;

''(ii) how the length of time that individuals and families remain homeless will be reduced;

''(iii) how the recipient will collaborate with local education authorities to assist in the identification of individuals and families who become or remain homeless and are informed of their eligibility for services under subtitle B of title VII of this Act (42 U.S.C. 11431 et seq.);

''(iv) the extent to which the recipient will—

''(I) address the needs of all relevant subpopulations;

''(II) incorporate comprehensive strategies for reducing homelessness, including the interventions referred to in section 428(d);

''(III) set quantifiable performance measures;

''(IV) set timelines for completion of specific tasks;

''(V) identify specific funding sources for planned activities; and

''(VI) identify an individual or body responsible for overseeing implementation of specific strategies; and

''(v) whether the recipient proposes to exercise authority to use funds under section 422(j), and if so, how the recipient will achieve the goals and outcomes identified in section 427(b)(1)(F);

''(C) the methodology of the recipient used to determine the priority for funding local projects under section 422(c)(1), including the extent to which the priority-setting process—

''(i) uses periodically collected information and analysis to determine the extent to which each project has resulted in rapid return to permanent housing for those served by the project, taking into account the severity of barriers faced by the people the project serves;

''(ii) considers the full range of opinions from individuals or entities with knowledge of homelessness in the geographic area or an interest in preventing or ending homelessness in the geographic area;

''(iii) is based on objective criteria that have been publicly announced by the recipient; and

''(iv) is open to proposals from entities that have not previously received funds under this subtitle;

''(D) the extent to which the amount of assistance to be provided under this subtitle to the recipient will be supplemented with resources from other public and private sources, including mainstream programs identified by the Government Accountability Office in the two reports described in section 203(a)(7);

''(E) demonstrated coordination by the recipient with the other Federal, State, local, private, and other entities serving individuals and families experiencing homelessness and at risk of homelessness in the planning and operation of projects;

''(F) for collaborative applicants exercising the authority under section 422(j) to serve homeless families with children and youth defined as homeless under other Federal statutes, program goals and outcomes, which shall include—

''(i) preventing homelessness among the subset of such families with children and youth who are at highest risk of becoming homeless, as such term is defined for purposes of this title; or

''(ii) achieving independent living in permanent housing among such families with children and youth, especially those who have a history of doubled-up and other temporary housing situations or are living in a temporary housing situation due to lack of available and appropriate emergency shelter, through the provision of eligible assistance that directly contributes to achieving such results including assistance to address chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, or multiple barriers to employment; and

''(G) such other factors as the Secretary determines to be appropriate to carry out this subtitle in an effective and efficient manner.

''(2) ADDITIONAL CRITERIA.—In addition to the criteria required under paragraph (1), the criteria established under paragraph (1) shall also include the need within the geographic area for homeless services, determined as follows and under the following conditions:

''(A) NOTICE.—The Secretary shall inform each collaborative applicant, at a time concurrent with the release of the notice of funding availability for the grants, of the pro rata estimated grant amount under this subtitle for the geographic area represented by the collaborative applicant.

''(B) AMOUNT.—

''(i) FORMULA.—Such estimated grant amounts shall be determined by a formula, which shall be developed by the Secretary, by regulation, not later than the expiration of the 2-year period beginning upon the date of the enactment of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, that is based upon factors that are appropriate to allocate funds to meet the goals and objectives of this subtitle.

''(ii) COMBINATIONS OR CONSORTIA.—For a collaborative applicant that represents a combination or consortium of cities or counties, the estimated need amount shall be the sum of the estimated need amounts for the cities or counties represented by the collaborative applicant.

''(iii) AUTHORITY OF SECRETARY.—Subject to the availability of appropriations, the Secretary shall increase the estimated need amount for a geographic area if necessary to provide 1 year of renewal funding for all expiring contracts entered into under this subtitle for the geographic area.

''(3) HOMELESSNESS COUNTS.—The Secretary shall not require that communities conduct an actual count of homeless people other than those described in paragraphs (1) through (4) of section 103(a) of this Act (42 U.S.C. 11302(a)).

''(c) ADJUSTMENTS.—The Secretary may adjust the formula described in subsection (b)(2) as necessary—

''(1) to ensure that each collaborative applicant has sufficient funding to renew all qualified projects for at least one year; and

''(2) to ensure that collaborative applicants are not discouraged from replacing renewal projects with new projects that the collaborative applicant determines will better be able to meet the purposes of this Act.

''SEC. 428. ALLOCATION OF AMOUNTS AND INCENTIVES FOR SPECIFIC ELIGIBLE ACTIVITIES.

''(a) MINIMUM ALLOCATION FOR PERMANENT HOUSING FOR HOMELESS INDIVIDUALS AND FAMILIES WITH DISABILITIES.—

''(1) IN GENERAL.—From the amounts made available to carry out this subtitle for a fiscal year, a portion equal to not less than 30 percent of the sums made available to carry out subtitle B and this subtitle, shall be used for permanent housing for homeless individuals with disabilities and homeless families that include such an individual who is an adult or a minor head of household if no adult is present in the household.

''(2) CALCULATION.—In calculating the portion of the amount described in paragraph (1) that is used for activities that are described in paragraph (1), the Secretary shall not count funds made available to renew contracts for existing projects under section 429.

''(3) ADJUSTMENT.—The 30 percent figure in paragraph (1) shall be reduced proportionately based on need under section 427(b)(2) in geographic areas for which subsection (e) applies in regard to subsection (d)(2)(A).

''(4) SUSPENSION.—The requirement established in paragraph (1) shall be suspended for any year in which funding available for grants under this subtitle after making the allocation established in paragraph (1) would not be sufficient to renew for 1 year all existing grants that would otherwise be fully funded under this subtitle.

''(5) TERMINATION.—The requirement established in paragraph (1) shall terminate upon a finding by the Secretary that since the beginning of 2001 at least 150,000 new units of permanent housing for homeless individuals and families with disabilities have been funded under this subtitle.

''(b) SET-ASIDE FOR PERMANENT HOUSING FOR HOMELESS FAMILIES WITH CHILDREN.—From the amounts made available to carry out this subtitle for a fiscal year, a portion equal to not less than 10 percent of the sums made available to carry out subtitle B and this subtitle for that fiscal year shall be used to provide or secure permanent housing for homeless families with children.

''(c) TREATMENT OF AMOUNTS FOR PERMANENT OR TRANSITIONAL HOUSING.—Nothing in this Act may be construed to establish a limit on the amount of funding that an applicant may request under this subtitle for acquisition, construction, or rehabilitation activities for the development of permanent housing or transitional housing.

''(d) INCENTIVES FOR PROVEN STRATEGIES.—

''(1) IN GENERAL.—The Secretary shall provide bonuses or other incentives to geographic areas for using funding under this

subtitle for activities that have been proven to be effective at reducing homelessness generally, reducing homelessness for a specific subpopulation, or achieving homeless prevention and independent living goals as set forth in section 427(b)(1)(F).

''(2) RULE OF CONSTRUCTION.—For purposes of this subsection, activities that have been proven to be effective at reducing homelessness generally or reducing homelessness for a specific subpopulation includes—

''(A) permanent supportive housing for chronically homeless individuals and families;

''(B) for homeless families, rapid rehousing services, short-term flexible subsidies to overcome barriers to rehousing, support services concentrating on improving incomes to pay rent, coupled with performance measures emphasizing rapid and permanent rehousing and with leveraging funding from mainstream family service systems such as Temporary Assistance for Needy Families and Child Welfare services; and

''(C) any other activity determined by the Secretary, based on research and after notice and comment to the public, to have been proven effective at reducing homelessness generally, reducing homelessness for a specific subpopulation, or achieving homeless prevention and independent living goals as set forth in section 427(b)(1)(F).

''(3) BALANCE OF INCENTIVES FOR PROVEN STRATEGIES.—To the extent practicable, in providing bonuses or incentives for proven strategies, the Secretary shall seek to maintain a balance among strategies targeting homeless individuals, families, and other subpopulations. The Secretary shall not implement bonuses or incentives that specifically discourage collaborative applicants from exercising their flexibility to serve families with children and youth defined as homeless under other Federal statutes.

''(e) INCENTIVES FOR SUCCESSFUL IMPLEMENTATION OF PROVEN STRATEGIES.—If any geographic area demonstrates that it has fully implemented any of the activities described in subsection (d) for all homeless individuals and families or for all members of subpopulations for whom such activities are targeted, that geographic area shall receive the bonus or incentive provided under subsection (d), but may use such bonus or incentive for any eligible activity under either section 423 or paragraphs (4) and (5) of section 415(a) for homeless people generally or for the relevant subpopulation.

''SEC. 429. RENEWAL FUNDING AND TERMS OF ASSISTANCE FOR PERMANENT HOUSING.

''(a) IN GENERAL.—Renewal of expiring contracts for leasing, rental assistance, or operating costs for permanent housing contracts may be funded either—

''(1) under the appropriations account for this title; or

''(2) the section 8 project-based rental assistance account.

''(b) RENEWALS.—The sums made available under subsection (a) shall be available for the renewal of contracts in the case of tenant-based assistance, successive 1-year terms, and in the case of project-based assistance, successive terms of up to 15 years at the discretion of the applicant or project sponsor and subject to the availability of annual appropriations, for rental assistance and housing operation costs associated with permanent housing projects funded under this subtitle, or under subtitle C or F (as in effect on the day before the effective date of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009). The Secretary shall determine whether to renew a contract for such a permanent housing project on the basis of certification by the collaborative applicant for the geographic area that—

''(1) there is a demonstrated need for the project; and

''(2) the project complies with program requirements and appropriate standards of housing quality and habitability, as determined by the Secretary.

''(c) CONSTRUCTION.—Nothing in this section shall be construed as prohibiting the Secretary from renewing contracts under this subtitle in accordance with criteria set forth in a provision of this subtitle other than this section.

''SEC. 430. MATCHING FUNDING.

''(a) IN GENERAL.—A collaborative applicant in a geographic area in which funds are awarded under this subtitle shall specify contributions from any source other than a grant awarded under this subtitle, including renewal funding of projects assisted under subtitles C, D, and F of this title as in effect before the effective date under section 1503 of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, that shall be made available in the geographic area in an amount equal to not less than 25 percent of the funds provided to recipients in the geographic area, except that grants for leasing shall not be subject to any match requirement.

''(b) LIMITATIONS ON IN-KIND MATCH.—The cash value of services provided to the residents or clients of a project sponsor by an entity other than the project sponsor may count toward the contributions in subsection (a) only when documented by a memorandum of understanding between the project sponsor and the other entity that such services will be provided.

''(c) COUNTABLE ACTIVITIES.—The contributions required under subsection (a) may consist of—

''(1) funding for any eligible activity described under section 423; and

''(2) subject to subsection (b), in-kind provision of services of any eligible activity described under section 423.

''SEC. 431. APPEAL PROCEDURE.

''(a) IN GENERAL.—With respect to funding under this subtitle, if certification of consistency with the consolidated plan pursuant to section 403 is withheld from an applicant who has submitted an application for that certification, such applicant may appeal such decision to the Secretary.

''(b) PROCEDURE.—The Secretary shall establish a procedure to process the appeals described in subsection (a).

''(c) DETERMINATION.—Not later than 45 days after the date of receipt of an appeal described in subsection (a), the Secretary shall determine if certification was unreasonably withheld. If such certification was unreasonably withheld, the Secretary shall review such application and determine if such applicant shall receive funding under this subtitle.''.

SEC. 1306. RESEARCH.

There is authorized to be appropriated $8,000,000, for each of fiscal years 2010 and 2011, for research into the efficacy of interventions for homeless families, to be expended by the Secretary of Housing and Urban Development over the 2 years at 3 different sites to provide services for homeless families and evaluate the effectiveness of such services.

TITLE IV—RURAL HOUSING STABILITY ASSISTANCE PROGRAM

SEC. 1401. RURAL HOUSING STABILITY ASSISTANCE.

Subtitle G of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408 et seq.) is amended—

(1) by striking the subtitle heading and inserting the following:

''Subtitle G—Rural Housing Stability Assistance Program''; and

(2) in section 491—

(A) by striking the section heading and inserting ''**RURAL HOUSING STABILITY GRANT PROGRAM**.'';

(B) in subsection (a)—

(i) by striking ''rural homelessness grant program'' and inserting ''rural housing stability grant program'';

(ii) by inserting ''in lieu of grants under subtitle C'' after ''eligible organizations''; and

(iii) by striking paragraphs (1), (2), and (3), and inserting the following:

''(1) rehousing or improving the housing situations of individuals and families who are homeless or in the worst housing situations in the geographic area;

''(2) stabilizing the housing of individuals and families who are in imminent danger of losing housing; and

''(3) improving the ability of the lowest-income residents of the community to afford stable housing.'';

(C) in subsection (b)(1)—

(i) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (I), (J), and (K), respectively; and

(ii) by striking subparagraph (D) and inserting the following:

''(D) construction of new housing units to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness;

''(E) acquisition or rehabilitation of a structure to provide supportive services or to provide transitional or permanent housing, other than emergency shelter, to homeless individuals and families and individuals and families at risk of homelessness;

''(F) leasing of property, or portions of property, not owned by the recipient or project sponsor involved, for use in providing transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, or providing supportive services to such homeless and at-risk individuals and families;

''(G) provision of rental assistance to provide transitional or permanent housing to homeless individuals and families and individuals and families at risk of homelessness, such rental assistance may include tenant-based or project-based rental assistance;

''(H) payment of operating costs for housing units assisted under this title;'';

(D) in subsection (b)(2), by striking ''appropriated'' and inserting ''transferred'';

(E) in subsection (c)—

(i) in paragraph (1)(A), by striking ''appropriated'' and inserting ''transferred''; and

(ii) in paragraph (3), by striking ''appropriated'' and inserting ''transferred'';

(F) in subsection (d)—

(i) in paragraph (5), by striking ''; and'' and inserting a semicolon;

(ii) in paragraph (6)—

(I) by striking ''an agreement'' and all that follows through ''families'' and inserting the following: ''a description of how individuals and families who are homeless or who have the lowest incomes in the community will be involved by the organization''; and

(II) by striking the period at the end, and inserting a semicolon; and

(iii) by adding at the end the following:

''(7) a description of consultations that took place within the community to ascertain the most important uses for funding under this section, including the involvement of potential beneficiaries of the project; and

''(8) a description of the extent and nature of homelessness and of the worst housing situations in the community.'';

(G) by striking subsections (f) and (g) and inserting the following:

''(f) MATCHING FUNDING.—

''(1) IN GENERAL.—An organization eligible to receive a grant under subsection (a) shall

specify matching contributions from any source other than a grant awarded under this subtitle, that shall be made available in the geographic area in an amount equal to not less than 25 percent of the funds provided for the project or activity, except that grants for leasing shall not be subject to any match requirement.

''(2) LIMITATIONS ON IN-KIND MATCH.—The cash value of services provided to the beneficiaries or clients of an eligible organization by an entity other than the organization may count toward the contributions in paragraph (1) only when documented by a memorandum of understanding between the organization and the other entity that such services will be provided.

''(3) COUNTABLE ACTIVITIES.—The contributions required under paragraph (1) may consist of—

''(A) funding for any eligible activity described under subsection (b); and

''(B) subject to paragraph (2), in-kind provision of services of any eligible activity described under subsection (b).

''(g) SELECTION CRITERIA.—The Secretary shall establish criteria for selecting recipients of grants under subsection (a), including—

''(1) the participation of potential beneficiaries of the project in assessing the need for, and importance of, the project in the community;

''(2) the degree to which the project addresses the most harmful housing situations present in the community;

''(3) the degree of collaboration with others in the community to meet the goals described in subsection (a);

''(4) the performance of the organization in improving housing situations, taking account of the severity of barriers of individuals and families served by the organization;

''(5) for organizations that have previously received funding under this section, the extent of improvement in homelessness and the worst housing situations in the community since such funding began;

''(6) the need for such funds, as determined by the formula established under section 427(b)(2); and

''(7) any other relevant criteria as determined by the Secretary.'';

(H) in subsection (h)—

(i) in paragraph (1), in the matter preceding subparagraph (A), by striking ''The'' and inserting ''Not later than 18 months after funding is first made available pursuant to the amendments made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the''; and

(ii) in paragraph (1)(A), by striking ''providing housing and other assistance to homeless persons'' and inserting ''meeting the goals described in subsection (a)'';

(iii) in paragraph (1)(B), by striking ''address homelessness in rural areas'' and inserting ''meet the goals described in subsection (a) in rural areas''; and

(iv) in paragraph (2)—

(I) by striking ''The'' and inserting ''Not later than 24 months after funding is first made available pursuant to the amendment made by title IV of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, the'';

(II) by striking '', not later than 18 months after the date on which the Secretary first makes grants under the program,''; and

(III) by striking ''prevent and respond to homelessness'' and inserting ''meet the goals described in subsection (a)'';

(I) in subsection (k)—

(i) in paragraph (1), by striking ''rural homelessness grant program'' and inserting ''rural housing stability grant program''; and

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking ''; or'' and inserting a semicolon;

(II) in subparagraph (B)(ii), by striking ''rural census tract.'' and inserting ''county where at least 75 percent of the population is rural; or''; and

(III) by adding at the end the following:

''(C) any area or community, respectively, located in a State that has population density of less than 30 persons per square mile (as reported in the most recent decennial census), and of which at least 1.25 percent of the total acreage of such State is under Federal jurisdiction, provided that no metropolitan city (as such term is defined in section 102 of the Housing and Community Development Act of 1974) in such State is the sole beneficiary of the grant amounts awarded under this section.'';

(J) in subsection (l)—

(i) by striking the subsection heading and inserting ''PROGRAM FUNDING.—''; and

(ii) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Secretary shall determine the total amount of funding attributable under section 427(b)(2) to meet the needs of any geographic area in the Nation that applies for funding under this section. The Secretary shall transfer any amounts determined under this subsection from the Community Homeless Assistance Program and consolidate such transferred amounts for grants under this section, except that the Secretary shall transfer an amount not less than 5 percent of the amount available under subtitle C for grants under this section. Any amounts so transferred and not used for grants under this section due to an insufficient number of applications shall be transferred to be used for grants under subtitle C.''; and

(K) by adding at the end the following:

''(m) DETERMINATION OF FUNDING SOURCE.—For any fiscal year, in addition to funds awarded under subtitle B, funds under this title to be used in a city or county shall only be awarded under either subtitle C or subtitle D.''.

SEC. 1402. GAO STUDY OF HOMELESSNESS AND HOMELESS ASSISTANCE IN RURAL AREAS.

(a) STUDY AND REPORT.—Not later than the expiration of the 12-month period beginning on the date of the enactment of this division, the Comptroller General of the United States shall conduct a study to examine homelessness and homeless assistance in rural areas and rural communities and submit a report to the Congress on the findings and conclusion of the study. The report shall contain the following matters:

(1) A general description of homelessness, including the range of living situations among homeless individuals and homeless families, in rural areas and rural communities of the United States, including tribal lands and colonias.

(2) An estimate of the incidence and prevalence of homelessness among individuals and families in rural areas and rural communities of the United States.

(3) An estimate of the number of individuals and families from rural areas and rural communities who migrate annually to non-rural areas and non-rural communities for homeless assistance.

(4) A description of barriers that individuals and families in and from rural areas and rural communities encounter when seeking to access homeless assistance programs, and recommendations for removing such barriers.

(5) A comparison of the rate of homelessness among individuals and families in and from rural areas and rural communities compared to the rate of homelessness among individuals and families in and from non-rural areas and non-rural communities.

(6) A general description of homeless assistance for individuals and families in rural areas and rural communities of the United States.

(7) A description of barriers that homeless assistance providers serving rural areas and rural communities encounter when seeking to access Federal homeless assistance programs, and recommendations for removing such barriers.

(8) An assessment of the type and amount of Federal homeless assistance funds awarded to organizations serving rural areas and rural communities and a determination as to whether such amount is proportional to the distribution of homeless individuals and families in and from rural areas and rural communities compared to homeless individuals and families in non-rural areas and non-rural communities.

(9) An assessment of the current roles of the Department of Housing and Urban Development, the Department of Agriculture, and other Federal departments and agencies in administering homeless assistance programs in rural areas and rural communities and recommendations for distributing Federal responsibilities, including homeless assistance program administration and grantmaking, among the departments and agencies so that service organizations in rural areas and rural communities are most effectively reached and supported.

(b) ACQUISITION OF SUPPORTING INFORMATION.—In carrying out the study under this section, the Comptroller General shall seek to obtain views from the following persons:

(1) The Secretary of Agriculture.

(2) The Secretary of Housing and Urban Development.

(3) The Secretary of Health and Human Services.

(4) The Secretary of Education.

(5) The Secretary of Labor.

(6) The Secretary of Veterans Affairs.

(7) The Executive Director of the United States Interagency Council on Homelessness.

(8) Project sponsors and recipients of homeless assistance grants serving rural areas and rural communities.

(9) Individuals and families in or from rural areas and rural communities who have sought or are seeking Federal homeless assistance services.

(10) National advocacy organizations concerned with homelessness, rural housing, and rural community development.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this division

TITLE V—REPEALS AND CONFORMING AMENDMENTS

SEC. 1501. REPEALS.

Subtitles D, E, and F of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11391 et seq., 11401 et seq., and 11403 et seq.) are hereby repealed.

SEC. 1502. CONFORMING AMENDMENTS.

(a) CONSOLIDATED PLAN.—Section 403(1) of the McKinney-Vento Homeless Assistance Act (as so redesignated by section 1101(2) of this division), is amended—

(1) by striking ''current housing affordability strategy'' and inserting ''consolidated plan''; and

(2) by inserting before the comma the following: ''(referred to in such section as a 'comprehensive housing affordability strategy')''.

(b) PERSONS EXPERIENCING HOMELESSNESS.—Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as amended by the preceding provisions of this division, is further amended by adding at the end the following new subsection:

''(e) PERSONS EXPERIENCING HOMELESSNESS.—Any references in this Act to homeless individuals (including homeless persons) or homeless groups (including homeless persons) shall be considered to include, and to refer to, individuals experiencing homelessness or groups experiencing homelessness, respectively.''.

(c) RURAL HOUSING STABILITY ASSISTANCE.—Title IV of the McKinney-Vento Homeless Assistance Act is amended by redesignating subtitle G (42 U.S.C. 11408 et seq.), as amended by the preceding provisions of this division, as subtitle D.

SEC. 1503. EFFECTIVE DATE.

Except as specifically provided otherwise in this division, this division and the amendments made by this division shall take effect on, and shall apply beginning on—

(1) the expiration of the 18-month period beginning on the date of the enactment of this division, or

(2) the expiration of the 3-month period beginning upon publication by the Secretary of Housing and Urban Development of final regulations pursuant to section 1504,

whichever occurs first.

SEC. 1504. REGULATIONS.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this division, the Secretary of Housing and Urban Development shall promulgate regulations governing the operation of the programs that are created or modified by this division.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this division.

SEC. 1505. AMENDMENT TO TABLE OF CONTENTS.

The table of contents in section 101(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 note) is amended by striking the item relating to the heading for title IV and all that follows through the item relating to section 492 and inserting the following new items:

''TITLE IV—HOUSING ASSISTANCE

''Subtitle A—General Provisions

''Sec. 401. Definitions.
''Sec. 402. Collaborative applicants.
''Sec. 403. Housing affordability strategy.
''Sec. 404. Preventing involuntary family separation
''Sec. 405. Technical assistance.
''Sec. 406. Discharge coordination policy.
''Sec. 407. Protection of personally identifying information by victim service providers.
''Sec. 408. Authorization of appropriations.

''Subtitle B—Emergency Solutions Grants Program

''Sec. 411. Definitions.
''Sec. 412. Grant assistance.
''Sec. 413. Amount and allocation of assistance.
''Sec. 414. Allocation and distribution of assistance.
''Sec. 415. Eligible activities.
''Sec. 416. Responsibilities of recipients.
''Sec. 417. Administrative provisions.
''Sec. 418. Administrative costs.

''Subtitle C—Continuum of Care Program

''Sec. 421. Purposes.
''Sec. 422. Continuum of care applications and grants.
''Sec. 423. Eligible activities.
''Sec. 424. Incentives for high-performing communities.
''Sec. 425. Supportive services.
''Sec. 426. Program requirements.
''Sec. 427. Selection criteria.
''Sec. 428. Allocation of amounts and incentives for specific eligible activities.
''Sec. 429. Renewal funding and terms of assistance for permanent housing.
''Sec. 430. Matching funding.
''Sec. 431. Appeal procedure.
''Sec. 432. Regulations.
''Sec. 433. Reports to Congress.

''Subtitle D—Rural Housing Stability Assistance Program

''Sec. 491. Rural housing stability assistance.
''Sec. 492. Use of FHMA inventory for transitional housing for homeless persons and for turnkey housing.''.

Mr. DODD. Mr. President, I move to reconsider that vote and to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Presiding Officer, the floor staff, and others for their work. I thank my colleagues and the staff as well for the tremendous work on this bill over the last several days.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

WEAPON SYSTEMS ACQUISITION REFORM ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 454, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 454) to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Weapon Systems Acquisition Reform Act of 2009''.

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

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

TITLE I—ACQUISITION ORGANIZATION

Sec. 101. Reports on systems engineering capabilities of the Department of Defense.
Sec. 102. Director of Developmental Test and Evaluation.
Sec. 103. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.
Sec. 104. Director of Independent Cost Assessment.
Sec. 105. Role of the commanders of the combatant commands in identifying joint military requirements.

TITLE II—ACQUISITION POLICY

Sec. 201. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.
Sec. 202. Preliminary design review and critical design review for major defense acquisition programs.
Sec. 203. Ensuring competition throughout the life cycle of major defense acquisition programs.
Sec. 204. Critical cost growth in major defense acquisition programs.
Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.
Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

SEC. 2. DEFINITIONS.

In this Act:

(1) The term ''congressional defense committees'' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

(2) The term ''major defense acquisition program'' has the meaning given that term in section 2430 of title 10, United States Code.

TITLE I—ACQUISITION ORGANIZATION

SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILITIES OF THE DEPARTMENT OF DEFENSE.

(a) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Under Secretary of Defense for Acquisition, Technology, and Logistics a report setting forth the following:

(1) A description of the extent to which such military department has in place development planning organizations and processes staffed by adequate numbers of personnel with appropriate training and expertise to ensure that—

(A) key requirements, acquisition, and budget decisions made for each major weapon system prior to Milestones A and B are supported by a rigorous systems analysis and systems engineering process;

(B) the systems engineering strategy for each major weapon system includes a robust program for improving reliability, availability, maintainability, and sustainability as an integral part of design and development; and

(C) systems engineering requirements, including reliability, availability, maintainability, and sustainability requirements, are identified during the Joint Capabilities Integration Development System process and incorporated into contract requirements for each major weapon system.

(2) A description of the actions that such military department has taken, or plans to take, to—

(A) establish needed development planning and systems engineering organizations and processes; and

(B) attract, develop, retain, and reward systems engineers with appropriate levels of hands-on experience and technical expertise to meet the needs of such military department.

(b) REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the system engineering capabilities of the Department of Defense. The report shall include, at a minimum, the following:

(1) An assessment by the Under Secretary of the reports submitted by the service acquisition executives pursuant to subsection (a) and of the adequacy of the actions that each military department has taken, or plans to take, to meet the systems engineering and development planning needs of such military department.

(2) An assessment of each of the recommendations of the report on Pre-Milestone A and Early-Phase Systems Engineering of the Air Force Studies Board of the National Research Council, including the recommended checklist of systems engineering issues to be addressed prior to Milestones A and B, and the extent to which such recommendations should be implemented throughout the Department of Defense.

SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.

(a) ESTABLISHMENT OF POSITION.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by inserting after section 139b the following new section:

"§ 139c. Director of Developmental Test and Evaluation

''(a) There is a Director of Developmental Test and Evaluation, who shall be appointed by the Secretary of Defense from among individuals with an expertise in acquisition and testing.

''(b)(1) The Director of Developmental Test and Evaluation shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on developmental test and evaluation in the Department of Defense.

''(2) The individual serving as the Director of Developmental Test and Evaluation may also serve concurrently as the Director of the Department of Defense Test Resource Management Center under section 196 of this title.

''(3) The Director shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary.

''(4)(A) The Under Secretary shall provide guidance to the Director to ensure that the developmental test and evaluation activities of the Department of Defense are fully integrated into and consistent with the systems engineering and development processes of the Department.

''(B) The guidance under this paragraph shall ensure, at a minimum, that—

''(i) developmental test and evaluation requirements are fully integrated into the Systems Engineering Master Plan for each major defense acquisition program; and

''(ii) systems engineering and development planning requirements are fully considered in the Test and Evaluation Master Plan for each major defense acquisition program.

''(c) The Director of Developmental Test and Evaluation shall—

''(1) develop policies and guidance for the developmental test and evaluation activities of the Department of Defense (including integration and developmental testing of software);

''(2) monitor and review the developmental test and evaluation activities of the major defense acquisition programs and major automated information systems programs of the Department of Defense;

''(3) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense;

''(4) supervise the activities of the Director of the Department of Defense Test Resource Management Center under section 196 of this title, or carry out such activities if serving concurrently as the Director of Developmental Test and Evaluation and the Director of the Department of Defense Test Resource Management Center under subsection (b)(2);

''(5) review the organizations and capabilities of the military departments with respect to developmental test and evaluation and identify needed changes or improvements to such organizations and capabilities; and

''(6) perform such other activities relating to the developmental test and evaluation activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

''(d) The Director of Developmental Test and Evaluation shall have access to all records and data of the Department of Defense (including the records and data of each military department) that the Director considers necessary in order to carry out the Director's duties under this section.

''(e)(1) The Director of Developmental Test and Evaluation shall submit to Congress each year a report on the developmental test and evaluation activities of the major defense acquisition programs and major automated information system programs of the of the Department of Defense. Each report shall include, at a minimum, the following:

''(A) A discussion of any waivers to testing activities included in the Test and Evaluation Master Plan for a major defense acquisition program in the preceding year.

''(B) An assessment of the organization and capabilities of the Department of Defense for test and evaluation.

''(2) The Secretary of Defense may include in any report submitted to Congress under this subsection such comments on such report as the Secretary considers appropriate.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title is amended by inserting after the item relating to section 139b the following new item:

''139c. Director of Developmental Test and Evaluation.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 196(f) of title 10, United States Code, is amended by striking ''the Under Secretary of Defense for Acquisition, Technology, and Logistics'' and all that follows and inserting ''the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of Developmental Test and Evaluation.''.

(B) Section 139(b) of such title is amended—

(i) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and

(ii) by inserting after paragraph (3) the following new paragraph (4):

''(4) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense;''.

(b) REPORTS ON DEVELOPMENTAL TESTING ORGANIZATIONS AND PERSONNEL.—

(1) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Director of Developmental Test and Evaluation a report on the extent to which the test organizations of such military department have in place, or have effective plans to develop, adequate numbers of personnel with appropriate expertise for each purpose as follows:

(A) To ensure that testing requirements are appropriately addressed in the translation of operational requirements into contract specifications, in the source selection process, and in the preparation of requests for proposals on all major defense acquisition programs.

(B) To participate in the planning of developmental test and evaluation activities, including the preparation and approval of a test and evaluation master plan for each major defense acquisition program.

(C) To participate in and oversee the conduct of developmental testing, the analysis of data, and the preparation of evaluations and reports based on such testing.

(2) FIRST ANNUAL REPORT BY DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.—The first annual report submitted to Congress by the Director of Developmental Test and Evaluation under section 139c(e) of title 10, United States Code (as added by subsection (a)), shall be submitted not later than one year after the date of the enactment of this Act, and shall include an assessment by the Director of the reports submitted by the service acquisition executives to the Director under paragraph (1).

SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF CRITICAL TECHNOLOGIES OF MAJOR DEFENSE ACQUISITION PROGRAMS BY THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) ASSESSMENT BY DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—

(1) IN GENERAL.—Section 139a of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c)(1) The Director of Defense Research and Engineering shall periodically review and assess the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense and report on the findings of such reviews and assessments to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(2) The Director shall submit to the Secretary of Defense and to Congress each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense.''.

(2) FIRST ANNUAL REPORT.—The first annual report under subsection (c)(2) of section 139a of title 10, United States Code (as added by paragraph (1)), shall be submitted to Congress not later than March 1, 2011, and shall address the results of reviews and assessments conducted by the Director of Defense Research and Engineering pursuant to subsection (c)(1) of such section (as so added) during the preceding calendar year.

(b) REPORT ON RESOURCES FOR IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this Act, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report describing any additional resources, including specialized workforce, that may be required by the Director, and by other science and technology elements of the Department of Defense, to carry out the following:

(1) The requirements under the amendment made by subsection (a).

(2) The technological maturity assessments required by section 2366b(a) of title 10, United States Code, as amended by section 202 of this Act.

(3) The requirements of Department of Defense Instruction 5000, as revised.

SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.

(a) DIRECTOR OF INDEPENDENT COST ASSESSMENT.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, as amended by section 102 of this Act, is further amended by inserting after section 139c the following new section:

"§ 139d. Director of Independent Cost Assessment

''(a) There is a Director of Independent Cost Assessment in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the Director.

''(b) The Director is the principal advisor to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Under Secretary of Defense (Comptroller) on cost estimation and cost analyses for the acquisition programs of the Department of Defense and the principal cost estimation official within the senior management of the Department of Defense. The Director shall—

''(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

''(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of

Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Secretaries of the military departments with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

''(3) establish guidance on confidence levels for cost estimates on major defense acquisition programs and require the disclosure of all such confidence levels;

''(4) monitor and review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs; and

''(5) conduct independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

''(A) in advance of—

''(i) any certification under section 2366a or 2366b of this title;

''(ii) any certification under section 2433(e)(2) of this title; and

''(iii) any report under section 2445c(f) of this title; and

''(B) whenever necessary to ensure that an estimate or analysis under paragraph (4) is unbiased, fair, and reliable.

''(c)(1) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.

''(2) The Director shall consult closely with, but the Director and the Director's staff shall be independent of, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and all other officers and entities of the Department of Defense responsible for acquisition and budgeting.

''(d)(1) The Secretary of a military department shall report promptly to the Director the results of all cost estimates and cost analyses conducted by the military department and all studies conducted by the military department in connection with cost estimates and cost analyses for major defense acquisition programs of the military department.

''(2) The Director may make comments on cost estimates and cost analyses conducted by a military department for a major defense acquisition program, request changes in such cost estimates and cost analyses to ensure that they are fair and reliable, and develop or require the development of independent cost estimates or cost analyses for such program, as the Director determines to be appropriate.

''(3) The Director shall have access to any records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out the Director's duties under this section.

''(e)(1) The Director shall prepare an annual report summarizing the cost estimation and cost analysis activities of the Department of Defense during the previous year and assessing the progress of the Department in improving the accuracy of its costs estimates and analyses.

''(2) Each report under this subsection shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and Congress not later than 10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31. The Director shall ensure that a report submitted under this subsection does not include any information, such as proprietary or source selection sensitive information, that could undermine the integrity of the acquisition process.

''(3) The Secretary may comment on any report of the Director to Congress under this subsection.

''(f) The President shall include in the budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the Director of Independent Cost Assessment in carrying out the duties and responsibilities of the Director under this section.

''(g) The Secretary of Defense shall ensure that the Director has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title, as so amended, is further amended by inserting after the item relating to section 139c the following new item:

''139d. Director of Independent Cost Assessment.''.

(3) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Director of Operational Test and Evaluation, Department of Defense the following new item:

''Director of Independent Cost Assessment, Defense of Defense.''.

(b) REPORT ON MONITORING OF OPERATING AND SUPPORT COSTS FOR MDAPS.—

(1) REPORT TO SECRETARY OF DEFENSE.—Not later than one year after the date of the enactment of this Act, the Director of Independent Cost Assessment under section 139d of title 10 United States Code (as added by subsection (a)), shall review existing systems and methods of the Department of Defense for tracking and assessing operating and support costs on major defense acquisition programs and submit to the Secretary of Defense a report on the finding and recommendations of the Director as a result of the review.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

(c) TRANSFER OF PERSONNEL AND FUNCTIONS OF COST ANALYSIS IMPROVEMENT GROUP.—The personnel and functions of the Cost Analysis Improvement Group of the Department of Defense are hereby transferred to the Director of Independent Cost Assessment under section 139d of title 10, United States Code (as so added), and shall report directly to the Director.

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting ''the Director of Independent Cost Assessment,'' before ''and the Director''.

(2) Section 2306b(i)(1)(B) of such title is amended by striking ''Cost Analysis Improvement Group of the Department of Defense'' and inserting ''Director of Independent Cost Assessment''.

(3) Section 2366a(a)(4) of such title is amended by striking ''has been submitted'' and inserting ''has been approved by the Director of Independent Cost Assessment''.

(4) Section 2366b(a)(1)(C) of such title is amended by striking ''have been developed to execute'' and inserting ''have been approved by the Director of Independent Cost Assessment to provide for the execution of''.

(5) Section 2433(e)(2)(B)(iii) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

(6) Subparagraph (A) of section 2434(b)(1) of such title is amended to read as follows:

''(A) be prepared or approved by the Director of Independent Cost Assessment; and''.

(7) Section 2445c(f)(3) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT COMMANDS IN IDENTIFYING JOINT MILITARY REQUIREMENTS.

Section 181 of title 10, United States Code, as amended by section 104(d)(1) of this Act, is further amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by adding after subsection (d) the following new subsection (e):

''(e) INPUT FROM COMBATANT COMMANDERS ON JOINT MILITARY REQUIREMENTS.—The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b) and in conducting periodic reviews in accordance with the requirements of subsection (f).''.

TITLE II—ACQUISITION POLICY

SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

(a) CONSIDERATION OF TRADE-OFFS.—

(1) IN GENERAL.—The Secretary of Defense shall develop and implement mechanisms to ensure that trade-offs between cost, schedule, and performance are considered as part of the process for developing requirements for major weapon systems.

(2) ELEMENTS.—The mechanisms required under this subsection shall ensure, at a minimum, that—

(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance requirements are established for major weapon systems; and

(B) consideration is given to fielding major weapon systems through incremental or spiral acquisition, while deferring technologies that are not yet mature, and capabilities that are likely to significantly increase costs or delay production, until later increments or spirals.

(3) MAJOR WEAPONS SYSTEM DEFINED.—In this subsection, the term ''major weapon system'' has the meaning given that term in section 2379(d) of title 10, United States Code.

(b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT COUNCIL.—Section 181(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(C) in ensuring the consideration of trade-offs among cost, schedule and performance for joint military requirements in consultation with the advisors specified in subsection (d);''.

(c) ANALYSIS OF ALTERNATIVES.—

(1) REQUIREMENT AT MATERIAL SOLUTION ANALYSIS PHASE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires the Milestone Decision Authority to conduct an analysis of alternatives (AOA) during the Material Solution Analysis Phase of each major defense acquisition program.

(2) ELEMENTS.—Each analysis of alternatives under paragraph (1) shall, at a minimum—

(A) solicit and consider alternative approaches proposed by the military departments and Defense Agencies to meet joint military requirements; and

(B) give full consideration to possible trade-offs between cost, schedule, and performance for each of the alternatives so considered.

(d) DUTIES OF MILESTONE DECISION AUTHORITY.—Section 2366b(a)(1)(B) of title 10, United States Code, is amended by inserting ''appropriate trade-offs between cost, schedule, and performance have been made to ensure that'' before ''the program is affordable''.

SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DESIGN REVIEW FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) PRELIMINARY DESIGN REVIEW.—Section 2366b(a) of title 10, United States Code, as amended by section 201(d) of this Act, is further amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph (2):

''(2) has received a preliminary design review (PDR) and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission; and''; and

(4) in paragraph (3), as redesignated by paragraph (2) of this section—

(A) in subparagraph (D), by striking the semicolon and inserting '', as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and'';

(B) by striking subparagraph (E); and

(C) by redesignating subparagraph (F) as subparagraph (E).

(b) CRITICAL DESIGN REVIEW.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires a critical design review and a formal post-critical design review assessment for each major defense acquisition program to ensure that such program has attained an appropriate level of design maturity before such program is approved for System Capability and Manufacturing Process Development.

SEC. 203. ENSURING COMPETITION THROUGHOUT THE LIFE CYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ENSURING COMPETITION.—The Secretary of Defense shall ensure that the acquisition plan for each major defense acquisition program includes measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level of such program throughout the life cycle of such program as a means to incentivize contractor performance.

(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, utilized for purposes of subsection (a) may include, but are not limited to, measures to achieve the following, in appropriate cases where such measures are cost-effective:

(1) Competitive prototyping.

(2) Dual-sourcing.

(3) Funding of a second source for interchangeable, next-generation prototype systems or subsystems.

(4) Utilization of modular, open architectures to enable competition for upgrades.

(5) Periodic competitions for subsystem upgrades.

(6) Licensing of additional suppliers.

(7) Requirements for Government oversight or approval of make or buy decisions to ensure competition at the subsystem level.

(8) Periodic system or program reviews to address long-term competitive effects of program decisions.

(9) Consideration of competition at the subcontract level and in make or buy decisions as a factor in proposal evaluations.

(c) COMPETITIVE PROTOTYPING.—The Secretary of Defense shall modify the acquisition regulations of the Department of Defense to ensure with respect to competitive prototyping for major defense acquisition programs the following:

(1) That the acquisition strategy for each major defense acquisition program provides for two or more competing teams to produce prototypes before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the milestone decision authority for such program waives the requirement on the basis of a determination that—

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing competitive prototypes exceeds the potential life-cycle benefits of such competition, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

(2) That if the milestone decision authority waives the requirement for prototypes produced by two or more teams for a major defense acquisition program under paragraph (1), the acquisition strategy for the program provides for the production of at least one prototype before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the milestone decision authority waives such requirement on the basis of a determination that—

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing a prototype exceeds the potential life-cycle benefits of such prototyping, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

(3) That whenever a milestone decision authority authorizes a waiver under paragraph (1) or (2), the waiver, the determination upon which the waiver is based, and the reasons for the determination are submitted in writing to the congressional defense committees not later than 30 days after the waiver is authorized.

(4) That prototypes may be required under paragraph (1) or (2) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system.

(d) APPLICABILITY.—This section shall apply to any acquisition plan for a major defense acquisition program that is developed or revised on or after the date that is 60 days after the date of the enactment of this Act.

SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL COST GROWTH.—Section 2433(e)(2) of title 10, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (D);

(2) by striking subparagraph (B); and

(3) by inserting after subparagraph (A) the following new subparagraphs (B) and (C):

''(B) terminate such acquisition program, unless the Secretary determines that the continuation of such program is essential to the national security of the United States and submits a written certification in accordance with subparagraph (C)(i) accompanied by a report setting forth the assessment carried out pursuant to subparagraph (A) and the basis for each determination made in accordance with clauses (I) through (IV) of subparagraph (C)(i), together with supporting documentation;

''(C) if the program is not terminated—

''(i) submit to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title, a written certification stating that—

''(I) such acquisition program is essential to national security;

''(II) there are no alternatives to such acquisition program which will provide equal or greater capability to meet a joint military requirement (as that term is defined in section 181(h)(1) of this title) at less cost;

''(III) the new estimates of the program acquisition unit cost or procurement unit cost were arrived at in accordance with the requirements of section 139d of this title and are reasonable; and

''(IV) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost;

''(ii) rescind the most recent Milestone approval (or Key Decision Point approval in the case of a space program) for such program and withdraw any associated certification under section 2366a or 2366b of this title; and

''(iii) require a new Milestone approval (or Key Decision Point approval in the case of a space program) for such program before entering into a new contract, exercising an option under an existing contract, or otherwise extending the scope of an existing contract under such program; and''.

(b) TOTAL EXPENDITURE FOR PROCUREMENT RESULTING IN TREATMENT AS MDAP.—Section 2430(a)(2) of such title is amended by inserting '', including all planned increments or spirals,'' after ''an eventual total expenditure for procurement''.

SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

(a) REVISED REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Supplement to the Federal Acquisition Regulation to address organizational conflicts of interest by contractors in the acquisition of major weapon systems.

(b) ELEMENTS.—The revised regulations required by subsection (a) shall, at a minimum—

(1) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major weapon systems from federally funded research and development centers or other sources independent of the prime contractor;

(2) require that a contract for the performance of systems engineering and technical assistance (SETA) functions with regard to a major weapon system contains a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof;

(3) provide for an exception to the requirement in paragraph (2) for an affiliate that is separated from the contractor by structural mechanisms, approved by the Secretary of Defense, that are similar to those required under rules governing foreign ownership, control, or influence over United States companies that have access to classified information, including, at a minimum—

(A) establishment of the affiliate as a separate business entity, geographically separated from related entities, with its own employees and management and restrictions on transfers for personnel;

(B) a governing board for the affiliate that has organizational separation from related entities and governance procedures that require the board to act solely in the interest of the affiliate, without regard to the interests of related entities, except in specified circumstances;

(C) complete informational separation, including the execution of non-disclosure agreements;

(D) initial and recurring training on organizational conflicts of interest and protections against organizational conflicts of interest; and

(E) annual compliance audits in which Department of Defense personnel are authorized to participate;

(4) prohibit the use of the exception in paragraph (3) for any category of systems engineering and technical assistance functions (including, but not limited to, advice on source selection matters) for which the potential for an organizational conflict of interest or the appearance of an organizational conflict of interest

makes mitigation in accordance with that paragraph an inappropriate approach;

(5) authorize waiver of the requirement in paragraph (2) in cases in which the agency head determines in writing that—

(A) the financial interest of the contractor or its affiliate in the development or construction of the weapon system is not substantial and does not include a prime contract, a first-tier subcontract, or a joint venture or similar relationship with a prime contractor or first-tier subcontractor; or

(B) the contractor—

(i) has unique systems engineering capabilities that are not available from other sources;

(ii) has taken appropriate actions to mitigate any organizational conflict of interest; and

(iii) has made a binding commitment to comply with the requirement in paragraph (2) by not later than January 1, 2011; and

(6) provide for fair and objective ''make-buy'' decisions by the prime contractor on a major weapon system by—

(A) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of the weapon system;

(B) providing for government oversight of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract;

(C) authorizing program managers to disapprove the determination by a prime contractor to conduct development or construction in-house rather than through a subcontract in cases in which—

(i) the prime contractor fails to give full and fair consideration to qualified sources other than the prime contractor; or

(ii) implementation of the determination by the prime contractor is likely to undermine future competition or the defense industrial base; and

(D) providing for the consideration of prime contractors ''make-buy'' decisions in past performance evaluations.

(c) ORGANIZATIONAL CONFLICT OF INTEREST REVIEW BOARD.—

(1) ESTABLISHMENT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall establish within the Department of Defense a board to be known as the ''Organizational Conflict of Interest Review Board''.

(2) DUTIES.—The Board shall have the following duties:

(A) To advise the Under Secretary of Defense for Acquisition, Technology, and Logistics on policies relating to organizational conflicts of interest in the acquisition of major weapon systems.

(B) To advise program managers on steps to comply with the requirements of the revised regulations required by this section and to address organizational conflicts of interest in the acquisition of major weapon systems.

(C) To advise appropriate officials of the Department on organizational conflicts of interest arising in proposed mergers of defense contractors.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' has the meaning given that term in section 2379(d) of title 10, United States Code.

SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.

Mr. LEVIN. Mr. President, on behalf of the Senate Armed Services Committee, we are pleased to bring S. 454, the Weapon Systems Acquisition Reform Act of 2009 to the Senate floor. I introduced this bill with Senator MCCAIN on February 23 to address problems in the performance of the major defense acquisition programs of the Department of Defense at a time when the cost growth on these programs has reached levels we simply cannot afford.

Five weeks later, the bill was unanimously approved by the Armed Services Committee, and just last week the President called on Congress to act quickly on the bill. Report after report has shown that there are fundamental problems with the way we buy major weapons systems. In the last month alone, we received three major reports documenting problems with the acquisition system.

First, the Government Accountability Office reported that the cost overruns of the Department's 97 largest acquisition programs now total almost $300 billion over the original program estimates, and the programs are an average of 22 months behind schedule. That is true even though the Department has cut unit quantities and reduced performance expectations on many programs in an effort to expedite production and hold costs down.

Second, we got a report from the Business Executives for National Security, BENS. They reported:

> We have an acquisition system at odds with the best practices in the business world: insufficient systems engineering capability [and] unrealistic cost estimating that injects too much optimism in early program execution. . . .

Then, thirdly, there was a Defense Science Board report that said:

> Today, the defense acquisition process takes too long to produce weapons that are too expensive. . . .

As Secretary Gates pointed out in his testimony before our committee earlier this year:

> The list of big-ticket weapons systems that have experienced contract or program performance problems spans the services.

Here are just a few examples of the kind of problems the Department of Defense's major acquisition programs have encountered. The Navy initially established a goal of $220 million and a 2-year construction cycle for the two lead ships on the Littoral Combat Ship, the LCS program. Those goals ran counter to the Navy's historic experience in building new ships and were inconsistent with the complexity of the design required to make the program successful. As a result, program costs have tripled and the program is almost 4 years behind schedule.

Next, the Air Force initially estimated that commonality between the three variants, threat varieties, of the Joint Strike Fighter would significantly reduce development costs. However, that level of commonality has proven impossible to achieve. Twelve years after the program started, three of the JSF's eight critical technologies are still not mature. Its production processes are not mature, and its designs are still not fully proven and tested.

As a result, the program is now expected to exceed its original budget by almost 40 percent. That is $40 billion. The Army underestimated the lines of code needed to support the Future Combat System's software development by a factor of three. That led to an increase in software development costs that now approaches $8 billion. So 8 years after the program started, only three of the Future Combat System's 44 critical technologies are fully mature. GAO tells us that the Army has not advanced the maturity of 11 critical technologies since 2003, and that 2 other technologies, which are central to the Army's plans, are now rated less mature than when the program began. As a result, the program is now expected to exceed its original budget by about 45 percent or $40 billion. It is as much as 5 years behind schedule and is likely to be substantially restructured.

There is a set of common problems underlying all these program failures. As a general rule, when the Department of Defense acquisition program fails, it is because the Department relies on unreasonable costs and schedule estimates; establishes unrealistic performance expectations; insists on the use of immature technologies; and adopts costly changes to program requirements, production quantities and funding levels in the middle of ongoing programs.

The bill we bring before the Senate today is designed to address these problems and to help put major defense acquisition programs on a sound footing from the outset by addressing program shortcomings in the early phases of the acquisition process. Our bill is going to address problems with unreasonable performance requirements and immature technologies by requiring the Department of Defense to reestablish systems engineering organizations and developmental testing capabilities that were downsized or eliminated as a result of reductions in the acquisition workforce in the late 1990s; periodically review and assess the maturity of critical technologies; and make greater use of prototypes, including competitive prototypes, to prove that new

technologies work before trying to produce them.

Our bill will address problems with unreasonable cost and schedule estimates by establishing an independent cost estimating office headed by a Senate-confirmed director of independent cost assessment in an effort to ensure that the budget assumptions underlying acquisition programs are sound.

We deal with a similar problem in the Congress by using an independent office, the Congressional Budget Office, to tell us how much direct spending programs are really going to cost. Those of us who have tangled with the CBO over the years know how tough and independent that office can be in insisting on its estimates. We can decide to spend the money anyway, but we do so with our eyes wide open because the cost estimator is not going to back down.

The Department of Defense itself has a model for this type of independence in the Director of Operational Test and Evaluation, the DOT&E. For the last 25 years, that Director, who is appointed by the President, confirmed by the Senate, and reports directly to the Secretary of Defense, has ensured that weapons systems are adequately tested before they are deployed by providing independent certifications as to whether new military systems are effective and suitable for combat. Program officials and contractors may disagree with the Director, but they have discovered they cannot go around him.

Section 104 of our bill would ensure comparable discipline when it comes to cost estimating by establishing a new director of independent cost assessment. Like the DOT&E, a new director will be appointed by the President, confirmed by the Senate, and will report directly to the Secretary of Defense. Like the Director of Test and Evaluation, this official would have the independence and the clout within the Department to make objective determinations and stick to them. A truly independent cost estimating director will not be popular within the Department, as the DOT&E is not popular often, but he will make our acquisition system work better by forcing the Department to recognize the real cost of what our Secretary of Defense has called ''exquisite requirements.''

Only when the Department faces up to these costs will it become more realistic in its requirements and start to make the necessary tradeoffs between cost, schedule, and performance.

Section 104 makes the Director responsible for all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated systems programs in the Department of Defense. Under section 104, the Director is required to perform his own cost estimates at four separate points in the life of each program for which the Under Secretary is the milestone decision authority. On other programs, he may rely on an independent cost estimate produced by one of the military departments but only if he determines that the service's independent estimate is unbiased, fair, and reliable.

Our bill would also address problems with costly changes in the middle of a program by putting teeth in the Nunn-McCurdy requirements that currently exist for troubled acquisition programs.

We will establish a presumption that any program that exceeds its original baseline by more than 50 percent will be terminated unless it can be justified—be ''justified;'' and this is critically important—from the ground up.

Finally, our bill would address an inherent conflict of interest we see on a number of programs today, when a contractor hired to give us an independent assessment of an acquisition program is participating in the development or construction side of the same program.

We held a hearing back in March on S. 454, at which four witnesses, including two former Under Secretaries of Defense for Acquisition, Technology, and Logistics, endorsed the committee's acquisition reform effort. The new Under Secretary for Acquisition, Technology, and Logistics added his support at his March 26 nomination hearing. In addition, we have since received extensive comments on the bill from the Department of Defense, from the defense industry, and from independent experts on the acquisition system.

Senator MCCAIN and I took those comments into consideration and we offered a number of modifications to the bill, which were adopted by the Armed Services Committee at our April 2 markup. We did not make all of the changes requested by the Department or the contractor community. For example, the Department would like to eliminate the provision on the Director of Independent Cost Assessment. Many contractors would prefer we not tighten the rules for organizational conflicts of interest. And both the Department and industry would like us to drop our Nunn-McCurdy amendments, which place tough new requirements on failing programs. We have not done that. These provisions are tough medicine, but the acquisition system needs tough medicine.

In January, Secretary Gates told our committee that we must work together to address the ''repeated—and unacceptable—problems with requirements, schedule, cost, and performance'' from which too many of our defense acquisition programs suffer. On March 4, the President endorsed the goals of the bill, telling the press that ''It's time to end the extra costs and long delays that are all too common in our defense contracting.'' Last week, the President reiterated his position that the bill has his full support, and he urged us to act quickly.

I hope our colleagues will join us. Senator MCCAIN has been instrumental in making this happen, and we and the Nation are appreciative to him for so many things, but we can add this now to the list. Also, our full committee endorsed this bill. It was adopted unanimously in committee. It is a bipartisan bill.

We look forward to beginning consideration of this legislation. And to those Senators who have amendments, we hope they will let us know about them to see if we can work them out, and, if not, arrange a time for their consideration.

Again, I thank my friend from Arizona for all his work on this matter.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I wish to begin by thanking my friend from Michigan, the distinguished chairman of the committee, whom I have had the great honor of working with for many years. Senator LEVIN and I have not always agreed on every issue; we are of different parties. But we have had, in my view, a great opportunity to work together for the good of this Nation and its security and the men and women who serve it.

I again thank Senator LEVIN for his leadership in bringing this legislation quickly through our committee in a unanimous, bipartisan fashion, and bringing it to the floor.

As Senator LEVIN has mentioned, there may be some amendments or some modifications that our colleagues want to make, but I am confident we can get this bill done, into conference, and on the desk of the President. I am happy to say the President is very supportive. A meeting he and Senator LEVIN and I had with the leaders in the House Armed Services Committee indicates the President and the administration's commitment.

I also want to say Secretary Gates—a man who I believe is one of the outstanding Secretaries of Defense in the history of our country—has always been forcefully in support of this legislation. There obviously is more to do because we have a broken system, a system that is broken so badly that in our attempt to provide a replacement for the President's helicopter—which is some 30 years old, known as Marine One—we came to a point where the helicopter costs more than Air Force One.

You cannot make it up—where we have a future combat system with cost overruns of tens of billions of dollars; a joint strike fighter program that is completely out of control; and contracts—and there are many areas to place the blame and responsibility—but contracts that are let at certain cost estimates and then lose all touch with the original realities.

Is there anybody who is an expert on defense acquisition, weapons systems acquisition, who believes the final cost will be anything near what the initial cost was as presented to Congress and the American people? Of course not. Of course not.

So the title of this legislation is the ''Weapon Systems Acquisition Reform Act of 2009''—perhaps not a very exciting title. But the fact is, we have out-

of-control costs of our weapons systems, which we cannot afford. We are expanding our Army and Marine Corps. We have increased obligations in Afghanistan, which has certainly been highlighted by the recent events in Pakistan, as well as Afghanistan. We cannot afford it.

We cannot afford to take care of our obligations in at least two wars, and potential flashpoints all over the world, and continue the spending spree we are on on weapons systems acquisition. This is timely. It is needed.

I again thank the chairman of the committee, Senator LEVIN, for his leadership in seeing this bill from introduction through floor consideration today. It shows, I think—and I do not want to make too much of it, but it does show when there is an issue that cries out for bipartisan action, this one can be an example now and in the future.

I do not want to get into a lot of the details of how all this came about. But I would remind my colleagues that back some years ago, we used to have a thing called fixed-cost contracts. Those were the majority of the contracts that were let when we wanted to build a new weapons system: a new airplane, a new ship, a new tank. For many years, we were almost able to stay within those costs.

There were some dramatic exceptions. I can remember back in the 1970s the cost escalation associated with new nuclear submarines. And I can remember some others. But, generally speaking, we built weapons systems and gave them to the military at very close to their original cost estimates. That is not the case today.

Some will argue—as I have heard in the industry—well, there are technical changes that are ordered by the military which increase the cost. I think Secretary Gates pointed out some months ago: Are we allowing the perfect to be the enemy of the good? Are we getting a weapon system which achieves 80 to 90 percent of what we want—which, it seems to me, is under reasonable costs—or are we making all these technical changes, which cause the cost of these systems to go up in the most dramatic fashion?

We cannot afford to continue to do it. We cannot. I think this is an important step. I know the chairman would agree with me. This is not the only step that needs to be taken to bring an out-of-control system under some kind of control and accountability to the American taxpayer.

In its most recent assessment of the Department of Defense's major weapons systems, the General Accountability Office observed that ''the overall performance of weapon system programs is poor [and] the time for change is now.''

So I say to my colleagues, as they come to the floor with amendments and debate—and we need to discuss this—we should keep in mind the General Accountability Office's observation that ''the time for change is now.''

I would also remind my colleagues and the American people this legislation has to pass through the House. We have to then go to conference. We then have to have the President sign it. And then the changes have to be implemented. So we are not seeing even an immediate turnaround with the rapid consideration of this legislation, as I think we can achieve today.

I would ask my colleagues on this side of the aisle, if they have amendments, if they would notify the cloakroom, and we will make time for them. I know the chairman and I can enter into time agreements so we can dispense with the legislation in an expeditious way as possible, but also taking into consideration any concerns, amendments, our colleagues on both sides of the aisle have.

The chairman has described, I think, this bill very well, and I do not want to repeat his assessment. But I do want to point out a couple things or emphasize a couple points the chairman made.

The bill improves how the Department of Defense manages probably the single most significant driver of cost growth in our largest weapons procurement programs: technology risk. Basically, it does so by starting programs off right—with sound systems engineering, developmental testing, and independent cost estimates early in the program. We have seen these cost estimates particularly being unrealistic because we have not done the proper sound systems engineering and developmental testing that is necessary to get a correct assessment of costs.

The bill, among many other things, requires the Department of Defense to assess each department's ability to conduct early stage systems engineering and fill in any gaps in that important capability.

The bill provides for the creation or resumption of key oversight positions, including a Director of Independent Cost Assessment and a Director of Developmental Testing and Evaluation. I am not one who believes in creating new positions. I think our bureaucracy over on the other side of the river is big enough. But I do believe we need to create and resume key oversight functions, and those do require a Director of Independent Cost Assessment and a Director of Developmental Testing and Evaluation.

The relationship between those who are doing the contracting, other contractors, and the awardee is way too close today for us to get truly independent assessments and cost controls.

The bill requires that preliminary design and critical design reviews are completed early in a program's acquisition cycle so as to inform go/no-go purchase decisions on major weapons systems.

The bill requires that the Department's budget, requirements, and acquisitions community consult with each other and make tradeoffs between cost, schedule, and performance early in the procurement process, and get combatant commanders more involved in the requirements process.

I want to emphasize that last point. The combatant commanders are the end users of the equipment we provide them with. Unfortunately, on many occasions, the combatant commanders have not been involved in the requirements process early enough on or too late, to the point where they cannot make significant changes. What we want to do is give the Department, under the leadership of our great Secretary of Defense and the Congress, a big stick—bigger than anything available under current law—to wield against the very worst performing programs.

On the broadest level, this bill recognizes that only when a program is predictable; that is, when milestones are being met, estimated costs are actual costs, and performance-to-contract specifications and ''key performance parameters'' are achieved, only then can we rely on the acquisition process to provide the joint warfighter with timely optimal capability at the most reasonable cost to the taxpayer.

The approach provided for in this bill, which allows the Department of Defense to manage technology risks effectively, should help it move away from cost-reimbursable contracts and instead maximize its use of fixed price-type contracts. When coupled with initiatives that subject programs to full and open competition, this approach could save taxpayers billions of dollars.

While we do not intend this bill as a panacea that will cure all that ails the defense procurement process, as it is, it constitutes an important next step in Congress's continuing effort to help the Department reform itself.

Two final points.

Since the chairman and I originally introduced the bill, the Department of Defense and others have raised various concerns about discrete elements of the bill. The bill now under consideration has benefited from that dialog as it addresses their reasonable concerns, without undermining the underlying intent of the bill, to put in place an evolutionary, knowledge-based acquisition process that metes out technology risks early in a program.

I note for the record that we received testimony on this bill in our March 3, 2009, hearing. A day later, the President came out in support of the bill's underlying principles. Just a few days ago, he offered an unqualified endorsement. In addition, Secretary Gates and Dr. Ashton Carter, the new Under Secretary of Defense for Acquisition, Technology and Logistics, have spoken approvingly of the bill. Also, the General Accountability Office, two former Defense acquisition chiefs, and various taxpayer advocacy and think tank organizations, including the Center for American Progress, Business Executives for National Security, the Project on Government Oversight, known as POGO, the National Taxpayers Union, NTU, the U.S. Public Interest Research

Group, PIRG, and Taxpayers for Common Sense, have also weighed in in support of the bill.

I ask unanimous consent to have their statements printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. CARL LEVIN,
Chairman, U.S. Senate Committee on Armed Services, Washington, DC.
Hon. JOHN MCCAIN,
Ranking Member, U.S. Senate Committee on Armed Services, Washington, DC.

DEAR CHAIRMAN LEVIN AND RANKING MEMBER MCCAIN, The undersigned groups applaud your commitment to reforming and improving the Department of Defense's (DoD's) acquisition system through the Weapons Acquisition Reform Act of 2009 (S. 454) and the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight (WASTE TKO) Act of 2009 (H.R. 2101). Both pieces of legislation include important provisions to restore discipline to DoD's procurement process. As the final legislation is worked out in conference, we believe that the following principles should be preserved:

Ensuring only programs with design maturity move forward—Programs that enter production before their designs are mature are vulnerable to gross schedule and cost overruns. The Senate bill advocates a strategy that would significantly improve programs by requiring design reviews to certify that programs have attained an appropriate level of design maturity before a program is approved for System Capability and Manufacturing Process Development. As a result of this reform, program and cost risk could be significantly reduced.

Elevating independent cost estimates—We support the establishment of a Director of Independent Cost Assessment to provide oversight and implement policies and procedures to make sure that the cost estimation process is reliable and objective. Creating this new, independent position is important to prevent the cycle of costs that exceed estimates due to insufficient knowledge of accurate requirements.

Increasing accountability for programs that experience critical cost growth—Both bills propose language that place additional and needed scrutiny on programs that experience critical cost growth. The House bill seeks to increase accountability by asking for an assessment of the root cause of growth, program validity, the viability of program strategy, and the quality of program management to determine whether a program should be terminated. But we believe the more aggressive strategy advocated by the Senate will do more to increase program discipline by requiring that a program be terminated unless the Secretary determines that it is essential to national security, and includes documentation that also states that 1) there are no alternatives to the acquisition program ''which will provide equal or greater capability to meet a joint military requirement''; 2) the new acquisition cost or procurement unit costs are reasonable; and 3) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost. By also rescinding the most recent Milestone approval and requiring a new approval, we believe program management for programs that experience critical cost growth will be improved.

Reducing organizational conflicts of interest—Independent analysis is key to ensuring that DoD decision makers are given unbiased, accurate information upon which to base program decisions. While we applaud the House for calling for a study to examine how to eliminate or mitigate organizational conflicts of interest, we also strongly support preventing organizational conflicts. The Senate version of this bill would decrease conflicts of interest by mandating that DoD seek independent advice on systems architecture and systems engineering for major weapon systems. We also support the language initially proposed in S. 454 that would require that a contract for the performance of systems engineering and technical assistance (SETA) functions for major weapons systems contain a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof. We urge you to include the ''Organizational Conflict of Interest'' provision that explicitly defines the minimum regulations to be enacted that will preclude contractors from advising the Department of Defense on weapons systems and then developing them.

Increasing competition in major weapons systems—Both bills enhance competition in the procurement process that will translate into the best value for taxpayers and also serves as an important tool to prevent waste, fraud, and abuse. We support language that would encourage programs to utilize methods such as competitive prototyping, periodic competitions for subsystem upgrades, licensing of additional suppliers, and periodic system or program reviews to address long-term competitive effects of program decisions. But we believe that competition, and with it benefits to taxpayers, will only be further enhanced by measures in the Senate bill to increase the use of government oversight or approval in make or buy decisions at every system level.

Increasing transparency in the waiver process—The answer to solving the problems with DoD's procurement process is not simply a matter of making new rules. We believe that many of the rules and controls are already in place for responsible procurement of weapons systems, but that these rules are too frequently ignored or otherwise not followed, resulting in a system that has been plagued by cost and schedule overruns. The House adopts an important strategy for this effort by forcing DoD to supply Congress with explanations for waivers to key provisions for Milestone decisions and follow-up annual reviews of these programs. This significantly increases Congress's ability to oversee DoD and make sure that taxpayers are getting the national security capabilities they need at a reasonable price.

We also support the proposed reforms to increase the emphasis on systems engineering, developmental testing, and technology maturity assessments, along with confidence levels for cost estimates. All of these principles help programs to have a strong foundation.

As important as all of these provisions are, it's important to recognize that this legislation is only one step in reforming weapons acquisition. The defense procurement process is also in desperate need of discipline. Standards for appropriate levels of design maturity should be clearly defined to meet missions and requirements. Waivers from procurement rules should be used rarely, should be the exception, not the rule, and should be made available to both Congress and the public. Additionally, spiral acquisition contracts should not be used to push immature technologies back in the production process, where they can still endanger the program's cost and schedule. All technologies should be mature before committing to production.

In the short term, Defense Secretary Robert Gates has demonstrated his commitment to restoring discipline to the Pentagon's weapons acquisition by his aggressive program cuts, and Congress should follow his lead in putting the public good ahead of their parochial interests. But in order to achieve lasting, meaningful change, the Pentagon must follow the rules and controls in place, and Congress must conduct oversight to make sure that they do so. We look forward to working with you in the future to implement these changes.

DANIELLE BRIAN,
Project on Government Oversight.
PETE SEPP,
Vice President, National Taxpayers Union, U.S. Public Interest Research Group.
RYAN ALEXANDER,
Taxpayers for Common Sense.

BUSINESS EXECUTIVES FOR NATIONAL SECURITY,
Washington, DC, March 31, 2009.
Hon. JOHN MCCAIN,
Ranking Member, Committee on Armed Services, U.S. Senate.

DEAR SENATOR MCCAIN: We note with pleasure the introduction of your bill targeted towards improvement of the Defense Department's acquisition management process. At Business Executives for National Security (BENS), we believe—and have asserted for some time—that acquisition reform is one of the most important areas for achieving efficiencies and savings that can be redirected to the warfighter. In line with your proposals, research shows the keys to successful acquisition are to start programs with sound systems engineering, realism in cost-estimating and subsequent funding, and ensuring appropriate technology maturation before entry into the program. Your proposal takes steps in the appropriate direction toward ensuring increased attention to these important areas.

For over twenty five years BENS has been the nation's pre-eminent conduit for bringing the best business practices and advice from the private sector to the world of national security. Through this engagement BENS has come to recognize that the Department of Defense and the Military Services are not businesses; they are organizations with an ethos and culture unique to their members and mission. Recognizing the difference has allowed BENS to help the Defense Department adopt relevant, proven practices that slash bureaucracy, streamline operations, and cut waste without violating those non-business characteristics which cannot be changed.

Therefore, we are particularly supportive of the Senate bill, Weapon Systems Acquisition Reform Act of 2009 (S. 454). We believe this bill, as good as it is, could go further in addressing many of the embedded processes that continue to detract from the overall effectiveness of the process. We fail sometimes in the basic recognition that the defense acquisition system is a national enterprise comprised of branches and agencies of the federal government on both sides of the Potomac River, and in the defense and private sectors nationally and globally. Based on the research of our Task Force on Acquisition Law and Oversight, BENS has concluded that it is time to fundamentally reset the expectations for what our nation wants from the defense acquisition enterprise and its processes. Congress is best suited to define and advocate these expectations. Too many studies and too many good recommendations have gone unheeded. If we are to reform, only Congress can lead it.

Your attention to this important issue is heartening. BENS recommends that Congress, as it continues to fashion this legislation, give careful consideration to the recommendations we make in our report, which is expected to be issued by April 30, 2009. We look forward to a successful outcome on the acquisition management issue, and to providing any further help as you negotiate the final bill. Please contact Chuck Boyd should you have any questions.

Sincerely,

JOSEPH E. ROBERT, Jr.
Chairman, BENS Board of Directors, Chairman and CEO, J.E. Robert Companies.

CHARLES G. BOYD,
President & CEO, BENS.

Mr. MCCAIN. Finally, I wish to say that there is another ongoing battle I will continue to engage in for as long as I am here, and that is the earmarking and porkbarreling that goes on in the Defense appropriations bill.

I am proud to have served for many years on the authorizing committee of the Armed Services Committee of the Senate. I see year after year, time after time, billions of dollars of unwanted, unnecessary porkbarrel-earmark spending, many of it having nothing to do with the defense of this Nation and the men and women who serve it. I see earmark-porkbarrel projects highlighted even as short a time ago as yesterday in the Washington Post, and the outrageous abuse of the taxpayers' dollars. When Members of Congress were put in Federal prison, it was the Defense appropriations bill that was the source of some of the corruption.

So I look forward to passing this to help reform the Pentagon. We still need to reform the way the Congress of the United States does business in porkbarreling and earmarking scarce taxpayers' dollars that should be used to defend this Nation and not for the sources of porkbarrel and earmark spending that has become rampant. The last Omnibus appropriations bill had 9,000 earmark-porkbarrel projects in it, thousands of them on the defense side of the appropriations. It is unacceptable. It is outrageous. The American people are sick and tired of it. I will continue that fight.

Again, I thank the distinguished chairman, Senator LEVIN, for his leadership on this legislation.

I yield the floor.

Mr. LEVIN. Mr. President, let me again thank Senator MCCAIN for all he has done to bring us to the floor today. This is a bipartisan bill. It is a major reform of the acquisition system. It is long overdue. It is genuinely and desperately needed.

Mr. MCCAIN. Mr. President, I wish to take just a couple minutes to discuss the kinds of overruns we are talking about.

I ask unanimous consent that this report by the GAO of 2009 on major weapons programs, changes in costs and quantities for 10 of the highest cost acquisition programs, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

2009 GAO REPORT ON MAJOR WEAPONS PROGRAMS

TABLE 2: CHANGES IN COSTS AND QUANTITIES FOR 10 OF THE HIGHEST-COST ACQUISITION PROGRAMS

Program	Total cost (fiscal year 2009 dollars in millions)		Total quantity		Acquisition unit cost
	First full estimate	Current estimate	First full estimate	Current estimate	Percentage change
Joint Strike Fighter	206,410	244,772	2,866	2,456	*38
Future Combat System	89,776	129,731	15	15	*45
Virginia Class Submarine	58,378	81,556	30	30	*40
F–22A Raptor	88,134	73,723	648	184	*195
C–17 Globemaster III	51,733	73,571	210	190	57
V–22 Joint Services Advanced Vertical Lift Aircraft	38,726	55,544	913	458	*186
F/A–18E/F Super Hornet	78,925	51,787	1,000	493	33
Trident II Missile	49,939	49,614	845	561	50
CVN 21 Nuclear Aircraft Class Carrier	34,360	29,914	3	3	-13
P–8A Poseidon Multi-mission Maritime Aircraft	29,974	29,622	115	113	1

*Enormous cost growth.

Source: GAO analysis of DOD data.

Mr. MCCAIN. For the Joint Strike Fighter, the first full estimate was that the cost would be $2.866 billion. The current estimate and percentage change is a 38-percent increase.

The Future Combat System was first estimated to cost $89-and-some billion. It is now up to $129 billion, a 45-percent increase in cost.

The Virginia class submarine was originally estimated to be around $58 billion. It is now $81 billion, a 40-percent increase.

The F–22, which will be the subject of debate on the floor of the Senate, original cost estimate was $88 billion, and the cost has increased by 195 percent.

The Globemaster has a 57-percent increase, the C–17.

The V–22 Joint Services Advanced Vertical Lift Aircraft, a 186-percent increase in cost.

The list goes on and on, with the exception of the nuclear aircraft carrier, which has a 13-percent decrease in cost. We ought to see what they are doing.

The programs GAO reviewed in 2008, the most used initial cost estimates from sources previously found to be unreliable, many still began with low levels of technical maturity. The promised capabilities continued to be delivered later than planned, and 10 of the Pentagon's largest programs equaling half of the Department's overall acquisition dollars are significantly over budget and under delivery in capability.

So these are the reasons we are absolutely in need of addressing weapons acquisition reform as early and quickly as possible.

Mr. LEVIN. Mr. President, our staffs have worked hard to try to clear some amendments. We have been able to do so. But in order for us to move these amendments be adopted, they are going to have to have their sponsors come to the floor.

The nine amendments which have been cleared on both sides and which we can accept if we can get the sponsors here would be three amendments of Senator MCCASKILL, one of Senator COLLINS, one of Senator COBURN, one of Senator WHITEHOUSE, one of Senator CARPER, one of Senator INHOFE, and one of Senator CHAMBLISS.

These amendments have not been filed yet. We have cleared them but they need to be filed by the Senators, and that is the reason we need them to come to the floor.

I will be happy to yield to my colleague.

Mr. MCCAIN. Mr. President, the Chairman explained what is necessary. I urge my colleagues to come to the floor, if they have additional amendments, so we can finish the bill. It seems to be remarkably free of controversy.

Mr. LEVIN. Mr. President, on a bipartisan basis our committee approved this bill unanimously, the Weapon Systems Acquisition Reform Act of 2009. We have a few minutes so I will just make a few points highlighting this bill.

The Government Accountability Office reported last month, as both Senator MCCAIN and I mentioned earlier, the cost overruns on the Department's 97 largest acquisition programs alone totaled almost $300 billion over the original program estimates. That is true, even though the Department of Defense cut the quantities being purchased and they reduced the performance expectations on many of the programs in order to hold down costs.

Second, we know what the underlying problems are at the Department of Defense. The Department of Defense acquisition programs fail because the

Department continues to rely on unreasonable cost and schedule estimates. They continue to establish unrealistic performance expectations. The Department continues to use immature technologies and to adopt costly changes to program requirements, to production quantities, and to funding levels right in the middle of these programs. When we do that we have unstable programs and costs that are going to rise.

Third, this bill contains a number of specific measures to address the problems I have just identified. The bill has the support of the President, Secretary of Defense, the Government Accountability Office, many independent experts on acquisition policy, and a number of public interest groups. There are many important provisions in this bill, but I want to highlight one of them this afternoon.

We are waiting for sponsors of amendments we have cleared, and those that we have not cleared, to come to the floor. We are open for business.

One of the most important provisions that is in this bill is the provision which establishes a director of independent cost assessment. It is the way to bring real discipline to the DOD's cost estimating process. At present, there is an entity called Cost Assessment Improvement Group, or CAIG, for short. They are supposed to be producing independent cost estimates on DOD acquisition programs. That is their responsibility. However, the CAIG operation is too low down in the bureaucracy. It is not directly accountable and reporting to the Secretary of Defense. It is a committee and includes representatives of each of the Under Secretaries and a number of other senior officials in the Department, chaired by a civil servant in the Senior Executive Service who is the Deputy Director for Resource Analysis in the Office of Program Analysis and Evaluation.

Just almost by saying those words one can understand why it does not have the direct clout we need this person to have. We are going to establish an individual who is responsible, a person who directly reports to the Secretary of Defense just the way in which another critically important office now does, the one that evaluates the technologies.

We are also going to have this person be Senate confirmed. The person who now is Senate confirmed, who does this for a different role, is the Director of Program Analysis and Evaluation. That person, that Director, is—I misspoke. It is the Director of Operational Testing and Evaluation who now is directly accountable to the Secretary of Defense and is Senate confirmed. We want this person who is going to be responsible for cost analysis to be also in that same position and to have that same kind of clout.

Now, the CAIG staff does a terrific job at what they do. I am not, in any way, disparaging the work of the CAIG staff. But a career official in the Senior Executive Service who serves as the Deputy Director of an office that is not even headed by a Presidential appointee simply does not have the independence and the clout that is essential if the cost of these programs is going to be put under control.

By establishing a tough and an independent cost estimator who is Senate confirmed and reports directly to the Secretary of Defense, we believe our bill is going to go a long way toward ending the unrealistic, the overly optimistic cost assessments that are too often used in order to sell the new acquisition programs.

We have to reduce the unnecessary ''gold plating'' of weapon systems. We have to bring the Department of Defense undisciplined requirements system under control.

As I indicated, we are ready to begin addressing amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

REPUBLIC OF GEORGIA SITUATION

Mr. MCCAIN. Mr. President, I thank my friend, the distinguished chairman of the Committee. I hope we can get these amendments filed as quickly as possible. In the meantime, I would like to make a comment about the recent situation in the Republic of Georgia.

It has been just 8 months since the world's attention was riveted by Russia's invasion of neighboring Georgia. In the midst of the fighting, the United States, the European Union, and the international community decried the violence and called on Russia to withdraw its troops from sovereign Georgian soil. There was talk of sanctions against Moscow, the Bush administration withdrew its submission to Congress of a nuclear cooperation agreement with Russia, and NATO suspended meetings of the NATO-Russia Council.

The outrage quickly subsided, however, and it seems that the events of last August have been all but forgotten in some quarters. A casual observer might guess that things have returned to normal in this part of the world, that the war in Georgia was a brief and tragic circumstance that has since been reversed.

But in fact this is not the case. While the stories have faded from the headlines, Russia remains in violation of the terms of the ceasefire to which it agreed last year, and Russian troops continue to be stationed on sovereign Georgian territory. I would like to spend a few moments addressing this issue. It bears remembering.

Last August, following months of escalating tension in the breakaway Georgian province of South Ossetia, the Russian military sent tanks and troops across the internationally recognized border into South Ossetia. It did not stop there, and Moscow also sent troops into Abkhazia, another breakaway province, dispatched its Black Sea Fleet to take up positions along the Georgian coastline, barred access to the port at Poti, and commenced bombing raids deep into Georgian territory. Despite an appeal from Georgian officials on August 10, noting the Georgian withdrawal from nearly all of South Ossetia and requesting a ceasefire, the Russian attacks continued.

Two days later, the Russian president met with French President Nicolas Sarkozy, and ultimately agreed to a six-point ceasefire requiring, among other things, that all parties to the conflict cease hostilities and pull back their troops to the positions they had occupied before the conflict began. Despite this agreement, the Russian military continued its operations throughout Georgia, targeting the country's military infrastructure and reportedly engaging in widespread looting.

A follow-on ceasefire agreement signed on September 8 by French President Sarkozy and Russian President Medvedev required that all Russian forces would withdraw from areas adjoining South Ossetia and Abkhazia by October 10, but it took just 1 day for Moscow to announce that, while it would withdraw its troops to the two provinces, it intended to station thousands of Russian soldiers there, in violation of its commitment to return those numbers to preconflict levels. Russia also recognized the independence of South Ossetia and Abkhazia, the only country in the world to do so other than Nicaragua. The leaders of both provinces have suggested publicly that they may seek eventual unification with Russia.

Despite the initial international reaction to these moves, the will to impose consequences on Russia for its aggression quickly faded. To cite one example, the European Parliament agreed on September 3 to postpone its talks with Russia on a new partnership agreement until Russian troops had withdrawn from Georgia. Just 2 months later, the European Union decided to restart those talks. The U.N. Security Council attempted to move forward a resolution embracing the terms of the ceasefire, but Russia blocked action. The NATO allies suspended meetings of the NATO-Russia Council, then decided in March to resume them.

Yet today, Russia remains in violation of its obligations of the ceasefire agreement. Thousands of Russian troops remain in South Ossetia and Abkhazia, greatly in excess of the preconflict levels. Rather than abide by the ceasefire's requirement to engage in international talks on the future of the two provinces, Russia has recognized their independence, signed friendship agreements with them that effectively render them Russian dependencies, and taken over their border controls.

All of this suggests tangible results to Russia's desire to maintain a sphere of influence in neighboring countries, dominate their politics, and circumscribe their freedom of action in

international affairs. Just last week, President Medvedev denounced NATO exercises currently taking place in Georgia, describing them as ''provocative.'' These ''provocative'' exercises do not involve heavy equipment or arms and focus on disaster response, search and rescue, and the like. Russia was even invited to participate in the exercises, an invitation Moscow declined.

We must not revert to an era in which the countries on Russia's periphery were not permitted to make their own decisions, control their own political futures, and decide their own alliances. Whether in Kyrgyzstan, where Moscow seems to have exerted pressure for the eviction of U.S. forces from the Manas base, to Estonia, which suffered a serious cyberattack some time ago, to Georgia and elsewhere, Russia continues its attempts to reestablish a sphere of influence. Yet such moves are in direct contravention to the free and open, rules-based international system that the United States and its partners have spent so many decades to uphold.

So let us not forget what has happened in Georgia, and what is happening there today. I would urge the Europeans, including the French President who brokered the ceasefire, to help hold the Russians to its terms. And in the United States, where there remain areas of potential cooperation with Moscow, from nuclear issues to ending the Iranian nuclear program, let us not sacrifice the full independence and sovereignty of countries we have been proud to call friends.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. 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. 1045

Ms. COLLINS. Mr. President, the Weapon Systems Acquisition Reform Act of 2009, authored by Senators LEVIN and MCCAIN, would strengthen and reform the Department of Defense acquisition process.

The bill would bring increased accountability, more transparency, and cost savings to major defense acquisition programs. Simply put, the bill would build discipline into the planning and requirements process, keep projects focused, help to prevent cost overruns and schedule delays and ultimately save taxpayers' dollars.

I am very proud to join the chairman and ranking member of the Armed Services Committee in cosponsoring this important initiative. I applaud their continued efforts to improve procurement at the Pentagon.

In fiscal year 2008, DOD spending reached $396 billion, approximately 74 percent of total Federal contract spending. The scope of the Department's contract spending is particularly startling when one examines closely Army procurement. The number of Army contract actions has grown by more than 600 percent since 2001, and contract dollars have increased by more than 500 percent.

In 2007, the Army put on contract one out of every four Federal contracting dollars. These figures alone are overwhelming. But they actually understate the scope of the procurement challenges at the Department of Defense.

Research, development, testing, evaluation, and procurement of increasingly complex weapon systems challenge the Department's ability to ensure that taxpayer dollars are wisely spent. Let me give you an example: The National Polar Orbiting Operational Environmental Satellite System—there is a mouthful—is just one of several Defense programs that have been undermined by cost overruns and schedule delays.

This is a complicated program that is required to promote and provide a remote sensing capability that is used by the Department of Defense and by the National Oceanic and Atmospheric Administration.

A 2006 report by an inspector general indicated that this one program was more than $3 billion over the initial life cycle cost estimates and nearly 17 months behind schedule. So here we have an essential program that is $3 billion over the initial life cycle cost estimates and it is about a year and a half behind schedule. Unfortunately, this is not an isolated example. It is but one of many examples of defense procurements that have suffered from soaring cost increases and unacceptable delays.

The legislation introduced by Senators LEVIN and MCCAIN, which I am pleased to cosponsor, would improve the Defense Department's planning and program oversight in many ways.

First, the bill would create a new director of independent cost assessment to be the principal cost estimation official at the Department. The director would be responsible for monitoring and reviewing all cost estimates and cost analyses conducted in connection with the major defense acquisition programs. Having this set of independent eyes on critical but expensive programs would help to prevent wasteful spending. It would help to ensure that when we embark on a new defense acquisition, we truly have confidence in the cost estimates.

The bill also mandates that the Department carefully balance cost, schedule, and performance as part of the requirements development process. These reforms would build important discipline into the procurement process long before a request for proposals is issued and a contract is awarded. By carefully considering the needs of the program office, the associated requirements and estimated cost of a program, and the risks inherent in system development and deployment, the Department will be able to make much more rational decisions about its investments and use more effective contracting vehicles for procurements long before taxpayer dollars are committed to the project.

I also applaud the bright lines this legislation would establish regarding organizational conflicts of interest by defense contractors. These reforms would strengthen the wall between Government employees and contractors, helping to ensure that ethical boundaries are respected. While certainly private sector contractors are vital partners with military and civilian employees at the Department of Defense, their roles and responsibilities must be well defined and free of conflicts of interest as they undertake their critical work supporting our Nation's military.

What we are finding—and we have had oversight hearings in the Homeland Security Committee on this issue—is that in the Department of Homeland Security and the Department of Defense, in some cases we have defense contractors involved in setting requirements, defining requirements for projects on which subsidiaries of those defense contractors may well be bidding. We want to avoid those kinds of conflicts of interest which impair confidence in the integrity of the process.

We also want to make sure we are following current law as far as activities that should be done in-house because they are inherently governmental.

I note, too, that this legislation encourages the Department to reinvest personnel resources in systems engineers—a necessary element for any successful acquisition reform of the Department's major weapon systems programs. Without experienced, well-trained engineers, the Department will be unable to set definitive requirements during the planning process, incapable of effectively testing and evaluating the development of these systems, and ineffective in addressing systems defects in the incredibly complex programs in which the Department, of necessity, invests. The lack of systems engineers also prevents strong program oversight, as the limited number of engineers available simply cannot focus sufficient time and attention on the programs as they are constantly pulled in multiple directions.

Adding systems engineers is only one part of the overall personnel reforms necessary to improve the acquisition process. DOD must also invest significantly in its undermanned acquisition workforce.

The dramatic downsizing of the defense acquisition workforce during the 1990s was followed by an even more dramatic increase in workload. So at the time that the Defense Department's acquisition workforce was declining, the workload was increasing. In fiscal year 2001, the Department spent $138 billion on contracts. Seven years later, DOD

spending reached $396 billion—a 187-percent increase. Of that amount, $202 billion was for the procurement of services. That requires labor-intensive acquisition management and oversight. Needless to say, these factors have greatly strained the defense acquisition workforce and greatly increased the risk of acquisition failure. At the same time, a significant increase in the use of contractor acquisition support personnel has added another layer of complexity as the Department must manage both organizational and personal conflicts of interest.

I commend Secretary Gates for recognizing just how important these workforce issues are. Under his leadership, the Department has set forth an aggressive program for strengthening the acquisition workforce, including increasing the number of acquisition personnel and improving their training. The Secretary has proposed increasing the workforce by 15 percent through 2015. That amounts to approximately 20,000 new employees. I also praise the Secretary for not only adding additional personnel but for thinking about what they should be doing. For example, he has proposed that some of these new employees take over tasks that are currently being performed by defense contractors. That is that conflict-of-interest issue I mentioned earlier. If the Secretary's plan goes through—and I am going to support him strongly in this regard—the acquisition workforce would increase to numbers not seen in a decade. That will save money and improve acquisition outcomes.

But this isn't just a numbers game. In addition to having a sufficient number of personnel, the Department must have the right mix. I am pleased that the Secretary has proposed 600 additional auditors for DCAA, the Defense Contract Audit Agency, and additional engineers and technical experts.

These acquisition changes will help to prevent contracting waste, fraud, abuse, and mismanagement. Most of all, they are absolutely essential to the effective implementation of the procurement reforms in this bill. We can write the best laws. We can impose the strongest reforms. But if we do not have sufficient personnel, well-trained employees to carry out these reforms, our efforts will be for naught.

I now call up an amendment I have at the desk. It is amendment No. 1045.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Ms. COLLINS], for herself and Mrs. MCCASKILL, proposes an amendment numbered 1045.

Ms. COLLINS. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 1045

(Purpose: To require the Secretary of Defense to apply uniform earned value management standards to reliably and consistently measure contract performance, and to ensure that contractors establish and use approved earned value management systems)

On page 69, after line 2, add the following:

SEC. 207. EARNED VALUE MANAGEMENT.

(a) ENHANCED TRACKING OF CONTRACTOR PERFORMANCE.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review the existing guidance and, as necessary, prescribe additional guidance governing the implementation of the Earned Value Management (EVM) requirements and reporting for contracts to ensure that the Department of Defense—

(1) applies uniform EVM standards to reliably and consistently measure contract or project performance;

(2) applies such standards to establish appropriate baselines at the award of a contract or commencement of a program, whichever is earlier;

(3) ensures that personnel responsible for administering and overseeing EVM systems have the training and qualifications needed to perform this function; and

(4) has appropriate mechanisms in place to ensure that contractors establish and use approved EVM systems.

(b) ENFORCEMENT MECHANISMS.—For the purposes of subsection (a)(4), mechanisms to ensure that contractors establish and use approved EVM systems shall include—

(1) consideration of the quality of the contractors' EVM systems and the timeliness of the contractors' EVM reporting in any past performance evaluation for a contract that includes an EVM requirement; and

(2) increased government oversight of the cost, schedule, scope, and performance of contractors that do not have approved EVM systems in place.

Ms. COLLINS. Mr. President, this amendment, which I am offering along with my distinguished colleague, Senator MCCASKILL, who has brought great auditing skills to this body, would help to ensure that the Department is supplying certain critical principles consistently and reliably to all projects that use a specific management tool that is known as EVM, earned value management. The Department currently requires EVM tracking for all contracts that exceed $20 million. This provides important visibility into the scope, schedule, and cost in a single integrated system. When properly applied, this system can provide an early warning of performance problems. The Government Accountability Office has observed, however, that contractor reporting on EVM often lacks consistency, leading to inaccurate data and faulty application of this metric. In other words, this is a garbage-in/garbage-out problem that we need to correct.

To address this challenge, our amendment would provide enforcement mechanisms to ensure that contractors establish and use approved EVM systems, and we would require the Department of Defense to consider the quality of the contractor's EVM systems and reporting in the past performance evaluation for a contract. When a contractor is bidding, the contracting official looks at any past performance. With improved data quality, both the Government and the contractor will be able to improve program oversight, leading to better acquisition outcomes.

This is so important. Some of the provisions that are particularly important in the Levin-McCain bill would increase transparency and oversight so that if an acquisition process is going in the wrong direction, we know about it and are able to take action. We are able to decide whether the Nunn-McCurdy breaches, for example, warrant halting the project. We are improving the cost estimate system for weapons acquisition projects. We have a lot of reforms. This would increase our transparency, our ability to flag problems.

I believe this amendment Senator MCCASKILL and I offer would help to strengthen the Department's acquisition planning, increase and improve program oversight, and help to prevent contracting waste, fraud, and mismanagement.

Let me end my comments by reminding all of us why this bill and our amendment are so important.

Ultimately, these procurement reforms will help ensure that our brave men and women in uniform—our military personnel—have the equipment they need when they need it, that it performs as promised, and that our tax dollars are not wasted on programs that are doomed to fail.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, before the Senator from Maine leaves the floor, let me congratulate her on this amendment. She has put her finger on a very significant point. There is a weakness in this system of contract oversight that the Department of Defense has not satisfactorily addressed.

As frequently happens, the Senator from Maine is willing to take on issues which are not necessarily the most glamorous and do not necessarily get the headlines but really get to the inside of what needs to be delved into, needs to be looked at, needs to be analyzed, and needs to be addressed.

This is an amendment which will require the Department of Defense to use a management tool which is called earned value management. They acknowledge it is an important tool, but they also acknowledge too often contractors are not using it and that Government officials who are responsible for overseeing this system and this management tool are inadequately trained, not qualified. There are inadequate mechanisms to enforce contractor compliance.

So the Senator from Maine, as she so often does, has put her finger on a critical issue and is willing to tackle it and make it understandable for the rest of us. I commend her and Senator MCCASKILL for this amendment, and we are delighted to support it.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the chairman for his thoughtful comments and for working with us on this amendment. I hope at the appropriate time it can be adopted. I believe it is acceptable to Senator MCCAIN. But I am unclear whether there is further clearance that needs to be done.

But, again, while the Senator is on the floor, I want to once again praise Senator LEVIN and Senator MCCAIN for tackling this critical issue. It is complex. And it is important that the reforms make a difference to our military—to those who need these weapon systems, who need the material and the supplies that the contracting is procuring. It is also important that taxpayers be protected. There have been far too many cost overruns and schedule delays that hurt those who are on the front lines, quite literally.

I praise and thank the chairman again for his leadership in this area.

Thank you, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I am informed that the amendment I have offered with Senator MCCASKILL, which is the pending amendment, No. 1045, has been cleared on our side.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, we very strongly support the amendment and hope it will be acted upon immediately.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1045) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Ms. COLLINS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. Thank you, Mr. President. And I thank the chairman.

Mr. LEVIN. 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. DORGAN. 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. DORGAN. Mr. President, I have come to the floor to speak about a couple of issues that relate to the Department of Defense and to defense issues, but I want to especially today talk about the work that has been done by my colleague, Senator LEVIN, and my colleague from Arizona. The work they have done on procurement reform is very important.

I listened to some of the presentations earlier today by Senator LEVIN and Senator MCCAIN about the overruns in various weapons programs, the cost overruns, and the significant dislocations with respect to decisions that have been made or not made with certain weapons programs.

I think there is real need for reform, and the bill they have brought to the floor of the Senate is a great service to the American taxpayer. I think it is also a great service to our defense structure. We have limited funds. We have to use them effectively. We have to fund weapons programs that are essential to the defense strength of this country. That is what both of my colleagues are saying. And they are saying, when we have a program that has outlived its usefulness, a program that has cost overruns that never stop and seem completely out of control, we have to address that and deal with it and respond to it.

So we have been going through a long period here of unbelievable cost overruns in some programs without much notice and without much action attending to it. I think my two colleagues are doing a great service. I hope, as I know the chairman does, we will be able to move quickly to address this legislation, perhaps without even amendments, and go forward and get it through the Senate. We will have done, I think, a great service to strengthen our defense capability and protect the American taxpayer at the same time.

DEFENSE DUPLICATION

Mr. President, I want to raise an issue that does not directly relate to this bill but relates to all the considerations of this bill because it is a follow-on and one I think we will deal with in the next bill, defense authorization. That bill will also be chaired on the floor of the Senate by my colleague, Senator LEVIN. It deals with the issue of duplication.

In addition to contract and procurement reform—in this case procurement reform—the issue of duplication of our services at the Department of Defense is a very important issue. Every service wants to do everything. That is just the way it is. I wish to give an example of something I have been working on, so far unsuccessfully, but I am going to raise it and push it during Defense authorization because it relates to the very same things that my colleagues have talked about today.

These are pictures of unmanned aerial vehicles; UAVs they are called. It is sort of the new way to fly, particularly over a battlefield for reconnaissance purposes and so on. Many of us are familiar with what is called the Predator B, which the Air Force refers to as the Reaper. That is this airplane. The Predator B is used extensively and has been used extensively in the war theater in Afghanistan and in Iraq and in that region. It is an unmanned aerial vehicle, unmanned aerial aircraft without a pilot. The pilot sits on the ground someplace in a little thing that looks almost like a trailer house, and they are flying this aircraft. In some cases, the pilot is 6,000, 8,000 miles away from where the aircraft is, flying it at a duty station perhaps at a National Guard base or somewhere else.

But, anyway, the Air Force has what is called the Predator. That is built by General Atomics, and it is a worthwhile program that has provided great service to us and to our country in terms of our defense capability.

This, by the way, is called the Sky Warrior. This is the Reaper. It is owned by the Air Force. This is the Sky Warrior. That is the U.S. Army.

Why does it look alike? Well, it is because it is made by the same company. It is made to different specifications because the Army wants a slightly different vehicle, but the Air Force has the Predator B, and the Army has the Sky Warrior.

Why does the Army have a Sky Warrior? Well, because they want to run their own reconnaissance. So what we have in these circumstances is, the Army, in the next 5 years, wants to spend $800 million to buy more than 100 of the Sky Warriors, and eventually they want to have 500 Sky Warriors. The Air Force wants to spend $1.5 billion to buy 150 more Predators, Predator Bs.

Here is what the Predator B and the Sky Warrior look like. As you can see, they are nearly identical. Both carry intelligence, surveillance, and reconnaissance sensors so they can find and track targets on the ground. Both can fire missiles so they can hit a target they might find, both can fly over 25,000 feet high for more than 30 hours which gives them range and endurance, but it seems to me a complete duplication of effort.

We are not talking about just the UAV mission itself; we are talking about the duplication of acquisition programs—engineering, contracting. I don't understand it.

For years, the Air Force used U–2s, F–15s, F–16s, even B–52s from time to time to provide surveillance, intelligence, reconnaissance, and close air support for the Army. They used manned aircraft to provide all of those services for the U.S. Army. It is not clear why that ought to be different just because we are using unmanned aircraft.

The Army says they plan to assign each set of 12 Sky Warriors to a specific combat unit. Of course, since most combat units in the Army are at their home base at any given time, most Sky Warriors will be based in the United States or perhaps Europe at any given time. The Air Force has a different approach. They have a streamlined operation concept. They have been working nearly 8 years in almost constant combat operations, and almost every single

Air Force Predator is at this point in the Central Command of Operations—CENTCOM.

It seems to me the services ought to do what they do best. What the Army does best is fight a war on the ground. What the Air Force does best is to provide timely intelligence, surveillance, and reconnaissance for the troops on the ground and to attack ground targets from the air. That is what each does best.

However, the Army wants to do exactly what the Air Force does and have a separate acquisition program to do so.

So we ought to be asking the question: Does this make sense to send thousands of airmen to Iraq and Afghanistan to be truck drivers in Army convoys while the Army plans to have thousands of troops operating unmanned aircraft? Yes, that is happening. Putting all of our large UAVs under the Air Force will result, in my judgment, in streamlined and more efficient acquisition of UAVs and allow the Army to concentrate its manpower on Army tasks.

Let me be clear. There are some surveillance—at low-altitude, over-the-battlefield surveillance with unmanned aircraft—that are just fine at 500 feet, 1,000 feet with various kinds of unmanned devices. I understand why the Army would want to operate that, and should. However, I don't understand the Army flying at 25,000 or 30,000 feet, a duplicate mission for which the Air Force exists.

So given the budget problems we face, with nondiscretionary and discretionary spending, we can't afford duplication of effort.

A few years ago, the Air Force proposed that it be designated as the executive agent for all medium- and high-altitude unmanned aerial vehicles. That made sense to me. The Air Force is the logical choice. They already have the infrastructure to deliver that combat power.

In 2007, by the way, the Pentagon's Joint Requirements Oversight Council endorsed that proposal, but the proposal didn't go anywhere because of intense opposition from the Army and those who support the Army in this Congress.

I don't think this should be an intramural debate between supporting the Army and supporting the Air Force. I support both. I want the Army to be equipped in an unbelievably important way to do its mission, and I want the Air Force to be similarly equipped. I just don't want the taxpayer to be paying for duplication of effort, and I don't want every service to believe it should do everything because that clearly is a duplication of effort.

The legislation that is before us today is about procurement reform, procurement reform itself. It does not address this specific issue of duplication, but this issue is certainly the second cousin to it. We will be discussing this when we get to the Defense authorization bill, and that, too, is a very important part of how we can strengthen our defense; how do we make certain the taxpayers are getting their money's worth; and how do we make certain the men and women who serve in defense of this country are equipped to do what they do best.

I raise this issue of duplication because I think it is so important that we find a way to begin to unravel the unmistakable duplication that exists in so many areas within the Pentagon. This is one that should be self-evident to virtually everyone.

I wish to mention as well today the issue that will also come up in Defense authorization that is the first or second cousin to procurement reform, and that is contracting reform. I know my colleague from Michigan and my colleague from Arizona are very concerned about this as well, and I look forward to working with them on the Defense authorization bill.

A couple of points about contract reform: I have held, I believe, 18 hearings in the Democratic Policy Committee that I chair on contracting issues over a good number of years now. I wish to show a couple of photographs that describe some of the unbelievable circumstances that have existed and that we must take steps to correct, and I know my colleagues, the chairman and ranking member, are already doing so.

This, by the way, deals with contracting. I understand during wartime there are going to be contracts sometimes that are let without a lot of scrutiny and somebody is going to make a lot of money, or perhaps somebody doesn't quite measure up, but this is different. I think we have seen some of the greatest waste, fraud, and abuse in the history of this country in contracting.

This is a picture of a couple million dollars wrapped in Saran wrap, a couple of million dollars in cash. Franklin Willis is the guy with the white shirt. He is holding one of these. This happens to be in a palace in Iraq, one of Saddam's palaces. I assume the chairman of the committee has been in one of Saddam's palaces. I have been in one of Saddam's palaces in Baghdad. So we took over all of those palaces for headquarters, or a good many of them. This happens to be a couple of million dollars in cash put on a table because the contractor was coming to pick up the cash. Franklin Willis—a very respected guy, by the way, who went over from the Federal Government to work on these issues and testified in one of my hearings—said the word was to contractors: Bring a bag because we pay cash.

We were contracting for everything in Iraq. Just all kinds—they had over 130,000 contractors, I believe, at one point. So the company who was going to pick up this cash, by the way, was later indicted in criminal court. But Franklin Willis was showing us how reimbursements were made in Iraq. This is bills wrapped in Saran wrap. He would say from time to time he would see people playing football catch with 100-dollar bills wrapped in Saran wrap waiting for the contractors to bring a bag, to pick up a couple million dollars on this day.

It is not an isolated problem that the contractor that was going to show up to pick up this money was later convicted—indicted and convicted—in a U.S. court for stealing millions of taxpayers' dollars. Franklin Willis said it was just like the old Wild West. That is what he said to us: It was like the Wild West. Bring a bag. We have cash.

So during this period of time, in Baghdad, as they began to try to set up a provisional government—which was the U.S. Government trying to set up a government, and we sent Ambassador Bremer over to set up a government—during that time, we know that pallets of cash were shipped to Iraq. This cash left the Federal Reserve Bank in New York. This pallet, each pallet, contains 640 bundles of 1,000-dollar bills and weighs 1,500 pounds. They sent 484 of these pallets to Iraq on C–130s. That is more than 363 tons of cash that was sent to Iraq in C–130s, totaling $12 billion. Think of that: $12 billion with reports of distributing cash onto the back of pickup trucks. Do you wonder why we were stolen blind?

A woman who has had a substantial amount of experience who has never gotten her due, but one of the most courageous women I have met in Washington, DC, Bunny Greenhouse, and for her testimony and for her courage she lost her job. Here is what she said. She was the former chief contracting officer at the Corps of Engineers. She was the top civilian working for the Army Corps of Engineers, and she was in the room when the logcap project was negotiated.

Let me describe to you what she said. This is the top civilian official in the U.S. Army Corps of Engineers. She had 25 years of great service to our country with two masters degrees, unbelievable qualifications, and performance appraisals that said she was outstanding every single time—until she spoke publicly.

Here is what she said:

> I can unequivocally state that the abuse related to the contracts awarded to Kellogg, Brown & Root—

A subsidiary of Halliburton—

> represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.

For that, this woman was demoted and lost her job; for the courage to speak out, she lost her job. Pretty unbelievable. This is an extraordinary woman.

We have seen from all of these circumstances unbelievable waste in contracting. It is not just—it is what Bunnatine Greenhouse said, the way the contracts were negotiated. She said they were illegal and so on.

Let me give an example, and I could give 100 examples. This shows $40 million spent on a prison in Iraq they

called the whale. This is when most of the money had already been spent. You can see there is virtually nothing done. The Parsons Corporation got that money. This now sits empty, never having been used. A top floor was never finished. The U.S. Government says: Well, we gave it to the Iraqis.

The Iraqi Government says: Are you kidding me? We wouldn't take that in a million years. We don't want the prison. We would not use the prison. It was never given to us.

So $40 million was spent of the taxpayers' money. Procurement reform and contractor reform are all related. I don't want to come and provide a message that steps in any way on anything that the chairman is doing on procurement reform because that is critically important.

We have to follow it with its first cousin, contract reform. The stories are so legend. In this photo is a young man who was killed. He was a Ranger and a Green Beret. He was electrocuted while taking a shower. This is his mother Cheryl. He was electrocuted because KBR got the contract for wiring facilities in Iraq and didn't do a good job. He was killed in a shower. Another man was power washing a Jeep or humvee and got electrocuted. The Army said: We think he took a radio or an electrical device into the shower. But he didn't.

It is not just this, but it is providing water to military bases that was more contaminated than the Euphrates River.

I will be on the floor when we come to defense authorization with a good number of amendments on contracting reform because we have to put a stop to this. It has gone on way too long.

Let me finish by coming back to where I started, and that is the issue of procurement reform. Our colleagues on the Defense Authorization Committee are trying to deal with virtually unlimited wants and resources. That is not new. We understand the problems that creates. So they have decided they have to put together procurement reform legislation. It is so important to this country to get this done and to get it right. Procurement reform is essential. It is the foundation of fixing the problems that exist with respect to these major weapons programs.

Then, I hope we can segue into contracting reform and the issues of duplication, on which I wish to work with the chairman and ranking member. I thank Senators LEVIN and MCCAIN for their leadership. I requested that I be made a cosponsor of the procurement reform legislation. I look forward to visiting and working with them on amendments on contracting reform in the coming month or two, when we get to the defense authorization.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, let me very quickly thank Senator DORGAN for his extraordinary commitment to the issues he has outlined. I don't know of anybody in this body who has devoted anywhere near the time he has to these issues. He has a passion second to none, and I commend him for it. We look forward to working with him on amendments on the authorization bill, and we also more than welcome his cosponsorship of the pending bill. I thank him for the effort he made.

I assume all the materials he has produced will go to the Commission on Contracting Reform, which has been created on wartime contracting. That will probably give us an opportunity, with the power they have, to take some concrete steps. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I believe we have cleared some amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 1044, 1053, 1046, 1051, 1049, 1050, 1047, AND 1048, EN BLOC

Mr. LEVIN. Mr. President, Senator MCCAIN and I now, with our staffs, have been able to clear eight amendments.

I ask unanimous consent that the following amendments be called up, considered, and approved en bloc: amendment No. 1044, by Senator INHOFE, which he will speak on; amendment No. 1053, Senator CHAMBLISS; Senator COBURN's amendment No. 1046; Senator MCCASKILL's amendments numbered 1051, 1049, and 1050; Senator WHITEHOUSE's amendment No. 1047; Senator CARPER's amendment No. 1048.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc and are agreed to.

The amendments were agreed to as follows:

AMENDMENT NO. 1044

(Purpose: To require a report on certain cost growth matters following the termination of a major defense acquisition program for critical cost growth)

On page 59, line 25, strike ''(D)'' and inserting ''(E)''.

On page 60, strike line 3 and insert the following:

lowing new subparagraphs (B), (C), and (D):

On page 60, line 4, insert ''and submit the report required by subparagraph (D)'' after ''terminate such acquisition program''.

On page 61, strike like 24 and insert the following:

gram;

''(D) if the program is terminated, submit to Congress a written report setting forth—

''(i) an explanation of the reasons for terminating the program;

''(ii) the alternatives considered to address any problems in the program; and

''(iii) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program; and''.

AMENDMENT NO. 1053

(Purpose: To clarify an exception to conflict of interest requirements applicable to contracts for systems engineering and technical assistance functions)

On page 63, line 11, insert ''for special security agreements'' after ''to those required''.

AMENDMENT NO. 1046

(Purpose: To require reports on the operation and support costs of major defense acquisition programs and major weapons systems)

On page 49, strike line 15 and all that follows through page 51, line 8, and insert the following:

view, including an assessment by the Director of the feasibility and advisability of establishing baselines for operating and support costs under section 2435 of title 10, United States Code.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

(c) TRANSFER OF PERSONNEL AND FUNCTIONS OF COST ANALYSIS IMPROVEMENT GROUP.—The personnel and functions of the Cost Analysis Improvement Group of the Department of Defense are hereby transferred to the Director of Independent Cost Assessment under section 139d of title 10, United States Code (as so added), and shall report directly to the Director.

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting ''the Director of Independent Cost Assessment,'' before ''and the Director''.

(2) Section 2306b(i)(1)(B) of such title is amended by striking ''Cost Analysis Improvement Group of the Department of Defense'' and inserting ''Director of Independent Cost Assessment''.

(3) Section 2366a(a)(4) of such title is amended by striking ''has been submitted'' and inserting ''has been approved by the Director of Independent Cost Assessment''.

(4) Section 2366b(a)(1)(C) of such title is amended by striking ''have been developed to execute'' and inserting ''have been approved by the Director of Independent Cost Assessment to provide for the execution of''.

(5) Section 2433(e)(2)(B)(iii) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

(6) Subparagraph (A) of section 2434(b)(1) of such title is amended to read as follows:

''(A) be prepared or approved by the Director of Independent Cost Assessment; and''.

(7) Section 2445c(f)(3) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

(e) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF OPERATING AND SUPPORT COSTS OF MAJOR WEAPON SYSTEMS.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on growth in operating and support costs for major weapon systems.

(2) ELEMENTS.—In preparing the report required by paragraph (1), the Comptroller General shall, at a minimum—

(A) identify the original estimates for operating and support costs for major weapon systems selected by the Comptroller General for purposes of the report;

(B) assess the actual operating and support costs for such major weapon systems;

(C) analyze the rate of growth for operating and support costs for such major weapon systems;

(D) for such major weapon systems that have experienced the highest rate of growth in operating and support costs, assess the factors contributing to such growth;

(E) assess measures taken by the Department of Defense to reduce operating and support costs for major weapon systems; and

(F) make such recommendations as the Comptroller General considers appropriate.

(3) MAJOR WEAPON SYSTEM DEFINED.—In this subsection, the term ''major weapon system'' has the meaning given that term in 2379(d) of title 10, United States Code.

AMENDMENT NO. 1051

(Purpose: To enhance the review of joint military requirements)

On page 53, between lines 17 and 18, insert the following:

(c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

(1) JROC SUBMITTAL OF RECOMMENDED REQUIREMENTS TO UNDER SECRETARY FOR ATL.—Upon recommending a new joint military requirement, the Joint Requirements Oversight Council shall transmit the recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics for review and concurrence or non-concurrence in the recommendation.

(2) REVIEW OF RECOMMENDED REQUIREMENTS.—The Under Secretary for Acquisition, Technology, and Logistics shall review each recommendation transmitted under paragraph (1) to determine whether or not the Joint Requirements Oversight Council has, in making such recommendation—

(A) taken appropriate action to solicit and consider input from the commanders of the combatant commands in accordance with the requirements of section 181(e) of title 10, United States Code (as amended by section 105);

(B) given appropriate consideration to trade-offs among cost, schedule, and performance in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as amended by subsection (b)); and

(C) given appropriate consideration to issues of joint portfolio management, including alternative material and non-material solutions, as provided in Chairman of the Joint Chiefs of Staff Instruction 3170.01G.

(3) NON-CONCURRENCE OF UNDER SECRETARY FOR ATL.—If the Under Secretary for Acquisition, Technology, and Logistics determines that the Joint Requirements Oversight Council has failed to take appropriate action in accordance with subparagraphs (A), (B), and (C) of paragraph (2) regarding a joint military requirement, the Under Secretary shall return the recommendation to the Council with specific recommendations as to matters to be considered by the Council to address any shortcoming identified by the Under Secretary in the course of the review under paragraph (2).

(4) NOTICE ON CONTINUING DISAGREEMENT ON REQUIREMENT.—If the Under Secretary for Acquisition, Technology, and Logistics and the Joint Requirements Oversight Council are unable to reach agreement on a joint military requirement that has been returned to the Council by the Under Secretary under paragraph (4), the Under Secretary shall transmit notice of lack of agreement on the requirement to the Secretary of Defense.

(5) RESOLUTION OF CONTINUING DISAGREEMENT.—Upon receiving notice under paragraph (4) of a lack of agreement on a joint military requirement, the Secretary of Defense shall make a final determination on whether or not to validate the requirement.

On page 53, line 18, strike ''(c)'' and insert ''(d)''.

On page 54, line 12, strike ''(d)'' and insert ''(e)''.

AMENDMENT NO. 1049

(Purpose: To specify certain inputs to the Joint Requirements Oversight Council from the commanders of the combatant commands on joint military requirements)

On page 51, line 12, insert ''(a) IN GENERAL.—'' before ''Section 181''.

On page 51, line 23, strike ''of subsection (f).''.'' and insert the following: ''of subsection (f). Such input may include, but is not limited to, an assessment of the following:

''(1) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would justify a new joint military requirement.

''(2) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

''(3) The relative priority of a proposed joint military requirement in comparison with other joint military requirements.

''(4) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or to partner in using technologies developed to meet the joint military requirement.''.

(b) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements of subsection (e) of section 181 of title 10, United States Code (as amended by subsection (a)), for the Joint Requirements Oversight Council to solicit and consider input from the commanders of the combatant commands. The report shall include, at a minimum, an assessment of the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements.

AMENDMENT NO. 1050

(Purpose: To provide for a review by the Comptroller General of the United States of waivers of the requirement for competitive prototypes based on excessive cost)

On page 59, strike line 15 and insert the following:

(d) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF CERTAIN WAIVERS.—

(1) NOTICE TO COMPTROLLER GENERAL.—Whenever a milestone decision authority authorizes a waiver of the requirement for prototypes under paragraph (1) or (2) of subsection (c) on the basis of excessive cost, the milestone decision authority shall submit a notice on the waiver, together with the rational for the waiver, to the Comptroller General of the United States at the same time a report on the waiver is submitted to the congressional defense committees under paragraph (3) of that subsection.

(2) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after receipt of a notice on a waiver under paragraph (1), the Comptroller General shall—

(A) review the rationale for the waiver; and

(B) submit to the congressional defense committees a written assessment of the rationale for the waiver.

(e) APPLICABILITY.—This section shall apply to any

AMENDMENT NO. 1047

(Purpose: To further improve the cost assessment procedures and processes of the Department of Defense)

On page 43, between lines 20 and 21, insert the following:

(c) TECHNOLOGICAL MATURITY STANDARDS.—For purposes of the review and assessment conducted by the Director of Defense Research and Engineering in accordance with subsection (c) of section 139a of title 10, United States Code (as added by subsection (a)), a critical technology is considered to be mature—

(1) in the case of a major defense acquisition program that is being considered for Milestone B approval, if the technology has been demonstrated in a relevant environment; and

(2) in the case of a major defense acquisition program that is being considered for Milestone C approval, if the technology has been demonstrated in a realistic environment.

On page 45, beginning on line 9, strike ''programs and require the disclosure of all such confidence levels;'' and insert ''programs, require that all such estimates include confidence levels compliant with such guidance, and require the disclosure of all such confidence levels (including through Selected Acquisition Reports submitted pursuant to section 2432 of this title);''.

On page 47, line 16, add at the end the following: ''The report shall include an assessment of—

''(A) the extent to which each of the military departments have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates; and

''(B) the overall quality of cost estimates prepared by each of the military departments.

On page 48, line 2, add at the end the following: ''Each report submitted to Congress under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.''.

AMENDMENT NO. 1048

(Purpose: To require consultation between the Director of Defense Research and Engineering and the Director of Developmental Test and Evaluation in assessments of technological maturity of critical technologies of major defense acquisition programs)

On page 42, line 12, insert '', in consultation with the Director of Developmental Test and Evaluation,'' after ''shall''.

Mr. LEVIN. Mr. President, I move to reconsider the vote regarding the amendments agreed to en bloc.

Mr. INHOFE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, it is my understanding, and I believe also the chairman's understanding, that we may have one or two other amendments pending.

Mr. LEVIN. I thank the Senator for making that point. We want to see additional amendments if they are out there. We will do our best to clear them but, if not, debate them. We appreciate the cooperation of everybody.

I yield the floor.

AMENDMENT NO. 1044

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, my amendment was one of the eight

amendments agreed to. I will be brief. I wish to get on record as to what it is I am trying to do.

First of all, though, I think my name may be on there as a cosponsor; if not, I ask unanimous consent that I be added at this time.

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

Mr. INHOFE. Mr. President, section 2094 of the bill requires the Secretary to submit written certification if a program is not terminated that states the acquisition program is essential to the national security, that no alternatives meet the joint military requirement, the new estimates are reasonable, and the management structure is adequate to manage and control the program acquisition cost. I concur with the certification process, but no similar requirement is there for the termination of an acquisition program. That is an area in which oversight is required and information critical as we continue to improve the acquisition process, which I believe this legislation will do.

My amendment requires the Secretary of Defense to submit a written report explaining the reasons for terminating the program, alternatives considered to address any problems in the program, and the course of action the Department of Defense plans to pursue to meet continuing joint military requirements intended to be met by the program being canceled. This report will provide Congress with historical documentation of the terminated or failed programs and why they are terminated.

Essentially, the language of the amendment is simply the requirement that if a program is terminated, submit to Congress a written report setting forth three things: One, an explanation of the reason for terminating the program; two, the alternatives considered to address any problems in the program; three, the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

In other words, it makes the same requirement on terminated programs as others. This has already been adopted en bloc, and I have no motion to make.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 1049, 1050, AND 1051

Mrs. MCCASKILL. Mr. President, I rise to thank Chairman LEVIN and Ranking Member MCCAIN on a good bill to address a serious and expensive problem in our military. We have costs that have ballooned. As Senator LEVIN explained earlier today, in 2008 alone the portfolio of DOD's 97 major defense acquisition programs was nearly $300 billion over cost and the average delay in terms of delivering these capabilities to the warfighter was 22 months. That is unacceptable to our warfighters and unacceptable to taxpayers.

There are obviously many examples of these systems that have been underestimated both on time of delivery and costs, but a good one is the Joint Strike Fighter. Right now, the JSF continues to rely on immature technologies and unrealistic cost schedules. We have a situation where DOD might actually procure these aircraft, these F–35s, costing $57 billion, before we have even completed the developmental flight testing. That is just one, but it is a very good example of a program that is underperforming for the warfighter and for the taxpayer.

There are three amendments that have been added to this bill at my request, and I thank the Armed Services staff and particularly Senator LEVIN and Senator MCCAIN for accepting these three amendments. I would like to briefly explain the three amendments we have added.

The first is one that will provide some more teeth in a very critical area that is of huge importance in this process; that is, tightening up the process and procedures at JROC.

JROC is the military's Joint Requirements Oversight Council. Now, that sounds pretty good. JROC sounds like a place where you are going to get oversight. But unfortunately, invariably, JROC has become a place where one branch of the military gets what it wants, and in return the other branch of the military gets what it wants, and in return the other branch of the military gets what it wants. It has been kind of a murky process. Based on hearings we have had and testimony and questions I have asked, it is clear to me that JROC has not been providing a lot of oversight—maybe a little too much back-scratching and not enough oversight. So two of these amendments are to deal with the JROC situation and hopefully improve it.

One is going to bring more input from combatant commands to the JROC process. The warfighter's perspective is very important, as this council makes decisions about requirements on systems the U.S. taxpayer is going to purchase. It is very important that the warfighters have input because they are the end user. Maybe what they are saying in that room is what is needed or it turns out that maybe it is not what is needed. We have had examples of where we have failed our warfighters in not anticipating what the needs actually are on the ground. The Iraq war is full of examples where we underestimated what we needed in some regards and overestimated what we needed in others. The warfighter being in the process is very important.

The other amendment that deals with the JROC—the Joint Requirements Oversight Council—is bringing another voice to this process. The Under Secretary of Defense for Acquisitions, Technology and Logistics will now be required to concur on the JROC requirements with an eye toward cost, utility, and policy considerations. So we have now added a referee of sorts—another voice. So it isn't just going to be about the Air Force or the Navy or the Army keeping each other happy but, rather, someone in a responsible position to look and concur that what they are doing is in the best interest of cost, utility, and overall policy considerations.

That critical layer of the Under Secretary of Defense for Acquisitions, Technology and Logistics will also bring into the process the Secretary of Defense, if necessary, because if there is not an agreement, then the Secretary of Defense will have to come in and provide that ultimate decision-making with an eye toward cost, utility, and policy. This will allow the kind of leadership from the top to make sure these decisions are in the best interests of all of the military as opposed to everybody getting what they want.

The final amendment that has been accepted that I believe will help is a little bit of looking over the shoulder on cost waivers. We have put into this bill a number of situations where certain safeguards can be waived if they are going to be too expensive. The best example is the prototype. There is going to be no need for them to do a competitive prototype if they decide they need to waive that requirement based on the cost of producing that prototype. I don't disagree that there may be some circumstances where costs are going to be too high to do a prototype, but what I want to make sure is that we don't abuse the cost waiver. In order to avoid abusing the cost waiver, we need an auditor looking over their shoulders. So this amendment mandates the reporting of cost waivers to GAO—the Government Accountability Office, the overall auditor in the Federal Government—and it requires the GAO to provide a written review to the Senate Armed Services Committee and the House Armed Services Committee within 60 days of the receipt of that waiver. This will allow the GAO to look over the shoulder and make sure the cost waiver is one based on reliable, objective, and reasonable information. I don't think it is going to be necessary for GAO to do a lot of these analyses if the military knows that it can. Sometimes, just knowing somebody is looking over your shoulder brings about better behavior. That is the goal of this amendment, to make sure we don't abuse cost waivers because this bill is not going to do a lot of good if the military has the opportunity to drive in, around, and through it without appropriate oversight.

So I believe these amendments improve the bill. They are going to be helpful as we try to get a handle on the acquisition process.

I will continue to work with the chairman and the ranking member in any way I can, particularly on the Subcommittee on Contracting Oversight, which I chair, which is now part of the Homeland Security and Governmental Affairs Committee. We on that subcommittee are going to continue to look at contracting in DOD, particularly keeping an eye not just on the weapons acquisition but the acquisition of services at DOD. That has also has been a huge growth industry as we have entered into contracting for support services such as never before in the American military, with, frankly, boxes and boxes of examples of waste, abuse, and fraud.

So I am pleased this bill is moving as quickly as it has, and I am particularly pleased there has been such a bipartisan effort in this body. It is refreshing when we can all come together and do the right thing, as we are doing on this bill.

Mr. President, I yield the floor.

Mr. UDALL of Colorado. Mr. President, I am pleased to rise in support of an amendment to this important bill, offered by my colleague Senator MCCASKILL. I am proud to be a cosponsor of this amendment, which adds to good language in the bill requiring competitive prototyping. At its heart, this amendment is about our government wisely using taxpayer dollars.

Last year, the U.S. Department of Defense announced a new policy that DOD development programs in their early stages must involve at least two prototypes—to be developed by competing industry teams—before DOD can move forward into the system design and development phase, the longest and costliest part of the process.

The idea behind this policy makes sense: Technologies should be proven before contracts are awarded. Paper proposals alone do not always provide sufficient information on technical risk and cost estimates. But an investment in prototyping up-front can result in greater knowledge up-front, which in turn can lead to better cost and schedule assessments.

It seems to me that DOD had the right idea to resurrect competitive prototyping. The sponsors of this bill—Senators LEVIN and MCCAIN—agreed. The bill we are considering today would codify DOD's policy.

The bill would also authorize a waiver for competitive prototyping in the event of excessive cost. This was a change we made in the Senate Armed Services Committee, on which I sit. This change reflects DOD's concerns that it can sometimes be cost prohibitive to produce two or more prototypes of a system.

One of the goals of competitive prototyping is to try to reduce costs, not increase them. So I believe DOD should have authority to waive this requirement when producing two or more prototypes of a system would be cost prohibitive. However, we should ensure that this waiver authority is not abused, or casually used as a way to avoid prototyping.

So I support this amendment offered by my colleague today, which will add a layer of fiscal oversight to the sole-source nature of prototyping that can result from these waivers. It would require DOD to report cost waivers both to the Government Accountability Office and to congressional defense committees and require GAO to provide a written review to the congressional defense committees. This amendment is about good government, and I would hope that my colleagues in both parties would support it.

I want to close by addressing the larger issue we are considering today—acquisition reform. As a member of the Armed Services Committee and as a taxpayer, this issue concerns me greatly. There seems to be universal agreement that reform is necessary. The GAO reported this year that DOD's major defense acquisition programs are nearly $300 billion over budget. At a time of economic crisis and uncertainty, we need to work much harder to get these costs under control.

But DOD's acquisition system is complex and there is no shortage of ideas on how to fix it. I am a cosponsor of this bill because I believe it takes important steps in the right direction. It does not try to fix the whole system, but instead focuses mainly on the early phases of the acquisition process, which can often start with ''inadequate foundations.'' As Chairman LEVIN stated in our committee, the ''bill is designed to help put major defense acquisition programs on a sound footing from the outset.'' I believe this bill will do that. I commend the authors of this bill for their important work and for building bipartisan support for this bill.

I urge support of this bill and of the McCaskill amendment.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, let me thank Senator MCCASKILL for her great work on the amendments she has just described. These are significant amendments, important amendments. They reflect the kind of dogged determination the good Senator from Missouri shows every day.

These amendments are so important to the procurement process.

I thank Senator MCCASKILL for her three amendments, which have strengthened the bill by, No. 1, reinforcing requirements to make tradeoffs between cost, schedule, and performance, by directing the Under Secretary of Defense for Acquisition, Technology and Logistics to review requirements and ensure that such tradeoffs have been made; No. 2, enhancing the role of combatant commanders in developing requirements by spelling out issues on which their input should be solicited and considered; and No. 3, reinforcing competitive prototyping requirements in the bill by requiring a GAO review and assessment of any waiver on the requirement on the basis of excessive cost.

These amendments improve the bill and reflect Senator MCCASKILL's consistent dedication to acquisition reform in the best interests of the taxpayers.

I commend the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I also would express my appreciation to the Senator from Missouri for her hard work, not only on this amendment but on the committee. I thank her and I think it has improved the legislation.

In consultation, I think the chairman is going to talk about what we intend to do. I understand there are a couple of amendments that may require recorded votes, but we really need to have all amendments in so we can wrap up this legislation either tonight or tomorrow, depending on the wishes of the respective leaders.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Senator from Arizona. What we are trying to do is see if we can't limit amendments. We think we know the amendments that are still out there, but we need people who want to pursue amendments to let us know that and give us an opportunity to look at them, to discuss the amendments with folks.

I have not had an opportunity to talk with the majority leader about whether there will be an opportunity to have votes tonight if we can't work out amendments, but I better not say anything until I have that opportunity to check it out with the majority leader. I know Senator CHAMBLISS is here to be recognized.

I yield the floor.

AMENDMENTS NOS. 1053 AND 1054

Mr. CHAMBLISS. Mr. President, I rise to call up two amendments that have been filed at the desk, No. 1053 and No. 1054. I want to start by recognizing the great work Senators LEVIN and MCCAIN have done on this issue. I have been extremely concerned about the acquisition process at the Department of Defense for years—during my House years as well as my Senate years. There have been no two greater champions on the issue than Senators LEVIN and MCCAIN.

They put together a piece of legislation that I think really does move us down the road in the right direction. We are dealing with less money in the defense budget than we have ever had. Yet the needs are greater. So I commend them for the great work they have done.

One of the amendments I am going to talk about has already been accepted. I am very appreciative of their support of that amendment.

Both of these amendments relate to the organizational conflict of interest—OCI—area of the bill.

The first amendment, No. 1053, deals with the ways in which contractors

that have affiliates that provide systems engineering and technical assistance, or ''SETA'' services, must organize their SETA affiliates in order to mitigate conflict of interest.

In relation to large contractors having affiliates that perform SETA functions, this amendment would allow for a closer modeling of the arrangements that large U.S. companies that are foreign-owned or controlled currently have for their defense-related operations in order to protect classified information.

One aspect of these arrangements relates to how the corporate board for the U.S. company, or SETA affiliate in this case, is organized.

One model is ''proxy board'' which cannot communicate in any way with the parent company and prohibits any board member for the affiliate from serving on the board of or having other responsibilities within the parent company.

The proxy board model requires all outside board members and removes all prerogatives of ownership for the parent company. It does not allow the parent company to exercise any management control or oversight over the separate entity and, as such, is a huge liability for the parent company. As such, it is not an attractive model in many cases.

The other approach is a ''special security agreement'' which is what BAE, Rolls Royce, and other large defense contractors who have a reputation for responsibility and trustworthiness use for their U.S. affiliates. This approach requires some board members to be totally independent of the parent company but also permits some communication between the board of the affiliate and the parent company.

This model allows for regulated discussions between the affiliate and the parent and protects sensitive—versus routine—information from being shared.

This model has other aspects to it that provide for independence and security, and it makes sense and is less onerous for the parent company.

My amendment specifies that the arrangements between large contractors and their SETA affiliates should be similar to the ''special security agreement'' I have discussed above.

I am pleased that the managers have agreed to accept the amendment. I thank them for that.

The second amendment which I have filed, No. 1054, relates to prime contractor ''make-buy'' decisions. These decisions relate to which aspects of a contract the prime contractor chooses to either make themselves or contract out to another company.

The current bill prescribes what I believe to be onerous procedures for regulating the prime contractors' decisions in this regard and provides for ''government oversight of the process by which prime contractors consider such sources'' and authorizes ''program managers to disapprove the determination by a prime contractor to conduct development or construction in-house rather than through a subcontract.''

In my opinion, this is an example of the Government interfering in a private company's legitimate business decisions and adds little value to the process.

Current acquisition regulations already provide for oversight of ''make-buy'' decisions by the Government. The ''Acquisition Reform Working Group'' composed of industry associations has strong language in their recent report on this bill opposing further Government intervention in ''make-buy'' decisions.

Prime contractors are already incentivized through the market to make wise choices in this area and are held accountable to the Government for their choices, both through the terms of the contract in question and through future competitions for which past performance is always a consideration.

My amendment strikes much of the provision in the bill and is intended to account for the fact that there are already procedures in place to address this issue. My amendment also attempts to prohibit excessive Government involvement in private sector business decisions.

I would like to quote from the Acquisition Reform Working Group's, position paper they issued on this bill in relation to this issue.

> The acquisition regulations already grant the government oversight of contractors' make/buy programs . . . The government has an appropriate oversight role, but that role must be managed to assure that the government is able to hold a contractor accountable for results. If the government is to determine which subcontractors will be part of a major program, the government will necessarily assume responsibility for that choice which will result in a corresponding reduction in the prime contractor 's responsibility for the program.
>
> Make-buy decisions are critical to program success. The prime contractor must consider the selection of a major subcontractor much as the government considers the selection of the prime contractor in the source selection process. The selection of the major subcontractors is made early in the proposal process . . . To have the government substitute an agency decision concerning these selections after award would likely put the prime contractor's performance against the contract awarded base-line at risk. Any additional emphasis on the make-buy process should take into account the program risk created by Government direction for contractor source selection decisions.
>
> There is a fine balance that must be maintained to hold contractors accountable for performance and results while affording the government an appropriate oversight role. It is unreasonable to expect a contractor to be held accountable for results if the government does not both provide the responsibility and the right incentives for that performance. Better and earlier planning and program management by the Government will mitigate a contractor's performance risks more effectively than taking away a contractor's intellectual property rights, innovation incentives, and accountability. Taking away such rights will also render the Defense market less attractive for new companies, especially commercial companies, with high risk and little chance of reward.

That is a rather extensive quote from that report by the Acquisition Reform Working Group, but I thought it was important to rationalize the way of thinking related to how we look at this issue. Basically, what we are proposing is, not to change the way the situation works today with respect to make-buy contracts.

So if you have a major weapons system contractor that is awarded a contract, and under that contract, let's say for an automobile that obviously requires a steering wheel, then the contractor ought to have the ability to decide whether to make that steering wheel themselves or whether to subcontract that steering wheel out to another contractor. If the contractor has a right to make those decisions then the numbers that were contained in their bid are going to reflect that and accurately reflect the ultimate price the Government pays. But if the Government has the right, as the bill says, to step in after the award and tell the prime contractor: You are not going to subcontract out, we are going to mandate that you make that steering wheel, then I think it does take away some of the flexibility and the ability on the part of the prime contractor to be able to adhere to the numbers and pricing that their bid contains.

This is a situation where, if we think contractors in the defense community are taking advantage of the system, the language in the bill is the direction in which we ought to go. But there are safeguards in every contract that the Department of Defense awards. I think what we need to do is focus more on making sure contractors are giving us the best possible buy we can get and the best quality of product we can get, and not hamstring those contractors who are making these bids. This will allow us to take the most advantage of taxpayer dollars that we have to use in equipping our men and women who wear the uniform of the United States.

I understand the committee may have issues with this amendment, but I think it is a good amendment. I urge its adoption.

I want to close by saying again that Senator MCCAIN and I have talked about this issue of acquisition reform a number of times during my years in the Senate. There is no stronger advocate for doing what is right related to proper expenditure of taxpayer money than Senator MCCAIN. I applaud him and Senator LEVIN for taking this on, getting in the weeds on it, because the contracts for which the Pentagon solicits bids and that they award on a daily basis are extremely complex, they are very large in the amount of money they spend, and this type of reform is not easy to put together.

But I think Senators LEVIN and MCCAIN have done an excellent job of coming up with what I think is a good product. I think with some of the amendments that have come forward

today it is going to be an even better product.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me commend the Senator from Georgia for the amendment which we have adopted, amendment No. 1053, that makes a very useful clarification of the standard for the separate business unit definition on this original conflict-of-interest provision we have.

I wish to commend my friend from Georgia for doing that, for catching that, and for making that suggested change which we have now adopted in amendment No. 1053.

We would oppose amendment No. 1054, if it were offered, for the following reasons: There has been a report from the Defense Science Board Task Force that, because of consolidation in the defense industry, there has been a substantial reduction in innovation and competition.

In order to stimulate that, to make sure the avenues are open for small business, we have a provision in this bill which basically adopts the approach of the Defense Science Board Task Force and is consistent with the concerns they raise about the lack of competition resulting from consolidation.

But, equally important, we hear from small business owners consistently that they have been excluded by prime contractors from competing for subcontract work. When they do that, they, of course, are reserving the business for themselves, for the prime contractors themselves.

As the Senator from Georgia mentions, there is now some oversight. But the problem is, there is no ability to veto, in effect, the decision to keep the work in-house. We would not take over the competition or the contracting bidding process. But what we do provide for is the veto of a decision to keep work in-house, where we think it is anticompetitive or unfair.

It is kind of an in-between position. The Defense Science Board actually suggested we go further than we have. What we do in this bill is say that if a decision is made that the contractor is keeping work in-house, which should be put up to competition to allow small businesses to bid on it, the discretion would be available for the Department to override that decision.

We think that is kind of an appropriate thing to do to protect small businesses, to protect competition, and to make sure there is reasonable oversight of that decision of any prime contractor to keep the work for themselves instead of bidding it out, which, of course, would open it to smaller businesses and greater innovation.

So we would oppose this amendment should it be called up. On the other hand, we want to, again, commend the Senator from Georgia because he has gotten into issues such as this. While we disagree with him on this one, we do want to note he has been very deeply involved in this bill. He has worked with us on this bill, and we greatly appreciate his support for our bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

HEALTH CARE REFORM

Mr. BROWN. Mr. President, as has always been the case when our Nation attempts to improve its health care system, some people and some groups try to scare Americans into believing it would be better to cling to what we have than to strive for something better—the same old story, the same old song.

Those who are using anti-reform scare tactics are typically people who are doing just fine, thank you, under the current system and, frankly, could not care less about those who are not doing so well, along with industry groups that want to make sure they can keep squeezing as much profit out of the health care system as possible.

It is that lust for profits—not a desire to honestly inform the public—that leads industry groups to demonize any reform proposals they themselves did not write.

In this case, conservative pundits, who I would guess have excellent health care coverage for themselves—the people you see on TV, the writers you see in the newspapers, the commentators you hear on the radio—conservative pundits, who probably have excellent health coverage for themselves, are trying to convince Americans that the only alternative to the status quo is ''socialized medicine.'' And the health insurance industry is trying to convince Americans that if it has to coexist with a federally backed insurance plan; that is, as an option for people, the insurance industry will disappear.

The private insurance industry did not disappear when Medicare was established. The private insurance industry did not disappear when Medicaid was established, even though many insurance companies said they would. Why would it disappear when a federally backed option is created for working-age adults?

Improving our health care system is too important a topic to be co-opted by inflammatory, unfounded rhetoric—rhetoric about ''socialized medicine,'' rhetoric about ''Medicare for all,'' rhetoric about ''single-payer systems,'' rhetoric that at the end of the day is nothing more than a bunch of hot air coming from a bunch of hotheads.

The truth is, Congress is contemplating health care reform that would increase consumer choice—increase consumer choice—by improving access to private and public insurance alike.

We are not eliminating private plans. We are saying: OK, the private plans will be here. They will have rules. The public plan will be here as an option—only as an option. It will have the same rules. Let them compete. If the private plans are so good, they will do well. The public plan is there, frankly, to keep the private plans honest so the private plans do not eliminate people because of community rating, do not eliminate people because they might have a preexisting medical condition.

As I said, the truth is, the Congress is contemplating health care reforms that would increase consumer choice. There are zero—count them, zero—health care proposals under consideration in this Senate that would eliminate the private insurance system. In fact, every single one of them embraces and strengthens the private health insurance system.

If you have employer-sponsored coverage, the reforms under consideration are designed to help you keep it. So understand, if you have insurance today, you can keep what you have. Under the legislation we will look at, if you want to choose a new insurance plan, you should have the full complement of choices: several private plans and a public plan, if you want to choose it. It is simply an option. It makes sense. It is not socialized medicine. It is simply good government. It is good health care.

What we have done in the past simply has not worked. It is time for a different approach. It is time for a public option for the American people.

Mr. President, I yield the floor.

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. LEVIN. 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. 1055

Mr. LEVIN. Mr. President, I would call up, on behalf of Senator BINGAMAN, amendment No. 1055. I understand this has been cleared now. It is a useful clarification of the relationship between the developmental testing requirements in the bill and the testing reforms that were enacted 6 years ago.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. BINGAMAN, proposes an amendment numbered 1055.

Mr. LEVIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the submittal of certifications of the adequacy of budgets by the Director of the Department of Defense Test Resource Management Center)

At the end of title I, add the following:

SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFICATION OF ADEQUACY OF BUDGETS BY THE DIRECTOR OF THE DEPARTMENT OF DEFENSE TEST RESOURCE MANAGEMENT CENTER.

Section 196(e)(2) of title 10, United States Code, is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) If the Director of the Center is not serving concurrently as the Director of Developmental Test and Evaluation under subsection (b)(2) of section 139c of this title, the certification of the Director of the Center under subparagraph (A) shall, notwithstanding subsection (c)(4) of such section, be submitted directly and independently to the Secretary of Defense.''.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1055) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I ask unanimous consent that the following be the only first-degree amendments in order to S. 454, other than the committee-reported substitute amendment, that the listed first-degree amendments be subject to second-degree amendments which are relevant to the amendment to which offered; that with respect to any subsequent agreement which provides for a limitation of debate regarding an amendment on the list, then that time be equally divided and controlled in the usual form; that if there is a sequence of votes with respect to these amendments, then there be 2 minutes equally divided and controlled prior to a vote in relation thereto; that upon disposition of the listed amendments, the substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to vote on passage of the bill.

The amendments I am including in this unanimous consent proposal are as follows:

The Snowe amendment No. 1056 regarding small business contracting; a Thune amendment regarding weapons systems; a Coburn amendment regarding financial management, which we think we may have worked out, by the way; the Chambliss amendment No. 1054 regarding ''make buy;'' the Bingaman amendment, which we have already adopted so I will not refer to that; and the Murray amendment No. 1052 regarding national security objectives.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEVIN. I thank the Chair, and I thank my friend from Arizona and the staffs who worked this out. I think these amendments then would be considered probably tomorrow morning, although I don't know that we have final word on that. We ought to probably doublecheck that with our leaders, and I would note the absence of a quorum while we do that.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators recognized to speak for up to 10 minutes.

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

Mr. LEVIN. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

DEFENSE PROCUREMENT PROCESS

Mrs. MURRAY. Mr. President, there is no question that our country's defense procurement process is broken. At a time when the American people are tightening their personal budgets, making sacrifices, and focusing on essentials, our defense acquisition program continues to run up huge bills.

Just this year, the GAO reported that the major defense procurement program is $296 billion over budget. Not only are they over budget, they are behind schedule. In fact, 95 percent of DOD's largest acquisition programs are now an average of 2 years behind schedule. Every extra day, every additional dollar spent on these systems is a step backward for our Nation's other priorities.

As we tackle the big challenges by getting our economy back on track or our health care system working again for all Americans or establishing a clean energy future, it is time that we focused on trimming the fat in our defense budget.

I applaud our Armed Services chairman, Senator LEVIN, and the ranking member, Senator MCCAIN, for introducing the bold plan that is now before the Senate, which will bring about reform. Their bill recognizes that making changes to acquisition starts at the beginning of the process, with the proper testing and the cost calculating and development procedures. It also returns discipline to the process by making sure the rules limiting cost are enforced. Those and other badly needed steps are going to help reform our system and return Federal dollars to meet the challenges we have on the horizon.

Mr. President, that should be only the first step because the truth is that, while today's debate has been delayed for far too long, there is another hard conversation surrounding procurement that we have not yet even started, and that is the conversation about the future of the men and women who produce our tanks, our planes, and our boats. The skilled workforce our military depends on is a workforce that is disappearing today before our eyes.

Our Government depends on our highly skilled industries, our manufacturers, our engineers, our researchers, and our development and science base to keep the U.S. military stocked with the best and most advanced equipment and tools available. Whether it is scientists who are designing the next generation of military satellites or engineers who are improving our radar system or machinists who are assembling warplanes, these industries and their workers are one of our greatest strategic assets today. What if those weren't available? What if we made budgetary and policy decisions without talking about the future needs of our domestic workforce? It is not impossible. It is not even unthinkable. It is actually what is happening.

We need to have a real dialog about the ramifications of these decisions before we lose the capability to provide our military with the tools and equipment they need because once our plants shut down, once our skilled workforce and workers move to other fields, and once that infrastructure is gone, it is not going to be rebuilt overnight if we need it.

As a Senator from the State of Washington, representing five major military bases and many military contractors, I am very aware of the important relationship between our military and the producers that keep them protected with the latest technological advances. I have also seen the ramifications of the Pentagon's decisions on communities, workers, and families. As many here know, I have been sounding the alarm about a declining domestic aerospace industry for years.

This isn't just about one company or one State or one industry. This is about our Nation's economic stability. It is about our skill base. It is about our future military capability. We have watched as the domestic base has shrunk. We have watched as competition has disappeared and as our military has looked overseas for the products that we have the capability to produce right here at home.

Many in the Senate have spent a lot of time talking about how many American jobs are being shipped overseas in search of cheaper labor. But we haven't focused nearly enough attention on the high-wage, high-skilled careers being lost to the realities of our procurement system. That is why, today, I am going to be introducing an amendment that will require the Pentagon to explain to

us in Congress and to the American people how their decisions affect good-paying jobs and the long-term strength of our industrial base.

My amendment will help to ensure that our industrial base is capable of meeting our national security objectives. It took us a very long time to build our industrial base. We have machinists who have past experience and know-how down the ranks for more than 50 years. We have engineers who know our mission, know the needs of our soldiers, sailors, airmen, and marines. We have a reputation for delivering for our military. But once those plants shut down, those industries are gone. We not only lose the jobs, but we lose the skills and the potential ability to provide our military with the equipment to defend our Nation and project our might worldwide. Preserving a healthy domestic base also breeds competition. That is good for innovation and, ultimately, for our taxpayers.

So today, as we begin this very serious and necessary conversation on procurement reform, we cannot afford to forget the needs of our industrial base. We have to consider how we achieve reform while continuing to support the development of our industrial base here at home.

It calls for thoughtful planning and projection about who our future enemies might possibly be and how they might possibly try to defeat us in this Nation. It is critical that our country and our military maintain a nimble and dynamic base. Once a new threat is identified, a solution has to be close at hand.

The discussion we are having on procurement reform in the Senate is happening as our country faces two difficult but not unrelated challenges: winning an international war on terror and rebuilding a faltering economy. It would be irresponsible not to include the needs of our industrial base as we move forward because unless we begin to address this issue now, we are not only going to continue to lose some of our best paying American jobs, we are going to lose the backbone of our military might.

I will be offering this amendment, and I would love to have the support of our colleagues to make sure we have a strong nation in the future.

ACADEMIC EXCHANGE

Mr. LEAHY. Mr. President, in early April of 2003, a professor of engineering at United Arab Emirates University contacted an American professor at the Worcester, MA, Polytechnic Institute about spending the summer in Worcester as a visiting professor. By late May his visit had been arranged—he would come for the months of July and August, the time when he was not teaching in the UAE, and they would collaborate on research on axiomatic design and fractal analysis of manufactured surfaces.

On June 7 the UAE professor applied for a nonimmigrant visa for June 27—August 26. Apart from being called back to the consulate for fingerprinting on June 22 and told that he would receive an answer in the next 2 to 3 weeks, he heard nothing in response to his inquiries other than a reminder to check his visa application status on the embassy Web site. On August 9, with still no sign of his record on the Web site and the beginning of his fall semester approaching, he cancelled his plans and stayed at home in the UAE.

Without any information about the reason for the delay it is impossible to determine whether it was due to some legitimate concern or more likely the result of a bureaucratic logjam. But at a minimum, the professor should have received a response informing him of the status of his application before June 27. Instead, he and his American colleague were left in the dark to wonder, and had no choice but to cancel their research plans which would have been mutually beneficial, as well as for their students.

This is one incident; however, it is illustrative of the larger problem of foreign scholars and teachers being denied entry into the United States not because of travel bans, but because of delays and inefficiencies in the visa application process, particularly in geographical regions of concern for the Department of Homeland Security.

Transnational academic collaboration is, if not politically blind, politically myopic. Diplomats sit across from each other, even when meeting in friendship, to resolve differences. To study, the parties sit on the same side of the table and, irrespective of national, religious, ethnic or political backgrounds, focus on what they have in common. Some fields of study are so universal that they transcend language—mathematics does not need a common tongue for collaboration to happen.

This is in no way meant to disparage diplomacy, which has been and will continue to be the keystone of how governments interact. It emphasizes differences because it addresses them—academic collaboration will never negotiate an arms reduction treaty. But neither should we be limited by thinking that diplomacy is the only way of working towards understanding between two societies.

Nor is this type of academic exchange limited to technical or scientific work. I am reminded of when, after Robert Frost's visit to the Soviet Union in 1962, Siberian poet Yevgeny Yevtushenko wrote to him ''I have read your poems again and again today, and I am glad you live on Earth.'' I picture Frost and Yevtushenko talking about the rural beauties of their homeland, Frost of Ripton, VT and Yevtushenko of Stantsiya Zima, Siberia.

It is not only relations that we damage and the resentment we create by limiting these partnerships. The United States and the world also lose the body of scholarship that would have been produced. In no academic discipline is anyone so bold as to suggest that knowledge lies only on one side of a fence or of an ocean.

To the foreign scholars who would study and do research here, I would say that in the post-9/11 world our immigration laws and procedures have indeed become more stringent, burdensome and time consuming. But do not interpret that as a sign that you are not welcome or that your presence is not desired. To the contrary, it is valuable—indispensable to you, to us and to the rest of the world.

It is also undeniable that during the Bush administration some of the immigration laws and regulations, enacted in haste to respond to 9/11, crossed the line between keeping a vigilant watch over our borders and creating unnecessary and illogical barriers to entry for those who pose no danger. The Department of Homeland Security and the Department of State deserve credit for their efforts to keep our borders secure, but I also urge them to continually review their policies and procedures to make sure they are keeping out those who need to be kept out, but facilitating the entry of those whose presence we want and need.

The case of the UAE professor is, again, one example. But it did not only inconvenience the two professors; such cases can have a compounding, ripple effect as family members, friends and colleagues conclude that it is pointless, and potentially humiliating, to apply for a visa to study, teach or conduct academic research in the United States. At a time when we should be doing everything possible to rebuild our image abroad, particularly in predominantly Muslim countries, this is not the message we should be sending.

As the Departments of Homeland Security, State and Justice continue to review their policies they should look closely at these issues. If existing laws regarding who and what constitute legitimate security risks need to be clarified, then the administration should come to Congress with a recommendation. If the problem is a lack of staff or other resources to process visa applications in a timely manner, we can allocate the funds necessary to ensure that legitimate visa applicants get the prompt and fair consideration they are due. But whatever the cause of the problem, it needs to be fixed.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me

through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Do not you think it is time to do something about the current price gouging on gasoline, even if it means leaning on the refiners in Utah? The price of oil has dropped about 27% off of the high point as of just a few moments ago, and has been hovering around the 23–25% drop for some time now, yet we do not see even a 10% drop in price at the pumps. I know that the retailers have taken advantage of the holiday weekend to make extra money, and hopefully now they will have the heart to drop the prices to levels that are fair.

Please move our country forward in domestic drilling so we may be less dependent on foreign oil. It would also help to curtail some of the terrorist activities, as we are funding some of that with each purchase of oil, maybe indirectly but funding just the same. I do not wish to finance terrorism or gold and diamond encrusted planes and autos for some Sheik. I would rather create jobs in America for Americans by utilizing our own resources. Thank you for reading this.

MONA.

I was employed [by a printing company] in Idaho Falls. I greatly enjoyed my job, and it helped give us the opportunity to purchase our first home in January 2008, which is located in the Ammon, Idaho area. We have been married for 15 years and have been working and saving for the day when we could purchase our first home. This has been my wife's dream to have a home of her own with a small garden. When we purchased this home, the first thing we did after the snow of winter had gone was to erect a 22-foot flag pole in the front yard. You see this has always been my dream to have a home of my own where I could display and show my love for this great country and its beautiful flag. It is also my way of paying respect and saying thank you to the many men and women that have fought to protect the freedoms I have been privileged to enjoy as a citizen of The United States of America.

On July 9, 2008, I was laid off from my employment because of slow business due to high-energy cost. One of their main customers is [a meat packing company], which has in the past ordered thousands of labels for their meat packing lines and international markets. I have been searching for other employment, but it is hard if not impossible to find a company or business that has not been affected by the out-of-control gas and energy prices.

I am now 55 years old and have worked my whole life to have the so-called American Dream. I know from personal experience what it is like to go hungry or to have no place to lay your head at night or shelter from the cold of a January night. These were very hard times and I do not wish to repeat them. It is upsetting to realize that we could lose it all just because of the greed of a few and the unwillingness of [our leaders] to intervene on behalf of the American people. Instead it is like watching a bunch of kids fighting over a toy in a sandbox, [our elected leaders] need to stop fighting and start working together for the good of the American people. In the Williston oil basin which covers Montana, the Dakotas and Wyoming, there are oil wells that were capped in the 1970s. From studies, this oil could carry the U.S. for the next 100 years or more—that is if we used it to supply only the U.S. and not other nations. So I ask you just what are we waiting for, a rainy day? I find it most interesting that the United States is the greatest super power in the world, but yet we cannot work together in Congress to resolve the issues facing our nation for fear the other political party may take or get credit for it. As an American citizen and taxpayer my message is to forget political lines and yourselves and just go to work together. I, for one, am tired of losing everything we have worked so hard for including our future just because [partisan politics prevent solutions from being found.]

I now ask all the members of Congress to work to save this great nation and our economy from total collapse and to restore the United States of America to that grandeur this nation once enjoyed. A house, nation, government, or people, divided against itself cannot stand or long endure. Ladies and Gentlemen of the U.S. Congress, the Constitution of the United States of America and the future of this great nation and its citizens are now in your hands. Please respect the sacred trust you have been given and honor the integrity of the office in which you now stand.

WALTER.

I have been an Idahoan all my life. I would not want to live anywhere else, and I love my state. I saw on the news awhile back about you wanting input on the gas prices and such. Well, I have more than that that concerns me.

First, I cannot believe the prices of gas. I use a lot of gas. I am a caregiver and I drive to my work two times a day, five days a week. I have had to borrow money just to get there and back. I should let you know I make an average of $400 a month; my husband makes around $1,200 a month. I receive a mere $6 in food stamps. The DHW say we make too much. We do not make enough to pay all our expenses. We cannot seem to get ahead of anything. I just got a ticket for no insurance. I cannot afford it. What am I to do? I have so many things to pay for. I could burden you with all my problems but I am not going to. Tell me, is there a low-income insurance agency around for people like me? I read about grants, but you have to pay just to get a little information. There are so many families that are in the same situation as I am; we try to do right, but get punished in other ways. We should not have to worry about how to get back and forth to work. How am I going to feed my family? How am I going to pay for everything so I do not lose it! I want to go to school to get my GED so I can become a nurse of some kind. I really want to be a doctor's assistant but I cannot because I have to support my family with what little I make. I cannot afford to lose any hours. I have a lot more I can complain about but it would take me all day. But this sums it up to the shortest degree. Thank you for listening to me.

CHRYSTALYNN, *Nampa*.

As crude oil begins to express its omnipresence amongst the consumers of this nation as a relevant component, that has raised a multitude of concern as transportation energy is now being brought forth—even with the expectations of food consumption as mentioned and expressed. As Americans are being brought to maintain and conserve what is left of this planet, transportation energy assumptions are now being presented to becoming a considerable difference when considering crop production rather for the purpose of food or a new found energy material. It seems that we as a consumer nation are stuck at a losing crossroad when the expectation of cost efficiency is approached and considered. Will the current crop land begin to be used for this process as new innovative responses towards transportation energy is expressed amongst this nation of consumers?

I do not think that this question has been asked by any consumer as the efforts are being presented to align this nation into a position to have safe and environmental friendly responses to all considerations that may arise as trends and new found provisions are being considered and met.

What are the responses expected from bringing forth a theory that fuel for the purpose of energy with the regards of transportation is expressed, what other questions and responses will arise from what seems to be a Third World theory of effective enterprising?

AARON.

Thank you for this opportunity to voice my opinion about the rising energy costs. We are seeing the effects of the escalating gas prices in every aspect of our family finances. We feel like the high price of gas has made me more cautious about how we spend money in all areas of our life from groceries, to activities we choose to let our children participate in, vacation, entertainment, and home repair/new home purchases. Our family is thrifty, we look for deals, we are conservative in our spending and we are consistently building our savings, yet we are still seeing a constant and steady increase in prices that are causing us to be concerned.

We appreciate your efforts to vote on issues that will lower our energy costs. We support the idea of drilling here in the United States and would like to see that starting so that the benefits of on shore drilling can begin sooner than later. Thank you for representing Idaho well.

BOB and CHARLYNN.

As you requested I am responding to your request to itemize some ways that my family and I are adversely affected by the extreme increases in the cost of energy. I live in a rural area of southeast Idaho. We are about fifteen miles south of Idaho Falls. As you accurately mentioned, there is no public transportation available in this area. We are suffering with the cost of gas especially but not just that. We heat our home, and water with propane, and the cost of that has gone through the roof also. The cost of electricity has doubled too. The bottom line is my income is not increasing at the rate the utility costs are increasing. This is becoming a real burden on my family.

DAVE, *Firth*.

You guys have got it all wrong: the problem is the consumption not the supply. We are not getting out of this mess by drilling for more oil. The only way is to use less oil. We need more hydro electric, solar power, nuclear energy, Stop building coal and gas power plants that only make our air worse. The air is getting so bad we are soon going to have air filtration systems for our homes and for our gas-guzzling cars so we can leave our homes. We will never have cheap gas again, so let us get on with something that makes sense for a change. I am amazed that the people of this country have not [protested], demanding some action. I do think there are enough concerned voters to crush

the stalemate in Washington. The biggest problem is no one is listening to any of the experts on our problems. Everyone just blunders ahead whether anything makes sense or not. We are going to keep spending like there is no tomorrow and then turn around and give people tax refunds. Where did we find the math that makes that work? I could go on and on for days, [but it does not appear to make any difference to our political leaders.]

DAVE.

If it is not already in the works, please consider sponsoring a bill to raise the IRS mileage deduction. It is now at 50½ cents/per mile, which is inadequate given the increases in gas, oil, tires, and other related auto products. I am a small business owner in Bonner County, and I travel nearly seven days per week to service clients. Some days I am all over this very large county! Though I usually drive a Honda Civic, even it is becoming expensive to drive. If I raise my prices, I will surely lose some business. Many other business owners are suffering, too.

LEXIE.

First, as for fuel prices. I am sure you have heard most all opinions on how to attempt to solve this issue. I believe there needs to be both short-term and long-range solutions. For the short term, off-shore and North Slope oil drilling needs to be allowed to provide some near-term relief on fuel prices. In addition, new refineries need to be allowed/encouraged in the U.S. as soon as possible. Long term—there needs to be an all-out funding of R&D to provide renewable energy for both transportation and to sustain our homes. I believe in this great nation we can harness the energy of the sun, etc. to provide unlimited renewable energy.

Also another issue close to home is jobs. It is very disturbing the rate at which we are losing jobs to India, etc. due to outsourcing. The corporate environment today is to save a buck at any cost, even sending jobs to under-developed countries. At my place of business, we have seen over the last seven years, many, many technology jobs go out of the country. In addition, just recently, it was announced that many clerical jobs are also to be outsourced. What is happening is that the better-paying jobs are being sent out of the country, and we are left with the lower-paying service industry jobs and are very quickly lowering the American standard of living. Also, this is also happening during tough economic times along with the rising energy costs.

It seems that Congress and our countries leadership is more concerned with everyone else around the world except our own citizens. In this area, there needs to be some kind of tax penalty/incentive to keep these jobs here, in America. If there is no economic benefit to outsource, the jobs will come back.

BEN, *Parma*.

Thanks for being interested in energy; our family sees the future as pretty bleak. Return to the Carter years, high energy prices, stagflation, no raises, general depression. We have upped our level pay on natural gas, expecting the price to double. We have rearranged our budget, less food and entertainment, etc. Far less travel. But I have to ask [if there are not some of our political leaders who want the U.S. economy to slow down. They view this as a way to stop lifestyles they consider wasteful.]

DAVE and MIEKE, *Pocatello*.

My biggest [worry is] fuel that we cannot afford. It is nice for our salary to go up, too. But if you only make $8 an hour or less, it is really tough to go anywhere and even going to work, and if you have a gas-eating vehicle, the pay is gone. How can we afford to live and a smile on your face when you put all your paycheck for the gas? Our country has to do something about this situation. When my kids asked me to go to practice for tennis, I say no, I could not afford the gas. It is very sad to see the face of my kids. And I know that it is not just me suffering for this issue. There are many more that cannot afford to even get groceries for their families. I hope that our government will do something to help our country, too.

EDITH, *Nampa*.

I began my professional career as a Forester in 1961 and have witnessed a massive change in Forest management and the timber industry. Currently my closest job involves driving 100 miles roundtrip to my closest job. I must drive a four-wheel drive pickup due to forest roads and occasional seedlings, tools etc. I would love to drive a more fuel economic vehicle but as you can see this is not an option. In terms of my business, transportation is extremely costly and typically log and pulpwood haulers charge in excess of $2/mile to haul their product. Today it is not uncommon for a surcharge to be added.

The big push in my business today is to remove forest waste as biomass to be used as an energy source and the biggest obstacle is the cost of transporting this material out of the woods economically.

The American people with the help of Congress must address this energy crisis immediately. The answer in my opinion is to commence exploration and oil recovery (drilling) immediately, build new refining capacity, and develop and utilize alternative sources such as nuclear, hydroelectric, wind, solar, tidal, etc. I do not see this as an ''either/or'' situation. We need a blend of all of the aforementioned to keep our ever-expanding population and economy healthy and vibrant.

I am involved with an invention that converts forest slash into a fine powder. This machine/process reduces weight and volume by roughly 40%, has fertilizer value, food value, and appears to be the breakthrough for the cellulosic production of ethanol. I have a report describing this invention that I would be willing and eager to share with you or your representative in Boise at your convenience.

LEWIS, *Eagle*.

My wife and I have recently started a small business in Idaho. Outrageous gas prices are making it hard to get this young company off the ground. My wife has quit her job of six years to finish school full-time at BSU. We figured we could live comfortably without her income but with the gas prices constantly rising we are getting a little uncomfortable about our decision. We feel that Congress needs to do something immediately to help the working people of this country.

SAM, *Nampa*.

I work in southern Idaho at the Idaho National Lab and the lab workers who work way out in the desert work a four-day work week. This helps keep the price to commute low. We here in town work a 9X80 schedule. It would behoove us to look at making the standard work week four days, possibly. I had seen on the news that a couple of the other states have enacted that legislation. Here in Idaho, where we have such wide open expanses and so far to drive in many cases, it could potentially save a lot of money.

MELISSA, *Ammon*.

I am a 68-year-old taxpaying American citizen, and military veteran. I work in Spokane, Washington. It is getting increasingly more difficult to afford the gas to drive to and from work. Carpooling or the use of public transportation is out of the question as I work in the construction industry on various jobs throughout the Spokane area. It appears that some elected people in Congress are letting the environmental lobbyists and their corrupt judges run our country.

The time has come to start drilling for oil in Alaska, Colorado, Wyoming, and offshore. From what has been in the news and from what we read in various publications, all from very intelligent engineers and scientists, we know the oil is there. We have shale deposits in several states that we could be using. We need to work harder on wind and nuclear power. The states want to drill, and we need to lift the federal bans.

We should either sell or give the abandoned military bases to companies willing to build refineries on them. The time has come to quit asking—it is time to demand that this be done. We have the resources, let us use them. The United States of America should not have to go begging to other countries for oil when we have it within our own shores.

We, the people, should not be suffering these exorbitant prices due to the incompetence in all areas of our government, and speculators in the stock market.

WAYNE, *Coeur d'Alene*.

ADDITIONAL STATEMENTS

RECOGNIZING WEST ANCHORAGE HIGH SCHOOL STUDENTS

• Mr. BEGICH. Mr. President, I am proud to announce a class from West Anchorage High School represented the State of Alaska by winning national distinction at the National We The People: The Citizen and the Constitution National Finals. These outstanding students, through their knowledge of the U.S. Constitution, won Alaska's statewide competition and earned the chance to come to our Nation's Capital and compete at the national level.

This competition involved a 3-day academic competition simulating a congressional hearing in which students demonstrate their knowledge and skills as they evaluate, take, and defend positions on historical and contemporary constitutional issues.

The students from West Anchorage High School were the Nation's top performers in the competition's unit on How the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices. This year is the 50th year of Alaska's statehood and while we may be one of the youngest States, the performance of these students is indicative of the unique contributions Alaska has made to America's institutions and practices.

I had the distinction of meeting these students so it makes me even more proud to recognize them on behalf of the State of Alaska. The names of these outstanding students from West Anchorage High School are: Grace Abbott, Sinivevela Aho, Spencer Bailly, Gizelle Baylon, Colby Bleicher, Blake Young, Jacqueline Braden, Santina

Chamberlain, Caitlin Cheely, Jon Derman Harris, Christa Eussen, Christina Hendrickson, Ryan Hunte, Terra Laughton, Logan Miller, Jasmine Neeno, Madeleine Overturf, Luke Park, Kassandra Smith, Krista Soderlund, Chelsea Thompson, Luicia Valencia, Stacy Wheeler, Sophie Wiepking-Brown, Amanda Xayasane, and Ethan Zinck.

I also commend the teacher of the class, Pamela Orme, who is responsible for preparing these young constitutional experts for the national finals. Also worthy of special recognition are Maida Buckley, the State coordinator, and Todd Heuston, the district coordinator, who are responsible for implementing the We the People program in Alaska.

I congratulate these young ''constitutional experts'' on their outstanding achievement and for their proud representation of the State of Alaska.●

TRIBUTE TO LOUISIANA WWII VETERANS

● Ms. LANDRIEU. Mr. President, I am proud to honor a group of 120 World War II veterans from all over Louisiana who will travel to Washington, DC, on May 9 to visit the various memorials and monuments that recognize the sacrifices of our Nation's invaluable servicemembers.

Louisiana HonorAir, a group based in Lafayette, LA, sponsored this trip to the Nation's Capital. The organization is honoring each surviving World War II Louisiana veteran by giving them an opportunity to see the memorials dedicated to their service. The veterans will visit the World War II, Korea, Vietnam and Iwo Jima memorials. They will also travel to Arlington National Cemetery.

This is the third of four flights Louisiana HonorAir is making to Washington, DC, this spring. It is the 16th flight to depart from Louisiana, which has sent more HonorAir flights than any other state to the Nation's Capital.

World War II was one of America's greatest triumphs but was also a conflict rife with individual sacrifice and tragedy. More than 60 million people worldwide were killed, including 40 million civilians, and more than 400,000 American servicemembers were slain during the long war. The ultimate victory over enemies in the Pacific and in Europe is a testament to the valor of American soldiers, sailors, airmen and marines. The years 1941 to 1945 also witnessed an unprecedented mobilization of domestic industry, which supplied our military on two distant fronts.

In Louisiana, there remain today more than 33,000 living WWII veterans, and each one has a heroic tale of achieving the noble victory of freedom over tyranny. This group had 44 veterans who served in the U.S. Army, 27 in the U.S. Air Force, 42 in the Navy, 3 in the Coast Guard and 4 in the Marines.

Our heroes trekked the world for their country. They fought in Germany, France, Italy, Africa, Japan, Guam, Guadalcanal, China, Okinawa, the Philippines, New Guinea, Korea, Thailand, and Saipan. Their journeys included the invasions of North Africa, Sicily and Normandy, and the Battle of the Bulge. Their fight for freedom extended to New Caledonia and the Solomon Islands.

One of our Army Airborne veterans navigated a glider plane and became a prisoner of war. He also lost a brother during the D-day invasion and earned many awards, including the Purple Heart. One of our Army Air Corps veterans flew 50 European missions in a B–24 bomber as a flight engineer. Another of our Army Air Corps heroes flew 20 missions as a tail gunner in a B–17 Flying Fortress. And one of our Navy veterans fought at Pearl Harbor.

I ask the Senate to join me in honoring these 120 veterans, all Louisiana heroes, who will visit Washington, and Louisiana HonorAir for making these trips a reality.●

TRIBUTE TO CADILLAC MOUNTAIN SPORTS

● Ms. SNOWE. Mr. President, with the weather beginning to warm up, Mainers and tourists alike are preparing to once again head outdoors and enjoy the beauty that our State has to offer. I rise this week to highlight the work one small business—Cadillac Mountain Sports—is doing to ensure that outdoorsmen and women have the gear and tools they need to make the most of their outings.

Cadillac Mountain Sports was founded in May 1989 by Matthew Curtis. Mr. Curtis set up his small shop in busy downtown Bar Harbor, a summer haven for those visiting Acadia National Park. His intention, however, was to build a year-round sports store that served both members of the local community and the region's seasonal visitors. The store initially carried a wide variety of equipment for a host of individual sports and fitness activities, from swimming and tennis to running and aerobics. It soon widened its product line to include hiking, rock climbing, and backpacking equipment.

Immensely popular from the outset, the business soon needed to significantly increase its space. Mr. Curtis moved his business to a larger location across the street after just 2 years, doubling its size and allowing the company to grow its product line. Since then, the company has undergone several expansions and renovations. Additionally, over the years, Cadillac has expanded to become a five-store chain, with four locations in downtown Bar Harbor, and one in nearby Ellsworth. Its line includes Cadillac's Patagonia, Cadillac's The North Face, and Cadillac's Nike, which all sell those particular brands' products. Cadillac now employs 30 people during the slow season, a number that rises to 100 people during the summer months.

Cadillac Mountain Sports is grounded in the communities where it is located, and strives to improve the quality of living in those towns. Cadillac was recently instrumental in supporting the Ellsworth High Street Beautification Program to revamp its downtown area. Additionally, Cadillac utilizes a number of ''green'' business practices, including recycling programs. As a result of its considerable efforts to improve the town's well being, Cadillac Mountain Sports will be presented with the 2009 ''Top Drawer'' Award by the Ellsworth Area Chamber of Commerce at the organization's 54th annual meeting on Thursday, May 14, 2009.

The ''Top Drawer'' Award is presented annually to either a business or person that makes a lasting contribution to the development and improvement of the greater Ellsworth region. The award was founded in 1980 to commemorate the late Tom Caruso, who established Bar Harbor Airlines to ''Link Maine With The World.''

It is clear that Cadillac Mountain Sports, with its solid and intelligent commitment to the customer and the community, is highly worthy of this recognition. A small business that has grown to become a regional leader in the sale of sports equipment, Cadillac is a prime example of the success that comes with hard work, community involvement, and customer responsiveness. Congratulations to Matthew Curtis and everyone at Cadillac Mountain Sports for winning the 2009 ''Top Drawer'' Award, and best wishes for continued success.●

TRIBUTE TO MATT GIRAUD

● Ms. STABENOW. Mr. President, today I pay tribute, on behalf of myself and Senator LEVIN, to Matt Giraud of Kalamazoo, MI.

Each week on ''American Idol,'' Matt sang his heart out and inspired many throughout Michigan. Early on, the judges recognized his incredible talent. Despite nearly being eliminated in the early stages of the competition, Matt rebounded with grace, confidence, and poise. His songs were a moving reminder of the toughness and resilience of our State.

Matt was born and raised in Michigan. He went to high school in Ypsilanti and graduated from Western Michigan University. Before he went on ''American Idol,'', he performed at a dueling piano bar in Kalamazoo. And on the show, he never forgot his roots.

He got the opportunity to work with Smokey Robinson, the ''King of Motown,'' during the show's Motown episode. His rendition of ''Let's Get it On'' deeply impressed Robinson, the show's judges, and the audience.

When he was faced with elimination in April, the judges, for the first time in the show's history, intervened to save a contestant. He came back strong the next week, singing ''Stayin' Alive.'' His enthusiasm in spite of adversity was a real inspiration to his fans across Michigan.

After his elimination, Matt remained graceful and thanked his fans back home for all of their support.

On behalf of myself and Senator LEVIN, and all the people of the great State of Michigan, we want to return the favor. We want to thank Matt for reaching for the stars, for pushing himself to the limit, and for showing America Michigan's creative and resilient spirit.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:26 p.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following resolutions, in which it requests the concurrence of the Senate:

H. R. 774. An act to designate the facility of the United States Postal Service located at 46–02 21St Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''.

H. R. 1271. An act to designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''.

H. R. 1397. An act to designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''.

At 5:37 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill with amendments, in which it requests the concurrence of the Senate:

S. 386. An act to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 774. An act to designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 1271. An act to designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 1397. An act to designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

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–1510. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Novaluron; Pesticide Tolerances for Emergency Exemptions'' (FRL–8409–8) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1511. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act that occurred at Fort Belvoir, Virginia, and has been assigned Army case number 06–07; to the Committee on Appropriations.

EC–1512. A communication from the Vice Director, Defense Logistics Agency, Department of Defense, transmitting, pursuant to law, a report relative to an interim response to the reporting requirement of the Strategic and Critical Materials Stockpiling Act; to the Committee on Armed Services.

EC–1513. A communication from the Vice Director, Defense Logistics Agency, Department of Defense, transmitting, pursuant to law, a report relative to the biennial report on stockpile requirements of the Strategic and Critical Materials Stockpiling Act; to the Committee on Armed Services.

EC–1514. A communication from the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, transmitting, pursuant to law, a report relative to the percentage of funds that was expended during the preceding fiscal year and is projected to be expended during the current fiscal year for the Department's depot maintenance and repair workloads by the public and private sectors; to the Committee on Armed Services.

EC–1515. A communication from the Secretary of Defense, transmitting a report on the approved retirement of Lieutenant General Robert J. Elder, Jr., United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–1516. A communication from the Vice Chair and First Vice President, Export–Import Bank of the United States, transmitting, pursuant to law, a report relative to transactions involving exports to Canada, China, Panama, India, Ukraine and to other countries yet to be determined; to the Committee on Banking, Housing, and Urban Affairs.

EC–1517. A communication from the Deputy General Counsel for Operations, Department of Housing and Urban Development, transmitting, pursuant to law, (4) reports relative to vacancy announcements within the Department; to the Committee on Banking, Housing, and Urban Affairs.

EC–1518. A communication from the Secretary of Transportation, transmitting, the Department's Fiscal Year 2008 Annual Report as required by the Superfund Amendments and Reauthorization Act of 1986; to the Committee on Environment and Public Works.

EC–1519. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's annual report on the administration of the Surface Transportation Project Delivery Pilot Program; to the Committee on Environment and Public Works.

EC–1520. A communication from the Acting Administrator, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report relative to the cost of response and recovery efforts for FEMA–3302–EM in the Commonwealth of Kentucky having exceeded the $5,000,000 limit for a single emergency declaration; to the Committee on Environment and Public Works.

EC–1521. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Indiana; Extended Permit Terms for Renewal of Federally Enforceable State Operating Permits'' (FRL–8899–3) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1522. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Kentucky; Section 110(a)(1) Maintenance Plans for the 1997 8–Hour Ozone Standard for the Huntington–Ashland Area, Lexington Area and Edmonson County; Withdrawal of Direct Final Rule'' (FRL–8900–4) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1523. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit State Implementation Plans Required for the 1997 8–Hour Ozone National Ambient Air Quality Standard; North Carolina and South Carolina'' (FRL–8901–8) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1524. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revision to the California State Implementation Plan; North Coast Unified Air Quality Management'' (FRL–8780–1) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1525. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, North Coast Unified Air Quality Management District'' (FRL–8782–7) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1526. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District'' (FRL–8900–2) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1527. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting,

pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, South Coast Air Quality Management District Sacramento Metropolitan Air Quality Management District'' (FRL–8783–9) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Environment and Public Works.

EC–1528. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Convention on Cultural Property Implementation Act, a report relative to action taken to enter into a Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material; to the Committee on Finance.

EC–1529. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Convention on Cultural Property Implementation Act, a report relative to extending the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Categories of Archaeological Material; to the Committee on Finance.

EC–1530. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2009 (RY 2010)'' (RIN0938–AP50) received in the Office of the President of the Senate on May 5, 2009; to the Committee on Finance.

EC–1531. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the website address of a report entitled ''Country Report on Terrorism 2008''; to the Committee on Foreign Relations.

EC–1532. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the incidental capture of sea turtles in commercial shrimping operations; to the Committee on Foreign Relations.

EC–1533. A communication from the Acting Deputy Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the Agency's second FY 2009 quarterly report; to the Committee on Foreign Relations.

EC–1534. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a quarterly report entitled, ''Acceptance of Contributions for Defense Programs, Projects, and Activities; Defense Cooperation Account''; to the Committee on Foreign Relations.

EC–1535. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of the Treasury, transmitting, the report of a draft bill ''To authorize an amendment to the Articles of Agreement of the International Bank for Reconstruction and Development increasing the basic votes of members''; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs:

Special Report entitled ''Activities of the Committee on Banking, Housing, and Urban Affairs During the 110th Congress Pursuant to Rule XXVI of the Standing Rules of the United States Senate'' (Rept. No. 111–17).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

*Ines R. Triay, of New Mexico, to be an Assistant Secretary of Energy (Environmental Management).

*Jo-Ellen Darcy, of Maryland, to be an Assistant Secretary of the Army.

*Michael Nacht, of California, to be an Assistant Secretary of Defense.

*Elizabeth Lee King, of the District of Columbia, to be an Assistant Secretary of Defense.

*Wallace C. Gregson, of Colorado, to be an Assistant Secretary of Defense.

*Air Force nomination of Col. Michael W. Miller, to be Brigadier General.

*Air Force nomination of Maj. Gen. Marc E. Rogers, to be Lieutenant General.

*Air Force nomination of Maj. Gen. Thomas J. Owen, to be Lieutenant General.

*Air Force nomination of Maj. Gen. Robert R. Allardice, to be Lieutenant General.

*Air Force nomination of Lt. Gen. Frank G. Klotz, to be Lieutenant General.

*Air Force nominations beginning with Brigadier General Thomas K. Andersen and ending with Brigadier General Janet C. Wolfenbarger, which nominations were received by the Senate and appeared in the Congressional Record on April 20, 2009. (minus 2 nominees: Brigadier General Richard T. Devereaux; Brigadier General Noel T. Jones)

*Air Force nomination of Maj. Gen. Larry O. Spencer, to be Lieutenant General.

*Navy nomination of Adm. Jonathan W. Greenert, to be Admiral.

*Navy nomination of Adm. Patrick M. Walsh, to be Admiral.

*Navy nomination of Vice Adm. John C. Harvey, Jr., to be Admiral.

*Navy nomination of Vice Adm. Samuel J. Locklear III, to be Vice Admiral.

*Navy nomination of Rear Adm. Richard W. Hunt, to be Vice Admiral.

*Navy nomination of Rear Adm. Mark D. Harnitchek, to be Vice Admiral.

*Navy nomination of Capt. Mark L. Tidd, to be Rear Admiral (lower half).

*Marine Corps nominations beginning with Brigadier General George J. Allen and ending with Brigadier General John E. Wissler, which nominations were received by the Senate and appeared in the Congressional Record on March 3, 2009.

*Marine Corps nominations beginning with Colonel John J. Broadmeadow and ending with Colonel Vincent R. Stewart, which nominations were received by the Senate and appeared in the Congressional Record on April 23, 2009.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Michael F. Adames and ending with Kathryn D. Vanderlinden, which nominations were received by the Senate and appeared in the Congressional Record on March 10, 2009.

Air Force nominations beginning with Paul L. Cannon and ending with Cherri S. Wheeler, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2009.

Air Force nominations beginning with Richard Edward Alford and ending with Richard D. Younts, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2009.

Air Force nomination of George E. Loughran, to be Colonel.

Air Force nomination of Raymond B. Abarca, to be Lieutenant Colonel.

Air Force nomination of Ian C. B. Diaz, to be Major.

Air Force nominations beginning with William T. Houston and ending with David L. Wells II, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

Army nomination of Elizabeth M. Sherr, to be Major.

Army nomination of Erin T. Doyle, to be Major.

Army nomination of Scott A. Bier, to be Major.

Army nomination of Robert G. Young, to be Colonel.

Army nominations beginning with George R. Berry and ending with Perry W. Sarver, Jr., which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

Army nominations beginning with Michael G. Amundson and ending with Paul C. Thorn, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

Army nominations beginning with Buster D. Akers, Jr. and ending with Michael T. Zell, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

Marine Corps nominations beginning with John W. Hahn IV and ending with Stephanie L. Malmanger, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

Navy nomination of Michael T. Echols, to be Commander.

Navy nomination of Gregory J. Hazlett, to be Lieutenant Commander.

Navy nomination of Brian J. Ellis, Jr., to be Lieutenant Commander.

Navy nomination of Jesus S. Moreno, to be Lieutenant Commander.

Navy nomination of Colleen L. Jackson, to be Lieutenant Commander.

Navy nomination of Gregory P. Mitchell, to be Lieutenant Commander.

Navy nominations beginning with Jonathan V. Ahlstrom and ending with Joel E. Yoder, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2009.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. SNOWE (for herself and Mr. BINGAMAN):

S. 983. A bill to reform the essential air service program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. BOXER (for herself, Mr. BOND, and Mr. KENNEDY):

S. 984. A bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. LINCOLN (for herself, Mr. BUNNING, Mr. LIEBERMAN, Ms. SNOWE, Mr. KERRY, and Ms. COLLINS):

S. 985. A bill to establish and provide for the treatment of Individual Development Accounts, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU (for herself, Mr. BAYH, and Mrs. LINCOLN):

S. 986. A bill to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in foster care; to the Committee on Finance.

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. WHITEHOUSE, Mr. BROWN, and Mrs. MURRAY):

S. 987. A bill to protect girls in developing countries through the prevention of child marriage, and for other purposes; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. BINGAMAN):

S. 988. A bill to amend the Internal Revenue Code of 1986 to allow small businesses to set up simple cafeteria plans to provide nontaxable employee benefits to their employees, to make changes in the requirements for cafeteria plans, flexible spending accounts, and benefits provided under such plans or accounts, and for other purposes; to the Committee on Finance.

By Mr. MENENDEZ (for himself, Mr. LIEBERMAN, and Mr. SANDERS):

S. 989. A bill to amend the Public Utility Regulatory Policies Act of 1978 to promote energy independence, increase competition, democratize energy generation, and provide for the connection of certain small electric energy generation systems, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. STABENOW (for herself, Mr. LUGAR, and Mr. SANDERS):

S. 990. A bill to amend the Richard B. Russell National School Lunch Act to expand access to healthy afterschool meals for school children in working families; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INHOFE:

S. 991. A bill to declare English as the official language of the United States, to establish a uniform English language rule for naturalization, and to avoid misconstructions of the English language texts of the laws of the United States, pursuant to Congress' powers to provide for the general welfare of the United States and to establish a rule of naturalization under article I, section 8, of the Constitution; to the Committee on Homeland Security and Governmental Affairs.

By Mr. INHOFE (for himself, Mr. ALEXANDER, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURR, Mr. SHELBY, Mr. VITTER, Mr. BUNNING, Mr. COBURN, Mr. WICKER, Mr. DEMINT, Mr. ENZI, Mr. THUNE, Mr. CORKER, and Mr. COCHRAN):

S. 992. A bill to amend title 4, United States Code, to declare English as the national language of the Government of the United States, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. VITTER (for himself, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. GRASSLEY, Mr. ISAKSON, Mr. CRAPO, Mr. CHAMBLISS, Mr. BUNNING, Mr. INHOFE, Mr. DEMINT, Mr. BURR, Mr. JOHANNS, Mr. ENZI, Mr. WICKER, Mr. THUNE, Mr. RISCH, and Ms. MURKOWSKI):

S.J. Res. 15. A joint resolution proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself and Mr. CONRAD):

S. Res. 132. A resolution commending the heroic efforts of the people fighting the floods in North Dakota; considered and agreed to.

By Ms. KLOBUCHAR (for herself and Mr. THUNE):

S. Res. 133. A resolution designating May 1 through May 7, 2009, as ''National Physical Education and Sport Week''; considered and agreed to.

By Ms. LANDRIEU (for herself, Mr. ALEXANDER, Mr. LIEBERMAN, Mr. CARPER, Mr. BAYH, Mr. BURR, Mr. GREGG, and Mr. VITTER):

S. Res. 134. A resolution congratulating the students, parents, teachers, and administrators at charter schools across the United States for their ongoing contributions to education and supporting the ideas and goals of the 10th annual National Charter Schools Week, May 3 through May 9, 2009; considered and agreed to.

By Mr. BURR (for himself and Mrs. FEINSTEIN):

S. Res. 135. A resolution designating May 8, 2009, as ''Military Spouse Appreciation Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 52

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 52, a bill to amend title XIX of the Social Security Act to provide 100 percent reimbursement for medical assistance provided to a Native Hawaiian through a Federally-qualified health center or a Native Hawaiian health care system.

S. 144

At the request of Mr. KERRY, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 211

At the request of Mrs. MURRAY, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral on human services and volunteer services, and for other purposes.

S. 407

At the request of Mr. AKAKA, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 407, a bill to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

S. 417

At the request of Mr. LEAHY, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 417, a bill to enact a safe, fair, and responsible state secrets privilege Act.

S. 421

At the request of Mr. SPECTER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 421, a bill to impose a temporary moratorium on the phase out of the Medicare hospice budget neutrality adjustment factor.

S. 423

At the request of Mr. AKAKA, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 423, a bill to amend title 38, United States Code, to authorize advance appropriations for certain medical care accounts of the Department of Veterans Affairs by providing two-fiscal year budget authority, and for other purposes.

S. 449

At the request of Mr. SPECTER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 449, a bill to protect free speech.

S. 454

At the request of Mr. LEVIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 454, a bill to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

At the request of Mr. INHOFE, his name was added as a cosponsor of S. 454, supra.

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of S. 454, supra.

S. 468

At the request of Ms. STABENOW, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 468, a bill to amend title XVIII of the Social Security Act to improve access to emergency medical services and the quality and efficiency of care furnished in emergency departments of hospitals and critical access hospitals by establishing a bipartisan commission to examine factors that affect the effective delivery of such services, by providing for additional payments for certain physician services furnished in such emergency departments, and by establishing a Centers for Medicare & Medicaid Services Working Group, and for other purposes.

S. 475

At the request of Mr. BURR, the names of the Senator from Kansas (Mr.

BROWNBACK), the Senator from Kentucky (Mr. BUNNING) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 475, a bill to amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes.

S. 491

At the request of Mr. WEBB, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 491, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 561

At the request of Mr. BINGAMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 561, a bill to authorize a supplemental funding source for catastrophic emergency wildland fire suppression activities on Department of the Interior and National Forest System lands, to require the Secretary of the Interior and the Secretary of Agriculture to develop a cohesive wildland fire management strategy, and for other purposes.

S. 581

At the request of Mr. BENNET, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 581, a bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to require the exclusion of combat pay from income for purposes of determining eligibility for child nutrition programs and the special supplemental nutrition program for women, infants, and children.

S. 614

At the request of Mrs. HUTCHISON, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 614, a bill to award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP'').

S. 638

At the request of Mrs. MURRAY, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 638, a bill to provide grants to promote financial and economic literacy.

S. 700

At the request of Mr. BINGAMAN, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Pennsylvania (Mr. CASEY) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 700, a bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for Medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes.

S. 799

At the request of Mr. DURBIN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 799, a bill to designate as wilderness certain Federal portions of the red rock canyons of the Colorado Plateau and the Great Basin Deserts in the State of Utah for the benefit of present and future generations of people in the United States.

S. 816

At the request of Mr. CRAPO, the names of the Senator from Utah (Mr. HATCH), the Senator from South Carolina (Mr. GRAHAM) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of S. 816, a bill to preserve the rights granted under second amendment to the Constitution in national parks and national wildlife refuge areas.

S. 849

At the request of Mr. CARPER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 849, a bill to require the Administrator of the Environmental Protection Agency to conduct a study on black carbon emissions.

S. 870

At the request of Mrs. LINCOLN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 870, a bill to amend the Internal Revenue Code of 1986 to expand the credit for renewable electricity production to include electricity produced from biomass for on-site use and to modify the credit period for certain facilities producing electricity from open-loop biomass.

S. 930

At the request of Mrs. MURRAY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 930, a bill to promote secure ferry transportation and for other purposes.

S. 934

At the request of Mr. HARKIN, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Michigan (Ms. STABENOW), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 934, a bill to amend the Child Nutrition Act of 1966 to improve the nutrition and health of schoolchildren and protect the Federal investment in the national school lunch and breakfast programs by updating the national school nutrition standards for foods and beverages sold outside of school meals to conform to current nutrition science.

S. 941

At the request of Mr. CRAPO, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 943

At the request of Mr. THUNE, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 943, a bill to amend the Clean Air Act to permit the Administrator of the Environmental Protection Agency to waive the lifecycle greenhouse gas emission reduction requirements for renewable fuel production, and for other purposes.

S. 962

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 962, a bill to authorize appropriations for fiscal years 2009 through 2013 to promote an enhanced strategic partnership with Pakistan and its people, and for other purposes.

S. 982

At the request of Mr. DORGAN, his name was added as a cosponsor of S. 982, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

At the request of Mrs. SHAHEEN, her name was added as a cosponsor of S. 982, supra.

At the request of Ms. KLOBUCHAR, her name was added as a cosponsor of S. 982, supra.

S.J. RES. 14

At the request of Mr. BROWNBACK, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S.J. Res. 14, a joint resolution to acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States.

S. RES. 7

At the request of Mr. INOUYE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 7, a resolution expressing the sense of the Senate regarding designation of the month of November as ''National Military Family Month''.

S. RES. 111

At the request of Mr. KOHL, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 111, a resolution recognizing June 6, 2009, as the 70th anniversary of the tragic date when the M.S. St. Louis, a ship carrying Jewish refugees from Nazi Germany, returned to Europe after its passengers were refused admittance to the United States.

AMENDMENT NO. 1036

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 1036 proposed to S. 896, a bill to prevent mortgage foreclosures and enhance mortgage credit availability.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. BINGAMAN):

S. 983. A bill to reform the essential air service program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to join my colleague, Senator BINGAMAN, to introduce the bipartisan Rural Aviation Improvement Act. I am proud to join the senior Senator from New Mexico, a steadfast and resolute guardian of commercial aviation service to all communities, particularly rural areas that would otherwise be deprived of any air service.

It has always been true that reliable air service to our Nation's rural areas is not simply a luxury or a convenience. It is an imperative. Ask any town manager or mayor of a small community how critical aviation is to economic development. All of us in the Senate who come from rural states understand the vital role aviation plays in the moving of people and goods to and from areas that would otherwise face a paucity of transportation options. Quite frankly, I have long held serious concerns about the impact deregulation of the airline industry has had on small cities and smaller towns in rural areas, like those in my home State of Maine. That fact is, since deregulation, many of these communities across the country have experienced a decline in flights and size of aircraft while seeing an increase in fares. More than 300 have lost air service altogether.

This legislation will serve to improve the long-underfunded Essential Air Service program. The additional commitment of resources will augment the ability of the program to achieve its desired goals, reducing the impact on the general fund while providing small communities with a greater degree of certainty when planning future improvements or bringing enhanced service to their airports. The bill also gives those same communities a greater role in retaining and determining the sort of air service which they receive, and assists in making that service sustainable.

Increasingly, the Essential Air Service program has been plagued with a decline in the number of airlines willing to provide this critical link to the national transportation network. Not only have we lost a rash of participants in the program due to wildly fluctuating fuel costs and the omnipresent economic downturn, but in addition, a few 'bad actors' have jeopardized commercial aviation for entire regions by submitting low-ball contracts to the Department of Transportation and then reneging on their commitment to the extent and quality of their service. Our bill will not only establish a system of minimum requirements for contracts to protect these small cities that rely on EAS, but it will also extend those contracts to 4 years from the current 2. This gives a heightened degree of stability in terms of air service, rather than having communities negotiating new contracts or receiving service from entirely new carriers every 18 months. Actively encouraging communities to get involved in the process, and build relationships with the carriers who serve them, can only bolster the quality of the program.

In the final analysis, everyone benefits when our Nation is at its strongest economically. Most importantly in this case, greater prosperity everywhere will, in the long run, mean more passengers for the airlines. We cannot afford to ignore rural America—which contains nearly a quarter of the population—as we move forward with aviation policy and the next generation air traffic system. Therefore, it is very much in our national interests to ensure that every region has reasonable, consistent access to commercial air service. That is why I strongly believe the federal government has an obligation to fulfill the commitment it made to these communities when Congress deregulated the airlines in 1978; to safeguard their ability to continue commercial air service.

By Mrs. BOXER (for herself, Mr. BOND, and Mr. KENNEDY):

S. 984. A bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, today I am pleased to join Senator KENNEDY and Senator BOND in introducing the Arthritis Prevention, Control and Cure Act, which makes a national commitment to find new ways to prevent and treat arthritis, and care for the patients that suffer from it.

Many people do not know that arthritis is the leading cause of disability in the U.S. As many as 46 million Americans, including almost 300,000 children, live every day with the pain of arthritis. Not only does this disease affect the health and quality of life of millions of Americans, arthritis also costs our Nation's economy an estimated $128 billion annually in visits to physicians, surgeries and missed work days.

By the year 2030, an estimated 67 million Americans will suffer from the debilitating pain and limited mobility caused by arthritis. It is past time that we came together to find a cure for arthritis and invest in the scientific research needed to conquer this disease.

Specifically, the Arthritis Prevention, Control and Cure Act would authorize the Secretary of Health and Human Services, HHS, to implement a National Arthritis Action Plan that includes grants for the coordination of research and training, education and outreach, and grants to States and Indian tribes to support comprehensive arthritis control and prevention programs.

I am especially pleased that this legislation would also increase support for efforts to address juvenile arthritis. While there are almost 300,000 children suffering from pediatric arthritis in the U.S., there are only 200 pediatric rheumatologists in the country to treat them. There are 9 States that do not have even one doctor trained specifically to treat these children.

This legislation will provide loan repayment to physicians who agree to practice pediatric rheumatology in underserved areas—so children do not have to travel to another state just to see a doctor.

The bill would also allow the Centers for Disease Control and Prevention to coordinate and expand programs related to juvenile arthritis, collect data and develop a National Juvenile Arthritis Patient Registry.

I hope that my colleagues will join me, Senator BOND and Senator KENNEDY, as well as the Arthritis Foundation, the American College of Rheumatology, and the American Academy of Pediatrics in support of the Arthritis Prevention, Control and Cure Act, to take a critical step forward in helping millions of Americans living with this devastating disease.

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. WHITEHOUSE, Mr. BROWN, and Mrs. MURRAY):

S. 987. A bill to protect girls in developing countries through the prevention of child marriage, and for other purposes; to the Committee on Foreign Relations.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 987

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''International Protecting Girls by Preventing Child Marriage Act of 2009''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Child marriage, also known as ''forced marriage'' or ''early marriage'', is a harmful traditional practice that deprives girls of their dignity and human rights.

(2) Child marriage as a traditional practice, as well as through coercion or force, is a violation of article 16 of the Universal Declaration of Human Rights, which states, ''Marriage shall be entered into only with the free and full consent of intending spouses.''.

(3) According to the United Nations Children's Fund (UNICEF), an estimated 60,000,000 girls in developing countries now ages 20-24 were married under the age of 18, and if present trends continue more than 100,000,000 more girls in developing countries will be married as children over the next decade, according to the Population Council.

(4) Child marriage ''treats young girls as property'' and ''poses grave risks not only to women's basic rights but also their health, economic independence, education, and status in society'', according to the Department of State in 2005.

(5) In 2005, the Department of State conducted a world-wide survey and found child marriage to be a concern in 64 out of 182 countries surveyed, with child marriage most common in sub-Saharan Africa and parts of South Asia.

(6) In Ethiopia's Amhara region, about ½ of all girls are married by age 14, with 95 percent not knowing their husbands before marriage, 85 percent unaware they were to be

married, and 70 percent reporting their first sexual initiation within marriage taking place before their first menstrual period, according to a 2004 Population Council survey.

(7) In some areas of northern Nigeria, 45 percent of girls are married by age 15 and 73 percent by age 18, with age gaps between girls and the husbands averaging between 12 and 18 years.

(8) Between ½ and ¾ of all girls are married before the age of 18 in Niger, Chad, Mali, Bangladesh, Guinea, the Central African Republic, Mozambique, Burkina Faso, and Nepal, according to Demographic Health Survey data.

(9) Factors perpetuating child marriage include poverty, a lack of educational or employment opportunities for girls, parental concerns to ensure sexual relations within marriage, the dowry system, and the perceived lack of value of girls.

(10) Child marriage has negative effects on the health of girls, including significantly increased risk of maternal death and morbidity, infant mortality and morbidity, obstetric fistula, and sexually transmitted diseases, including HIV/AIDS.

(11) According to the United States Agency for International Development (USAID), increasing the age at first birth for a woman will increase her chances of survival. Currently, pregnancy and childbirth complications are the leading cause of death for women 15 to 19 years old in developing countries.

(12) In developing countries, girls 15 years of age are 5 times more likely to die in childbirth than women in their 20s.

(13) Child marriage can result in bonded labor or enslavement, commercial sexual exploitation, and violence against the victims, according to UNICEF.

(14) Out-of-school or unschooled girls are at greater risk of child marriage while girls in school face pressure to withdraw from school when secondary school requires monetary costs, travel, or other social costs, including lack of lavatories and supplies for menstruating girls and increased risk of sexual violence.

(15) In Mozambique 60 percent of girls with no education are married by age 18, compared to 10 percent of girls with secondary schooling and less than 1 percent of girls with higher education.

(16) According to UNICEF, in 2005 it was estimated that ''about half of girls in Sub-Saharan Africa who drop out of primary school do so because of poor water and sanitation facilities''.

(17) UNICEF reports that investments in improving school sanitation resulted in a 17 percent increase in school enrollment for girls in Guinea and an 11 percent increase for girls in Bangladesh.

(18) Investments in girls' schooling, creating safe community spaces for girls, and programs for skills building for out-of-school girls are all effective and demonstrated strategies for preventing child marriage and creating a pathway to empower girls by addressing conditions of poverty, low status, and norms that contribute to child marriage.

(19) Most countries with high rates of child marriage have a legally-established minimum age of marriage, yet child marriage persists due to strong traditional norms and the failure to enforce existing laws.

(20) In Afghanistan, where the legal age of marriage for girls is 16 years, 57 percent of marriages involve girls below the age of 16, including girls younger than 10 years, according to the United Nations Children's Fund (UNICEF).

(21) Secretary of State Hillary Clinton has stated that ''child marriage is a clear and unacceptable violation of human rights, and that the Department of State denounces all cases of child marriage as child abuse''.

SEC. 3. CHILD MARRIAGE DEFINED.

In this Act, the term ''child marriage'' means the marriage of a girl or boy, not yet the minimum age for marriage stipulated in law in the country in which the girl or boy is a resident.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) child marriage is a violation of human rights and the prevention, and elimination of child marriage should be a foreign policy goal of the United States;

(2) the practice of child marriage undermines United States investments in foreign assistance to promote education and skills building for girls, reduce maternal and child mortality, reduce maternal illness, halt the transmission of HIV/AIDS, prevent gender-based violence, and reduce poverty; and

(3) expanding educational opportunities for girls, economic opportunities for women, and reducing maternal and child mortality are critical to achieving the Millennium Development Goals and the global health and development objectives of the United States, including efforts to prevent HIV/AIDS.

SEC. 5. ASSISTANCE TO PREVENT THE INCIDENCE OF CHILDHOOD MARRIAGE IN DEVELOPING COUNTRIES.

(a) ASSISTANCE AUTHORIZED.—The President is authorized to provide assistance, including through multilateral, nongovernmental, and faith-based organizations, to prevent the incidence of child marriage in developing countries and to promote the educational, health, economic, social, and legal empowerment of girls and women as part of the strategy established pursuant to section 6 to prevent child marriage in developing countries.

(b) PRIORITY.—In providing assistance authorized under subsection (a), the President shall give priority to—

(1) areas or regions in developing countries in which 15 percent of girls under the age of 15 are married or 40 percent of girls under the age of 18 are married; and

(2) activities to—

(A) expand and replicate existing community-based programs that are successful in preventing the incidence of child marriage;

(B) establish pilot projects to prevent child marriage; and

(C) share evaluations of successful programs, program designs, experiences, and lessons.

(c) COORDINATION.—Assistance authorized under subsection (a) shall be integrated with existing United States programs for advancing appropriate age and grade-level basic and secondary education through adolescence, ensure school enrollment and completion for girls, health, income generation, agriculture development, legal rights, and democracy building and human rights, including—

(1) support for community-based activities that encourage community members to address beliefs or practices that promote child marriage and to educate parents, community leaders, religious leaders, and adolescents of the health risks associated with child marriage and the benefits for adolescents, especially girls, of access to education, health care, livelihood skills, microfinance, and savings programs;

(2) enrolling girls in primary and secondary school at the appropriate age and keeping them in age-appropriate grade levels through adolescence;

(3) reducing education fees, and enhancing safe and supportive conditions in primary and secondary schools to meet the needs of girls, including—

(A) access to water and suitable hygiene facilities, including separate lavatories and latrines for girls;

(B) assignment of female teachers;

(C) safe routes to and from school; and

(D) eliminating sexual harassment and other forms of violence and coercion;

(4) ensuring access to health care services and proper nutrition for adolescent girls, which is essential to both their school performance and their economic productivity;

(5) increasing training for adolescent girls and their parents in financial literacy and access to economic opportunities, including livelihood skills, savings, microfinance, and small-enterprise development;

(6) supporting education, including through community and faith-based organizations and youth programs, that helps remove gender stereotypes and the bias against girls used to justify child marriage, especially efforts targeted at men and boys, promotes zero tolerance for violence, and promotes gender equality, which in turn help to increase the perceived value of girls;

(7) creating peer support and female mentoring networks and safe social spaces specifically for girls; and

(8) supporting local advocacy work to provide legal literacy programs at the community level and ensure that governments and law enforcement officials are meeting their obligations to prevent child and forced marriage.

SEC. 6. STRATEGY TO PREVENT CHILD MARRIAGE IN DEVELOPING COUNTRIES.

(a) STRATEGY REQUIRED.—The President, acting through the Secretary of State, shall establish a multi-year strategy to prevent child marriage in developing countries and promote the empowerment of girls at risk of child marriage in developing countries, including by addressing the unique needs, vulnerabilities, and potential of girls under age 18 in developing countries.

(b) CONSULTATION.—In establishing the strategy required by subsection (a), the President shall consult with Congress, relevant Federal departments and agencies, multilateral organizations, and representatives of civil society.

(c) ELEMENTS.—The strategy required by subsection (a) shall—

(1) focus on areas in developing countries with high prevalence of child marriage; and

(2) encompass diplomatic initiatives between the United States and governments of developing countries, with attention to human rights, legal reforms and the rule of law, and programmatic initiatives in the areas of education, health, income generation, changing social norms, human rights, and democracy building.

(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report that includes—

(1) the strategy required by subsection (a);

(2) an assessment, including data disaggregated by age and gender to the extent possible, of current United States-funded efforts to specifically assist girls in developing countries; and

(3) examples of best practices or programs to prevent child marriage in developing countries that could be replicated.

SEC. 7. RESEARCH AND DATA COLLECTION.

The Secretary of State shall work through the Administrator of the United States Agency for International Development and any other relevant agencies of the Department of State, and in conjunction with relevant executive branch agencies as part of their ongoing research and data collection activities, to—

(1) collect and make available data on the incidence of child marriage in countries that receive foreign or development assistance from the United States where the practice of child marriage is prevalent; and

(2) collect and make available data on the impact of the incidence of child marriage and the age at marriage on progress in meeting key development goals.

SEC. 8. DEPARTMENT OF STATE'S COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

The Foreign Assistance Act of 1961 is amended—

(1) in section 116 (22 U.S.C. 2151n), by adding at the end the following new subsection:

''(g) The report required by subsection (d) shall include for each country in which child marriage is prevalent at rates at or above 40 percent in at least one sub-national region, a description of the status of the practice of child marriage in such country. In this subsection, the term 'child marriage' means the marriage of a girl or boy, not yet the minimum age for marriage stipulated in law in the country in which such girl or boy is a resident.''; and

(2) in section 502B (22 U.S.C. 2304), by adding at the end the following new subsection:

''(i) The report required by subsection (b) shall include for each country in which child marriage is prevalent at rates at or above 40 percent in at least one sub-national region, a description of the status of the practice of child marriage in such country. In this subsection, the term 'child marriage' means the marriage of a girl or boy, not yet the minimum age for marriage stipulated in law in the country in which such girl or boy is a resident.''.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

To carry out this Act and the amendments made by this Act, there are authorized to be appropriated such sums as may be necessary for fiscal years 2010 through 2014.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. BINGAMAN):

S. 988. A bill to amend the Internal Revenue Code of 1986 to allow small businesses to set up simple cafeteria plans to provide nontaxable employee benefits to their employees, to make changes in the requirements for cafeteria plans, flexible spending accounts, and benefits provided under such plans or accounts, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the SIMPLE Cafeteria Plan Act of 2009, which will increase the access to quality, affordable health care for millions of small business owners and their employees. I am pleased that my good friends, Senator BOND from Missouri and Senator BINGAMAN from New Mexico, have agreed to cosponsor this critical, bipartisan piece of legislation. We have introduced this legislation together since 2005.

In order to help small businesses increase their employees' access to health insurance and other benefits, and help them compete for talented workers, we are introducing the SIMPLE Cafeteria Plan Act. This bill will enable small business employees to purchase health insurance with tax-free dollars in the same way that many employees of large companies already do—in their cafeteria plans. This legislation is modeled after the Savings Incentive Match Plan for Employees SIMPLE, Pension Plan enacted in 1996.

As former Chair and now Ranking Member of the Senate Small Business Committee, if there's one concern I've heard time and again—from small businesses in Maine and across the country—it's the exorbitant cost to small businesses of providing health insurance to their employees. Throughout America, health insurance premiums have increased by a staggering 89 percent since 2000—far outpacing inflation and wage gains. In Maine, the annual premium for the most heavily subscribed policy in the small group insurance market is $5,400 for individual coverage, and over $16,000 for a family plan.

Clearly our Nation's health care system is terribly broken—and the majority of the uninsured—52 percent—are either self-employed, work for a small business with 100 or fewer employees, or are dependent upon someone who does. I am pleased that the Congress is now in the midst of a serious reform effort that will result in a much better system of delivering health care. In order to address the problem of the working uninsured, we must address access and affordability in small businesses. The bill we are introducing today will do just that.

So why are our Nation's small businesses, which are our country's job creators and the true engine of our economic growth, not offering health insurance? Survey after survey tells us that the main reason is that they cannot afford to offer it, or other benefits. Still other small firms can only afford to pay a portion of their employees' health insurance premiums. As a result, countless employees of small business must try to obtain health insurance from the individual market rather than through their work place. As we debate reforming health insurance, we must consider cafeteria plans—Section 125 plans, as they are often known—which are a proven vehicle for access, and should be a key component to reform. I would like to add that another component to reform that must be considered is the SHOP Act, which I reintroduced yesterday with Senators DURBIN and LINCOLN, which would also help to reverse the pernicious problems of access and affordability of health insurance.

Currently, many large employers, and even the Federal Government, allow employees to purchase health insurance, and other qualified benefits, with tax-free dollars. Cafeteria plans allow employers to offer health benefits with pre-tax dollars. As the name suggests, cafeteria plans are programs where employees can purchase a variety of qualified benefits. Specifically, cafeteria plans offer employees great flexibility in selecting their desired benefits while allowing them to disregard those benefits that do not fit their particular needs. Moreover, the employees are usually purchasing benefits at a lower cost because their employers are often able to obtain a reduced group rate prices.

Typically, in cafeteria plans, a combination of employer contributions and employee contributions are used to fund the accounts that employees used to buy specific benefits. Under current law, qualified benefits include health insurance, dependent-care reimbursement, life and disability insurance. Unfortunately, long term care insurance is not currently a qualified benefit available for purchase in cafeteria plans. I will come back to long term care insurance in a moment.

Again, cafeteria plans already have a proven record of providing good benefits to a wide group of employees. However, in order for companies to qualify for cafeteria plans they must satisfy the tax code's strict non-discrimination rules and these rules are a major impediment to small employers being able to offer benefits to employees. These rules exist to ensure that companies offer the same benefits to their low-wage employees along with their highly compensated employees.

Now, I want to be clear. I believe that these non-discrimination rules serve a legitimate purpose and are necessary employee protections. Indeed, we need to ensure that employers are not able to game the tax system to benefit only upper income employees or the business owners. As with the SIMPLE pension plan, a small business employer that is willing to make a minimum contribution for all employees, or who is willing to match contributions, will be permitted to waive the non-discrimination rules that currently prevent them from otherwise offering these benefits. This structure has worked extraordinarily well in the pension area with little risk of abuse. I am confident that it will be just as successful when it comes to broad-based benefits offered through cafeteria plans. The SIMPLE Cafeteria Plan Act requires the employer to either match contributions of 3 percent of an employee's income or contribute 2 percent without the employee's contribution.

An essential change allows small business owners themselves to participate in cafeteria plans generally. Current law punitively prohibits the owners of small businesses from participating in these benefit plans. As a result, if a business owner is unable to obtain any benefit for himself or his own family he is unlikely to undertake the time and financial commitment of offering the benefit. It is time to remove this punitive prohibition which I believe will expand access to this flexible platform for employee benefits.

Another improvement generally applicable to all cafeteria plan law updates the rules regarding depended care flexible spending accounts, DCFSA. The bill increases the amount that can be excluded to $7,500 for one dependent or $10,000 for two or more dependents. Had the original $5,000 limit for DCFSA been indexed for inflation when it was created in 1986, it would have risen to $9,692. The bill also indexes these amounts for future inflation so that families will not see an erosion of their benefit in the future. In order for millions of working moms to be able to

work outside of the home, they must have help in addressing child care costs. It is critical to note that it is not just working parents but an increasing number of baby-boom adults who need help caring for aging dependent parents. Increasing the dependent care exclusion in flexible spending accounts is an essential update to cafeteria plan law for working families.

Another provision of the bill generally revises the use it or lose it rule under current law, and permits participants to carry over up to $500 left in a health-care or dependent-care flexible spending account to the next plan year. Such unused contributions could also be carried over to the employee's retirement account, such as a 401(k) plan, or to a Health Savings Account. In either case, any carried over contributions will reduce the amount that the employee could contribute to the flexible spending account or pension plan in the subsequent year. The bill indexes the carry-over amount for inflation.

Finally, the bill also works to address our aging populations' need for long-term care insurance which is also a probable component to the debate on health care reform. In the U.S., nearly half of all seniors age 65 or older will need long-term care at some point in their life. Unfortunately, most seniors have not adequately prepared for this possibility, just as many working age individuals have not given much thought to their eventual long-term care needs. With the cost of a private room in a nursing home averaging more than $74,000 annually, many Americans risk losing their life savings—and jeopardizing their children's inheritance—by failing to properly plan for the long-term care services they will need as they grow older.

To address this problem, this bill would allow employees to purchase long-term care insurance coverage through their cafeteria plans and flexible spending arrangements. Expanding eligibility of these benefits will make long-term care insurance more affordable and help Americans prepare for their future long-term care needs.

If more small business owners are able to offer their employees the chance to enjoy a variety of employee benefits these firms will be more likely to attract, recruit, and retain talented workers. This will ultimately make small enterprises more competitive. Therefore, I urge my colleagues to join Senator BOND and Senator BINGAMAN and me in cosponsoring this important legislation as we work together to achieve broader health care reform.

Mr. President, I ask unanimous consent that the text of the bill and a bill summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 988

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''SIMPLE Cafeteria Plan Act of 2009''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

''(i) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

''(1) IN GENERAL.—An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement with respect to benefits provided under the plan during such year.

''(2) SIMPLE CAFETERIA PLAN.—For purposes of this subsection, the term 'simple cafeteria plan' means a cafeteria plan—

''(A) which is established and maintained by an eligible employer, and

''(B) with respect to which the contribution requirements of paragraph (3), and the eligibility and participation requirements of paragraph (4), are met.

''(3) CONTRIBUTIONS REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if, under the plan—

''(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee's elective plan contributions do not exceed 3 percent of the employee's compensation, or

''(ii) the employer is required, without regard to whether an employee makes any elective plan contribution, to make a contribution to the plan on behalf of each employee who is not a highly compensated or key employee and who is eligible to participate in the plan in an amount equal to at least 2 percent of the employee's compensation.

''(B) MATCHING CONTRIBUTIONS ON BEHALF OF HIGHLY COMPENSATED AND KEY EMPLOYEES.—The requirements of subparagraph (A)(i) shall not be treated as met if, under the plan, the rate of matching contribution with respect to any elective plan contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

''(C) SPECIAL RULES.—

''(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph with respect to any elective plan contributions of any compensation, or employer contributions required under this paragraph with respect to any compensation, if such contributions are made no later than the 15th day of the month following the last day of the calendar quarter which includes the date of payment of the compensation.

''(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph may be made either to the plan to provide benefits offered under the plan or to any person as payment for providing benefits offered under the plan.

''(iii) ADDITIONAL CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to the plan in addition to contributions required under subparagraph (A).

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) ELECTIVE PLAN CONTRIBUTION.—The term 'elective plan contribution' means any amount which is contributed at the election of the employee and which is not includible in gross income by reason of this section.

''(ii) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

''(iii) KEY EMPLOYEE.—The term 'key employee' has the meaning given such term by section 416(i).

''(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

''(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

''(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

''(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan employees—

''(i) who have less than 1 year of service with the employer as of any day during the plan year,

''(ii) who have not attained the age of 21 before the close of a plan year,

''(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

''(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

''(5) ELIGIBLE EMPLOYER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible employer' means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

''(B) EMPLOYERS NOT IN EXISTENCE DURING PRECEDING YEAR.—If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

''(C) GROWING EMPLOYERS RETAIN TREATMENT AS SMALL EMPLOYER.—If—

''(i) an employer was an eligible employer for any year (a 'qualified year'), and

''(ii) such employer establishes a simple cafeteria plan for its employees for such year, then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer employs an average of 200 more employees on business days during any year preceding any such subsequent year.

''(D) SPECIAL RULES.—

''(i) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(ii) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person.

''(6) APPLICABLE NONDISCRIMINATION REQUIREMENT.—For purposes of this subsection, the term 'applicable nondiscrimination requirement' means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

''(7) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2009.

SEC. 3. MODIFICATIONS OF RULES APPLICABLE TO CAFETERIA PLANS.

(a) APPLICATION TO SELF-EMPLOYED INDIVIDUALS.—

(1) IN GENERAL.—Section 125(d) (defining cafeteria plan) is amended by adding at the end the following new paragraph:

''(3) EMPLOYEE TO INCLUDE SELF-EMPLOYED.—

''(A) IN GENERAL.—The term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(B) LIMITATION.—The amount which may be excluded under subsection (a) with respect to a participant in a cafeteria plan by reason of being an employee under subparagraph (A) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the cafeteria plan is established.''.

(2) APPLICATION TO BENEFITS WHICH MAY BE PROVIDED UNDER CAFETERIA PLAN.—

(A) GROUP-TERM LIFE INSURANCE.—Section 79 (relating to group-term life insurance provided to employees) is amended by adding at the end the following new subsection:

''(f) EMPLOYEE INCLUDES SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under the exceptions contained in subsection (a) or (b) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the individual is so treated.''.

(B) ACCIDENT AND HEALTH PLANS.—Subsection (g) of section 105 (relating to amounts received under accident and health plans) is amended to read as follows:

''(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under this section by reason of subsection (b) or (c) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the accident or health insurance was established.''.

(C) CONTRIBUTIONS BY EMPLOYERS TO ACCIDENT AND HEALTH PLANS.—

(i) IN GENERAL.—Section 106, as amended by subsection (b), is amended by inserting after subsection (b) the following new subsection:

''(c) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under subsection (a) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the accident or health insurance was established.''.

(ii) CLARIFICATION OF LIMITATIONS ON OTHER COVERAGE.—The first sentence of section 162(l)(2)(B) is amended to read as follows: ''Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any subsidized health plan maintained by any employer (other than an employer described in section 401(c)(4)) of the taxpayer or the spouse of the taxpayer.''.

(b) LONG-TERM CARE INSURANCE PERMITTED TO BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—The last sentence of section 125(f) (defining qualified benefits) is amended to read as follows: ''Such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount of such payment does not exceed the eligible long-term care premiums (as defined in section 213(d)(10)) for such contract.''.

(2) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106 (relating to contributions by employer to accident and health plans) is amended by striking subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 4. MODIFICATION OF RULES APPLICABLE TO FLEXIBLE SPENDING ARRANGEMENTS.

(a) MODIFICATION OF RULES.—

(1) IN GENERAL.—Section 125, as amended by section 2, is amended by redesignating subsections (j) and (k) as subsections (k) and (l), respectively, and by inserting after subsection (i) the following new subsection:

''(j) SPECIAL RULES APPLICABLE TO FLEXIBLE SPENDING ARRANGEMENTS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a flexible spending or similar arrangement solely because under the plan or arrangement—

''(A) the amount of the reimbursement for covered expenses at any time may not exceed the balance in the participant's account for the covered expenses as of such time,

''(B) except as provided in paragraph (4)(A)(ii), a participant may elect at any time specified by the plan or arrangement to make or modify any election regarding the covered benefits, or the level of covered benefits, of the participant under the plan, and

''(C) a participant is permitted access to any unused balance in the participant's accounts under such plan or arrangement in the manner provided under paragraph (2) or (3).

''(2) CARRYOVERS AND ROLLOVERS OF UNUSED BENEFITS IN HEALTH AND DEPENDENT CARE ARRANGEMENTS.—

''(A) IN GENERAL.—A plan or arrangement may permit a participant in a health flexible spending arrangement or dependent care flexible spending arrangement to elect—

''(i) to carry forward any aggregate unused balances in the participant's accounts under such arrangement as of the close of any year to the succeeding year, or

''(ii) to have such balance transferred to a plan described in subparagraph (E).

Such carryforward or transfer shall be treated as having occurred within 30 days of the close of the year.

''(B) DOLLAR LIMIT ON CARRYFORWARDS.—

''(i) IN GENERAL.—The amount which a participant may elect to carry forward under subparagraph (A)(i) from any year shall not exceed $500. For purposes of this paragraph, all plans and arrangements maintained by an employer or any related person shall be treated as 1 plan.

''(ii) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2010, the $500 amount under clause (i) shall be increased by an amount equal to—

''(I) $500, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting '2009' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this clause is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

''(C) EXCLUSION FROM GROSS INCOME.—No amount shall be required to be included in gross income under this chapter by reason of any carryforward or transfer under this paragraph.

''(D) COORDINATION WITH LIMITS.—

''(i) CARRYFORWARDS.—The maximum amount which may be contributed to a health flexible spending arrangement or dependent care flexible spending arrangement for any year to which an unused amount is carried under this paragraph shall be reduced by such amount.

''(ii) ROLLOVERS.—Any amount transferred under subparagraph (A)(ii) shall be treated as an eligible rollover under section 219, 223(f)(5), 401(k), 403(b), or 457, whichever is applicable, except that—

''(I) the amount of the contributions which a participant may make to the plan under any such section for the taxable year including the transfer shall be reduced by the amount transferred, and

''(II) in the case of a transfer to a plan described in clause (ii) or (iii) of subparagraph (E), the transferred amounts shall be treated as elective deferrals for such taxable year.

''(E) PLANS.—A plan is described in this subparagraph if it is—

''(i) an individual retirement plan,

''(ii) a qualified cash or deferred arrangement described in section 401(k),

''(iii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

''(iv) an eligible deferred compensation plan described in section 457, or

''(v) a health savings account described in section 223.

''(3) DISTRIBUTION UPON TERMINATION.—

''(A) IN GENERAL.—A plan or arrangement may permit a participant (or any designated heir of the participant) to receive a cash payment equal to the aggregate unused account balances in the plan or arrangement as of the date the individual is separated (including by death or disability) from employment with the employer maintaining the plan or arrangement.

''(B) INCLUSION IN INCOME.—Any payment under subparagraph (A) shall be includible in gross income for the taxable year in which such payment is distributed to the employee.

''(4) TERMS RELATING TO FLEXIBLE SPENDING ARRANGEMENTS.—

''(A) FLEXIBLE SPENDING ARRANGEMENTS.—

''(i) IN GENERAL.—For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions).

''(ii) ELECTIONS REQUIRED.—A plan or arrangement shall not be treated as a flexible spending arrangement unless a participant may at least 4 times during any year make or modify any election regarding covered benefits or the level of covered benefits.

''(B) HEALTH AND DEPENDENT CARE ARRANGEMENTS.—The terms 'health flexible spending arrangement' and 'dependent care flexible spending arrangement' means any flexible spending arrangement (or portion thereof) which provides payments for expenses incurred for medical care (as defined in section 213(d)) or dependent care (within the meaning of section 129), respectively.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 125 is amended by inserting ''and flexible spending arrangements'' after ''plans''.

(B) The item relating to section 125 in the table of sections for part III of subchapter B of chapter 1 is amended by inserting ''and flexible spending arrangements'' after ''plans''.

(b) TECHNICAL AMENDMENTS.—

(1) Section 106 is amended by striking subsection (e) (relating to FSA and HRA Terminations to Fund HSAs).

(2) Section 223(c)(1)(B)(iii)(II) is amended to read as follows:

''(II) the individual is transferring the entire balance of such arrangement as of the end of the plan year to a health savings account pursuant to section 125(j)(2)(A)(ii), in accordance with rules prescribed by the Secretary.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5. RULES RELATING TO EMPLOYER-PROVIDED HEALTH AND DEPENDENT CARE BENEFITS.

(a) HEALTH BENEFITS.—Section 106, as amended by section 4(b)(1), is amended by adding at the end the following new subsection:

''(e) LIMITATION ON CONTRIBUTIONS TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

''(1) IN GENERAL.—Gross income of an employee for any taxable year shall include employer-provided coverage provided through 1 or more health flexible spending arrangements (within the meaning of section 125(j)) to the extent that the amount otherwise excludable under subsection (a) with regard to such coverage exceeds the applicable dollar limit for the taxable year.

''(2) APPLICABLE DOLLAR LIMIT.—For purposes of this subsection—

''(A) IN GENERAL.—The applicable dollar limit for any taxable year is an amount equal to the sum of—

''(i) $7,500, plus

''(ii) if the arrangement provides coverage for 1 or more individuals in addition to the employee, an amount equal to one-third of the amount in effect under clause (i) (after adjustment under subparagraph (B)).

''(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning in any calendar year after 2010, the $7,500 amount under subparagraph (A) shall be increased by an amount equal to—

''(i) $7,500, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting '2009' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this subparagraph is not a multiple of $100, such dollar amount shall be rounded to the next lowest multiple of $100.''.

(b) DEPENDENT CARE.—

(1) EXCLUSION LIMIT.—

(A) IN GENERAL.—Section 129(a)(2) (relating to limitation on exclusion) is amended—

(i) by striking ''$5,000'' and inserting ''the applicable dollar limit'', and

(ii) by striking ''$2,500'' and inserting ''one-half of such limit''.

(B) APPLICABLE DOLLAR LIMIT.—Section 129(a) is amended by adding at the end the following new paragraph:

''(3) APPLICABLE DOLLAR LIMIT.—For purposes of this subsection—

''(A) IN GENERAL.—The applicable dollar limit is $7,500 ($10,000 if dependent care assistance is provided under the program to 2 or more qualifying individuals of the employee).

''(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after 2010, each dollar amount under subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '2009' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this clause is not a multiple of $100, such dollar amount shall be rounded to the next lowest multiple of $100.''.

(2) AVERAGE BENEFITS TEST.—

(A) IN GENERAL.—Section 129(d)(8)(A) (relating to benefits) is amended—

(i) by striking ''55 percent'' and inserting ''60 percent'', and

(ii) by striking ''highly compensated employees'' the second place it appears and inserting ''employees receiving benefits''.

(B) SALARY REDUCTION AGREEMENTS.—Section 129(d)(8)(B) (relating to salary reduction agreements) is amended—

(i) by striking ''$25,000'' and inserting ''$30,000'', and

(ii) by adding at the end the following: ''In the case of years beginning after 2010, the $30,000 amount in the first sentence shall be adjusted at the same time, and in the same manner, as the applicable dollar amount is adjusted under subsection (a)(3)(B).''.

(3) PRINCIPAL SHAREHOLDERS OR OWNERS.—Section 129(d)(4) (relating to principal shareholders and owners) is amended by adding at the end the following: ''In the case of any failure to meet the requirements of this paragraph for any year, amounts shall only be required by reason of the failure to be included in gross income of the shareholders or owners who are members of the class described in the preceding sentence.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

THE SIMPLE CAFETERIA PLAN ACT OF 2009

Small businesses face a crisis when it comes to securing affordable, quality health care and other benefits for their employees. Of the working uninsured, who make up a majority of the uninsured—52 percent—are either self-employed or work for a small business with 100 or fewer employees or are dependent upon someone who does. The SIMPLE Cafeteria Plan Act is modeled after the Savings Incentive Match Plan for Employees (SIMPLE) pension plan enacted in 1996 and it will address access and affordability for health insurance coverage and for other employee benefits. The legislation also updates current law for all cafeteria plans for dependent care flexible spending accounts (DCFSA) and long-term care insurance.

First, the SIMPLE Cafeteria Plan Act will increase access to quality, affordable health care for millions of small business owners and their employees by amending the non-discrimination rules so that the employer must either: (1) make a minimum 3% matching contribution to amounts contributed by non-highly compensated employees to the SIMPLE Cafeteria Plan; or (2) contribute a minimum of 2% of compensation on behalf of each non-highly compensated employee eligible to participate in the plan. The bill eliminates the prohibition against small business owners' participation in cafeteria plans.

For all flexible spending accounts, the bill revises the ''use it or lose it'' rule under current law, and permits participants to carry over up to $500 left in a health-care or dependent-care flexible spending account to the next plan year. Such unused contributions could also be carried over to the employee's retirement account, such as a 401(k) plan, or to a Health Savings Account. In either case, any carried over contributions will reduce the amount that the employee could contribute to the flexible spending account or pension plan in the subsequent year. The bill indexes the carry-over amount for inflation.

The SIMPLE Cafeteria Act also updates DCFSA limits for any cafeteria plan by increasing the amount that can be excluded to $7,500 for one dependent or $10,000 for two or more dependents. Had the original $5,000 limit for DCFSA been indexed for inflation when it was created in 1986, it would have risen to $9,692. The bill also indexes these amounts for future inflation so that families will not see an erosion of their benefit in the future.

Finally, the bill allows long-term care benefits to be provided under a cafeteria plan, thereby reversing the current law prohibition against such benefits.

By Mr. INHOFE:

S. 991. A bill to declare English as the official language of the United States, to establish a uniform English language rule for naturalization, and to avoid misconstructions of the English language texts of the laws of the United States, pursuant to Congress' powers to provide for the general welfare of the United States and to establish a rule of naturalization under article I, section 8, of the Constitution; to the Committee on Homeland Security and Governmental Affairs.

Mr. INHOFE. Mr. President, today I would like to introduce two pieces of legislation that I believe are of great importance to the unity of the American people—the National Language Act, S. 992, and the English Language Unity Act, S. 991.

The National Language Act recognizes the practical reality of the role of English as our national language and makes English the national language of the U.S. Government, a status in law it has not had before, and calls on government to preserve and enhance the role of English as the national language. It clarifies that there is no entitlement to receive Federal documents and services in languages other than English, unless required by statutory law, recognizing decades of unbroken court opinions that civil rights laws protecting against national origin discrimination do not create rights to Government services and materials in languages other than English. This is especially important considering the Office of Management and Budget has estimated that the annual cost of providing multilingual assistance required by Clinton Executive Order 13166 is $1–$2 billion annually.

The National Language Act is an attempt to legislate a common sense language policy that a nation of immigrants needs one national language. Our Nation was settled by a group of people with a common vision. When members of our society cannot speak a common language, individuals miss out on many opportunities to advance in society and achieve the American Dream. By establishing that there is no entitlement to receive documents or services in languages other than English, we set the precedent that English is a common to us all in the public forum of Government.

The Language Unity Act of 2009, the second piece of legislation that I am introducing today, incorporates all the ideas of the National Language Act, and requires the establishment of a uniform language requirement for naturalization and sets the framework for uniform testing of English language ability for candidates for naturalization.

I want to empower new immigrants coming to our Nation by helping them understand and become successful in their new home. I believe that one of the most important ways immigrants can achieve success is by learning English.

There is enormous popular support for English as the National Language, according to polling that has taken place over the last few years. In polling reported only a few days ago, 86 percent of Oklahomans favor making English the official language; 87 percent of Americans support making English the official language of the U.S.; 77 percent of Hispanics believe English should be the official language of government operations; 82 percent of Americans support legislation that would require the Federal Government to conduct business solely in English; 74 percent of Americans support all election ballots and other government documents be printed in English. This polling data refers to making English an official language of the U.S., or further creating an affirmative responsibility on the part of Government to conduct its operations in English.

My colleagues who have followed this debate will remember that the National Language Act of 2009 is identical to S. 2715, legislation I introduced in the 110th Congress. Most importantly, this language is identical to the English amendments I authored which passed the Senate in 2007 as Senate Amendment 1151, and in 2006 as Senate Amendment 4064, each being part of the Comprehensive Immigration Reform Act of each respective Congress. Senate Amendment 1151 was agreed to in the Senate by a vote of 64–33. Senate Amendment 4064 was agreed to in the Senate by a vote of 62–35. As you can see, there is widespread and bipartisan support for legislation that empowers this nation's immigrants to learn English,

I am especially pleased to be introducing these bills today because just hours ago in my home State the Oklahoma State Legislature passed a joint resolution in support of English as the official language. This resolution, which passed the Oklahoma House of Representatives by an overwhelming vote of 89 to 8 and the Senate by a vote of 44 to 2, will allow the people of Oklahoma to vote on a statewide ballot for a constitutional amendment to make English the official language of Oklahoma. I am encouraged by the State Legislature's tireless efforts to affirm the importance of English as the unifying language in our society. I hope that the U.S. Congress will follow their lead and let the voice of the people be heard—a voice that overwhelmingly supports English as the official language.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 991

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''English Language Unity Act of 2009''.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The United States is comprised of individuals from diverse ethnic, cultural, and linguistic backgrounds, and continues to benefit from this rich diversity.

(2) Throughout the history of the United States, the common thread binding individuals of differing backgrounds has been the English language.

(3) Among the powers reserved to the States respectively is the power to establish the English language as the official language of the respective States, and otherwise to promote the English language within the respective States, subject to the prohibitions enumerated in the Constitution of the United States and in laws of the respective States.

SEC. 3. ENGLISH AS OFFICIAL LANGUAGE OF THE UNITED STATES.

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 6—OFFICIAL LANGUAGE

''§ 161. Official language of the United States

''The official language of the United States is English.

''§ 162. Preserving and enhancing the role of the official language

''Representatives of the Federal Government shall have an affirmative obligation to preserve and enhance the role of English as the official language of the Federal Government. Such obligation shall include encouraging greater opportunities for individuals to learn the English language.

''§ 163. Official functions of Government to be conducted in English

''(a) OFFICIAL FUNCTIONS.—The official functions of the Government of the United States shall be conducted in English.

''(b) SCOPE.—For the purposes of this section, the term 'United States' means the several States and the District of Columbia, and the term 'official' refers to any function that (i) binds the Government, (ii) is required by law, or (iii) is otherwise subject to scrutiny by either the press or the public.

''(c) PRACTICAL EFFECT.—This section shall apply to all laws, public proceedings, regulations, publications, orders, actions, programs, and policies, but does not apply to—

''(1) teaching of languages;

''(2) requirements under the Individuals with Disabilities Education Act;

''(3) actions, documents, or policies necessary for national security, international relations, trade, tourism, or commerce;

''(4) actions or documents that protect the public health and safety;

''(5) actions or documents that facilitate the activities of the Bureau of the Census in compiling any census of population;

''(6) actions that protect the rights of victims of crimes or criminal defendants; or

''(7) using terms of art or phrases from languages other than English.

''§ 164. Uniform English language rule for naturalization

''(a) UNIFORM LANGUAGE TESTING STANDARD.—All citizens should be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution.

''(b) CEREMONIES.—All naturalization ceremonies shall be conducted in English.

''§ 165. Rules of construction

''Nothing in this chapter shall be construed—

''(1) to prohibit a Member of Congress or any officer or agent of the Federal Government, while performing official functions, from communicating unofficially through any medium with another person in a language other than English (as long as official functions are performed in English);

''(2) to limit the preservation or use of Native Alaskan or Native American languages (as defined in the Native American Languages Act);

''(3) to disparage any language or to discourage any person from learning or using a language; or

''(4) to be inconsistent with the Constitution of the United States.

''§ 166. Standing

''A person injured by a violation of this chapter may in a civil action (including an action under chapter 151 of title 28) obtain appropriate relief.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of title 4, United States Code, is amended by inserting after the item relating to chapter 5 the following new item:

''CHAPTER 6. OFFICIAL LANGUAGE''.

SEC. 4. GENERAL RULES OF CONSTRUCTION FOR ENGLISH LANGUAGE TEXTS OF THE LAWS OF THE UNITED STATES.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following new section:

''§ 8. General rules of construction for laws of the United States

''(a) English language requirements and workplace policies, whether in the public or private sector, shall be presumptively consistent with the Laws of the United States; and

''(b) Any ambiguity in the English language text of the Laws of the United States shall be resolved, in accordance with the last two articles of the Bill of Rights, not to deny or disparage rights retained by the people, and to reserve powers to the States respectively, or to the people.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, is amended by inserting after the item relating to section 7 the following new item:

''8. General Rules of Construction for Laws of the United States.''.

SEC. 5. IMPLEMENTING REGULATIONS.

The Secretary of Homeland Security shall, within 180 days after the date of enactment of this Act, issue for public notice and comment a proposed rule for uniform testing English language ability of candidates for naturalization, based upon the principles that—

(1) all citizens should be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States which are made in pursuance thereof; and

(2) any exceptions to this standard should be limited to extraordinary circumstances, such as asylum.

SEC. 6. EFFECTIVE DATE.

The amendments made by sections 3 and 4 shall take effect on the date that is 180 days after the date of the enactment of this Act.

By Mr. INHOFE (for himself, Mr. ALEXANDER, Mr. ISAKSON, Mr. CHAMBLISS, Mr. BURR, Mr. SHELBY, Mr. VITTER, Mr. BUNNING, Mr. COBURN, Mr. WICKER, Mr. DEMINT, Mr. ENZI, Mr. THUNE, Mr. CORKER, and Mr. COCHRAN):

S. 992. A bill to amend title 4, United States Code, to declare English as the national language of the Government of the United States, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INHOFE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 992

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Language Act of 2009''.

SEC. 2. AMENDMENT TO TITLE 4.

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following:

"CHAPTER 6—LANGUAGE OF THE GOVERNMENT

''Sec.
''161. Declaration of national language.
''162. Preserving and enhancing the role of the national language.
''163. Use of language other than English.

"§ 161. Declaration of national language

''English shall be the national language of the Government of the United States.

"§ 162. Preserving and enhancing the role of the national language

''(a) IN GENERAL.—The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

''(b) EXCEPTION.—Unless specifically provided by statute, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If an exception is made with respect to the use of a language other than English, the exception does not create a legal entitlement to additional services in that language or any language other than English.

''(c) FORMS.—If any form is issued by the Federal Government in a language other than English (or such form is completed in a language other than English), the English language version of the form is the sole authority for all legal purposes.

"§ 163. Use of language other than English

''Nothing in this chapter shall prohibit the use of a language other than English.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following new item:

''6. Language of the Government ..... 161''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 132—COMMENDING THE HEROIC EFFORTS OF THE PEOPLE FIGHTING THE FLOODS IN NORTH DAKOTA

Mr. DORGAN (for himself and Mr. CONRAD) submitted the following resolution; which was considered and agreed to:

S. RES. 132

Whereas 47 of the 53 counties in North Dakota have been declared Federal disaster areas;

Whereas wide swaths of North Dakota have faced unprecedented flooding crises, including cities along the Des Lacs, Heart, James, Knife, Missouri, Little Missouri, Park, Pembina, Red, Sheyenne, Souris, and Wild Rice Rivers and Beaver Creek;

Whereas the people of North Dakota have suffered tremendous damage to their homes, livelihoods, and communities;

Whereas the ranchers of North Dakota are estimated to have lost nearly 100,000 head of livestock;

Whereas many of the roads and bridges, and much of the other infrastructure, in North Dakota are in need of repair;

Whereas, despite terrible conditions, the people of North Dakota have shown the strength of their shared bond, coming together in large numbers to save their cities, towns, businesses, farms, and ranches;

Whereas stories of exceptional efforts abound, from people filling millions of sandbags on short notice, to people saving lives and effecting rapid emergency evacuations;

Whereas Federal, State, and local officials have provided outstanding leadership and effective service throughout the crisis in North Dakota; and

Whereas the response of the people of North Dakota to the disaster has shown the world how communities can unite, fight, and win in a crisis: Now, therefore, be it

Resolved, That the Senate—

(1) commends the people of North Dakota for their heroic efforts in fighting the floods in North Dakota;

(2) commends the many people from around the United States who assisted the people of North Dakota during this time of need;

(3) expresses appreciation to the officials of the numerous Federal agencies working on the ground in North Dakota for their consistently rapid, efficient, and effective response to the disaster; and

(4) continues to stand with the communities of North Dakota in the efforts to recover from the flooding during 2009, and to improve protections against flooding in the future.

SENATE RESOLUTION 133—DESIGNATING MAY 1 THROUGH MAY 7, 2009, AS ''NATIONAL PHYSICAL EDUCATION AND SPORT WEEK''

Ms. KLOBUCHAR (for herself and Mr. THUNE) submitted the following resolution; which was considered and agreed to:

S. RES. 133

Whereas childhood obesity has reached epidemic proportions in the United States;

Whereas the Department of Health and Human Services estimates that, by 2010, 20 percent of children in the United States will be obese;

Whereas a decline in physical activity has contributed to the unprecedented epidemic of childhood obesity;

Whereas regular physical activity is necessary to support normal and healthy growth in children;

Whereas overweight adolescents have a 70 to 80 percent chance of becoming overweight adults, increasing their risk for chronic disease, disability, and death;

Whereas Type II diabetes can no longer be referred to as ''late in life'' or ''adult onset'' diabetes because it occurs in children as young as 10 years old;

Whereas the Physical Activity Guidelines for Americans recommend that children engage in at least 60 minutes of physical activity on most, and preferably all, days of the week;

Whereas children spend many of their waking hours at school and therefore need to be active during the school day to meet the recommendations of the Physical Activity Guidelines for Americans;

Whereas teaching children about physical education and sports not only ensures that they are physically active during the school day, but also educates them on how to be physically active and its importance;

Whereas only 3.8 percent of elementary schools, 7.9 percent of middle schools, and 2.1 percent of high schools provide daily physical education or its equivalent for the entire school year, and 22 percent of schools do not require students to take any physical education at all;

Whereas research shows that fit and active children are more likely to thrive academically;

Whereas participation in sports and physical activity improves self-esteem and body image in children and adults;

Whereas the social and environmental factors affecting children are in the control of the adults and the communities in which they live, and therefore this Nation shares a collective responsibility in reversing the childhood obesity trend; and

Whereas Congress strongly supports efforts to increase physical activity and participation of youth in sports: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of May 1 through May 7, 2009, as ''National Physical Education and Sport Week'';

(2) recognizes ''National Physical Education and Sport Week'' and the central role of physical education and sports in creating a healthy lifestyle for all children and youth;

(3) calls on school districts to implement local wellness policies as defined by the Child Nutrition and WIC Reauthorization Act of 2004 that include ambitious goals for physical education, physical activity, and other activities addressing the childhood obesity epidemic and promoting child wellness; and

(4) encourages schools to offer physical education classes to students and work with community partners to provide opportunities and safe spaces for physical activities

before and after school and during the summer months for all children and youth.

SENATE RESOLUTION 134—CONGRATULATING THE STUDENTS, PARENTS, TEACHERS, AND ADMINISTRATORS AT CHARTER SCHOOLS ACROSS THE UNITED STATES FOR THEIR ONGOING CONTRIBUTIONS TO EDUCATION AND SUPPORTING THE IDEAS AND GOALS OF THE 10TH ANNUAL NATIONAL CHARTER SCHOOLS WEEK, MAY 3 THROUGH MAY 9, 2009

Ms. LANDRIEU (for herself, Mr. ALEXANDER, Mr. LIEBERMAN, Mr. CARPER, Mr. BAYH, Mr. BURR, Mr. GREGG, and Mr. VITTER) submitted the following resolution; which was considered and agreed to:

S. RES. 134

Whereas charter schools deliver high-quality education and challenge all students to reach their potential;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that respond to the needs of communities, families, and students in the United States and promote the principles of quality, choice, and innovation;

Whereas, in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 40 States and the District of Columbia have passed laws authorizing charter schools;

Whereas approximately 4,700 charter schools are now operating in 40 States and the District of Columbia, serving more than 1,400,000 students;

Whereas, during the last 14 years, Congress has provided more than $2,478,288,000 in financial assistance to the charter school movement through facilities financing assistance and grants for planning, startup, implementation, and dissemination;

Whereas many charter schools improve the achievements of students and stimulate improvement in traditional public schools;

Whereas charter schools must meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in the same manner as traditional public schools and often set higher and additional individual goals to ensure that charter schools are of high quality and truly accountable to the public;

Whereas charter schools give parents new freedom to choose public schools, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and their communities;

Whereas more than 50 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill more than 1,100 average-sized charter schools;

Whereas the President has called for increased Federal support for replicating and expanding high-performing charter schools to meet the dramatic demand created by the more than 365,000 children on charter school waiting lists; and

Whereas the 10th annual National Charter Schools Week is May 3 through May 9, 2009: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the students, parents, teachers, and administrators of charter schools across the United States for their ongoing contributions to education, especially their impressive results in closing the persistent achievement gap in the United States, and improving and strengthening the public school system in the United States;

(2) supports the ideas and goals of the 10th annual National Charter Schools Week, a week-long celebration to be held May 3 through May 9, 2009, in communities throughout the United States; and

(3) encourages the people of the United States to conduct appropriate programs, ceremonies, and activities during National Charter Schools Week to demonstrate support for charter schools.

SENATE RESOLUTION 135—DESIGNATING MAY 8, 2009, AS ''MILITARY SPOUSE APPRECIATION DAY''

Mr. BURR (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 135

Whereas the month of May marks National Military Appreciation Month;

Whereas military spouses provide vital support to men and women in the Armed Forces and help to make their service to the Armed Forces possible;

Whereas military spouses have been separated from their loved ones because of deployment in support of the Global War on Terrorism and other military missions carried out by the Armed Forces;

Whereas the establishment of Military Spouse Appreciation Day would be an appropriate way to honor the spouses of members of the Armed Forces; and

Whereas May 8, 2009, would be an appropriate date to establish as ''Military Spouse Appreciation Day'': Now, therefore, be it

Resolved, That the Senate—

(1) designates May 8, 2009, as ''Military Spouse Appreciation Day'';

(2) honors and recognizes the contributions made by spouses of members of the Armed Forces; and

(3) encourages the people of the United States to observe Military Spouse Appreciation Day to promote awareness of the contributions of spouses of members of the Armed Forces and the importance of their role in the lives of members of the Armed Forces and veterans.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1044. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

SA 1045. Ms. COLLINS (for herself and Mrs. MCCASKILL) submitted an amendment intended to be proposed by her to the bill S. 454, supra.

SA 1046. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 454, supra.

SA 1047. Mr. WHITEHOUSE (for himself, Mr. FEINGOLD, and Mr. SANDERS) submitted an amendment intended to be proposed by him to the bill S. 454, supra.

SA 1048. Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 454, supra.

SA 1049. Mrs. MCCASKILL (for herself and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, supra.

SA 1050. Mrs. MCCASKILL (for herself, Mr. UDALL of Colorado, and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, supra.

SA 1051. Mrs. MCCASKILL (for herself and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, supra.

SA 1052. Mrs. MURRAY (for herself and Mr. CHAMBLISS) submitted an amendment intended to be proposed by her to the bill S. 454, supra; which was ordered to lie on the table.

SA 1053. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 454, supra.

SA 1054. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 454, supra; which was ordered to lie on the table.

SA 1055. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 454, supra.

SA 1056. Ms. SNOWE (for herself and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill S. 454, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1044. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 59, line 25, strike ''(D)'' and inserting ''(E)''.

On page 60, strike line 3 and insert the following:

lowing new subparagraphs (B), (C), and (D):

On page 60, line 4, insert ''and submit the report required by subparagraph (D)'' after ''terminate such acquisition program''.

On page 61, strike like 24 and insert the following:

gram;

''(D) if the program is terminated, submit to Congress a written report setting forth—

''(i) an explanation of the reasons for terminating the program;

''(ii) the alternatives considered to address any problems in the program; and

''(iii) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program; and''.

SA 1045. Ms. COLLINS (for herself and Mrs. MCCASKILL) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 69, after line 2, add the following:

SEC. 207. EARNED VALUE MANAGEMENT.

(a) ENHANCED TRACKING OF CONTRACTOR PERFORMANCE.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review the existing guidance and, as necessary, prescribe additional guidance governing the implementation of the Earned Value Management (EVM) requirements and reporting for contracts to ensure that the Department of Defense—

(1) applies uniform EVM standards to reliably and consistently measure contract or project performance;

(2) applies such standards to establish appropriate baselines at the award of a contract or commencement of a program, whichever is earlier;

(3) ensures that personnel responsible for administering and overseeing EVM systems have the training and qualifications needed to perform this function; and

(4) has appropriate mechanisms in place to ensure that contractors establish and use approved EVM systems.

(b) ENFORCEMENT MECHANISMS.—For the purposes of subsection (a)(4), mechanisms to ensure that contractors establish and use approved EVM systems shall include—

(1) consideration of the quality of the contractors' EVM systems and the timeliness of the contractors' EVM reporting in any past performance evaluation for a contract that includes an EVM requirement; and

(2) increased government oversight of the cost, schedule, scope, and performance of contractors that do not have approved EVM systems in place.

SA 1046. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 49, strike line 15 and all that follows through page 51, line 8, and insert the following:

view, including an assessment by the Director of the feasibility and advisability of establishing baselines for operating and support costs under section 2435 of title 10, United States Code.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

(c) TRANSFER OF PERSONNEL AND FUNCTIONS OF COST ANALYSIS IMPROVEMENT GROUP.—The personnel and functions of the Cost Analysis Improvement Group of the Department of Defense are hereby transferred to the Director of Independent Cost Assessment under section 139d of title 10, United States Code (as so added), and shall report directly to the Director.

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting ''the Director of Independent Cost Assessment,'' before ''and the Director''.

(2) Section 2306b(i)(1)(B) of such title is amended by striking ''Cost Analysis Improvement Group of the Department of Defense'' and inserting ''Director of Independent Cost Assessment''.

(3) Section 2366a(a)(4) of such title is amended by striking ''has been submitted'' and inserting ''has been approved by the Director of Independent Cost Assessment''.

(4) Section 2366b(a)(1)(C) of such title is amended by striking ''have been developed to execute'' and inserting ''have been approved by the Director of Independent Cost Assessment to provide for the execution of''.

(5) Section 2433(e)(2)(B)(iii) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

(6) Subparagraph (A) of section 2434(b)(1) of such title is amended to read as follows:

''(A) be prepared or approved by the Director of Independent Cost Assessment; and''.

(7) Section 2445c(f)(3) of such title is amended by striking ''are reasonable'' and inserting ''have been determined by the Director of Independent Cost Assessment to be reasonable''.

(e) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF OPERATING AND SUPPORT COSTS OF MAJOR WEAPON SYSTEMS.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on growth in operating and support costs for major weapon systems.

(2) ELEMENTS.—In preparing the report required by paragraph (1), the Comptroller General shall, at a minimum—

(A) identify the original estimates for operating and support costs for major weapon systems selected by the Comptroller General for purposes of the report;

(B) assess the actual operating and support costs for such major weapon systems;

(C) analyze the rate of growth for operating and support costs for such major weapon systems;

(D) for such major weapon systems that have experienced the highest rate of growth in operating and support costs, assess the factors contributing to such growth;

(E) assess measures taken by the Department of Defense to reduce operating and support costs for major weapon systems; and

(F) make such recommendations as the Comptroller General considers appropriate.

(3) MAJOR WEAPON SYSTEM DEFINED.—In this subsection, the term ''major weapon system'' has the meaning given that term in 2379(d) of title 10, United States Code.

SA 1047. Mr. WHITEHOUSE (for himself, Mr. FEINGOLD, and Mr. SANDERS) submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 43, between lines 20 and 21, insert the following:

(c) TECHNOLOGICAL MATURITY STANDARDS.—For purposes of the review and assessment conducted by the Director of Defense Research and Engineering in accordance with subsection (c) of section 139a of title 10, United States Code (as added by subsection (a)), a critical technology is considered to be mature—

(1) in the case of a major defense acquisition program that is being considered for Milestone B approval, if the technology has been demonstrated in a relevant environment; and

(2) in the case of a major defense acquisition program that is being considered for Milestone C approval, if the technology has been demonstrated in a realistic environment.

On page 45, beginning on line 9, strike ''programs and require the disclosure of all such confidence levels;'' and insert ''programs, require that all such estimates include confidence levels compliant with such guidance, and require the disclosure of all such confidence levels (including through Selected Acquisition Reports submitted pursuant to section 2432 of this title);''.

On page 47, line 16, add at the end the following: ''The report shall include an assessment of—

''(A) the extent to which each of the military departments have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates; and

''(B) the overall quality of cost estimates prepared by each of the military departments.

On page 48, line 2, add at the end the following: ''Each report submitted to Congress under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.''.

SA 1048. Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 42, line 12, insert '', in consultation with the Director of Developmental Test and Evaluation,'' after ''shall''.

SA 1049. Mrs. MCCASKILL (for herself and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 51, line 12, insert ''(a) IN GENERAL.—'' before ''Section 181''.

On page 51, line 23, strike ''of subsection (f).''.'' and insert the following: ''of subsection (f). Such input may include, but is not limited to, an assessment of the following:

''(1) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would justify a new joint military requirement.

''(2) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

''(3) The relative priority of a proposed joint military requirement in comparison with other joint military requirements.

''(4) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or to partner in using technologies developed to meet the joint military requirement.''.

(b) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements of subsection (e) of section 181 of title 10, United States Code (as amended by subsection (a)), for the Joint Requirements Oversight Council to solicit and consider input from the commanders of the combatant commands. The report shall include, at a minimum, an assessment of the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements.

SA 1050. Mrs. MCCASKILL (for herself, Mr. UDALL of Colorado, and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 59, strike line 15 and insert the following:

(d) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF CERTAIN WAIVERS.—

(1) NOTICE TO COMPTROLLER GENERAL.—Whenever a milestone decision authority authorizes a waiver of the requirement for prototypes under paragraph (1) or (2) of subsection (c) on the basis of excessive cost, the milestone decision authority shall submit a notice on the waiver, together with the rational for the waiver, to the Comptroller General of the United States at the same time a report on the waiver is submitted to the congressional defense committees under paragraph (3) of that subsection.

(2) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after receipt of a notice on a waiver under paragraph (1), the Comptroller General shall—

(A) review the rationale for the waiver; and

(B) submit to the congressional defense committees a written assessment of the rationale for the waiver.

(e) APPLICABILITY.—This section shall apply to any

SA 1051. Mrs. MCCASKILL (for herself and Mr. CASEY) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 53, between lines 17 and 18, insert the following:

(c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

(1) JROC SUBMITTAL OF RECOMMENDED REQUIREMENTS TO UNDER SECRETARY FOR ATL.—Upon recommending a new joint military requirement, the Joint Requirements Oversight Council shall transmit the recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics for review and concurrence or non-concurrence in the recommendation.

(2) REVIEW OF RECOMMENDED REQUIREMENTS.—The Under Secretary for Acquisition, Technology, and Logistics shall review each recommendation transmitted under paragraph (1) to determine whether or not the Joint Requirements Oversight Council has, in making such recommendation—

(A) taken appropriate action to solicit and consider input from the commanders of the combatant commands in accordance with the requirements of section 181(e) of title 10, United States Code (as amended by section 105);

(B) given appropriate consideration to trade-offs among cost, schedule, and performance in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as amended by subsection (b)); and

(C) given appropriate consideration to issues of joint portfolio management, including alternative material and non-material solutions, as provided in Chairman of the Joint Chiefs of Staff Instruction 3170.01G.

(3) NON-CONCURRENCE OF UNDER SECRETARY FOR ATL.—If the Under Secretary for Acquisition, Technology, and Logistics determines that the Joint Requirements Oversight Council has failed to take appropriate action in accordance with subparagraphs (A), (B), and (C) of paragraph (2) regarding a joint military requirement, the Under Secretary shall return the recommendation to the Council with specific recommendations as to matters to be considered by the Council to address any shortcoming identified by the Under Secretary in the course of the review under paragraph (2).

(4) NOTICE ON CONTINUING DISAGREEMENT ON REQUIREMENT.—If the Under Secretary for Acquisition, Technology, and Logistics and the Joint Requirements Oversight Council are unable to reach agreement on a joint military requirement that has been returned to the Council by the Under Secretary under paragraph (4), the Under Secretary shall transmit notice of lack of agreement on the requirement to the Secretary of Defense.

(5) RESOLUTION OF CONTINUING DISAGREEMENT.—Upon receiving notice under paragraph (4) of a lack of agreement on a joint military requirement, the Secretary of Defense shall make a final determination on whether or not to validate the requirement.

On page 53, line 18, strike ''(c)'' and insert ''(d)''.

On page 54, line 12, strike ''(d)'' and insert ''(e)''.

SA 1052. Mrs. MURRAY (for herself and Mr. CHAMBLISS) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 207. EXPANSION OF NATIONAL SECURITY OBJECTIVES OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.

(a) IN GENERAL.—Subsection (a) of section 2501 of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(6) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.''.

(b) CERTIFICATION OF COMPLIANCE OF TERMINATION OF MDAPS WITH NATIONAL SECURITY OBJECTIVES.—Such section is further amended by adding at the end the following new subsection:

''(c) CERTIFICATION OF COMPLIANCE OF TERMINATION OF MAJOR DEFENSE ACQUISITION PROGRAM WITH OBJECTIVES.—(1) Upon the termination of a major defense acquisition program, the Secretary of Defense shall certify to Congress that the termination of the program is consistent with the national security objectives for the national technology and industrial base set forth in subsection (a).

''(2) In this subsection, the term 'major defense acquisition program' has the meaning given that term in section 2430 of this title.''.

SA 1053. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

On page 63, line 11, insert ''for special security agreements'' after ''to those required''.

SA 1054. Mr. CHAMBLISS submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; which was ordered to lie on the table; as follows:

On page 65, strike line 16 and all that follows through page 66, line 17, and insert the following:

system by providing for the consideration of prime contractors ''make-buy'' decisions in past performance evaluations.

SA 1055. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFICATION OF ADEQUACY OF BUDGETS BY THE DIRECTOR OF THE DEPARTMENT OF DEFENSE TEST RESOURCE MANAGEMENT CENTER.

Section 196(e)(2) of title 10, United States Code, is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) If the Director of the Center is not serving concurrently as the Director of Developmental Test and Evaluation under subsection (b)(2) of section 139c of this title, the certification of the Director of the Center under subparagraph (A) shall, notwithstanding subsection (c)(4) of such section, be submitted directly and independently to the Secretary of Defense.''.

SA 1056. Ms. SNOWE (for herself and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, after line 2, add the following:

SEC. 207. AMENDMENTS TO THE FEDERAL ACQUISITION REGULATION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation issued pursuant to section 25 of such Act to clarify the relationship between certain programs of the Small Business Administration.

(b) CONTENT OF AMENDMENTS.—The amendments made pursuant to subsection (a) shall—

(1) reflect the interpretations of the Small Business Act (15 U.S.C. 631 et seq.) by the Administrator of the Small Business Administration relating to the order of precedence that applies when determining whether to satisfy a requirement under the Federal Acquisition Regulation through an award of a contract to—

(A) a small business concern, as that term is used in section 3 of the Small Business Act (15 U.S.C. 632);

(B) a HUBZone small business concern, within the meaning given that term under section 3(p)(3) of the Small Business Act (15 U.S.C. 632(p)(3));

(C) a small business concern owned and controlled by service-disabled veterans, as that term is defined in section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)); or

(D) a small business concern that participates in the program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); and

(2) include the amendments relating to socioeconomic program parity proposed by the Federal Acquisition Regulatory Council and published in the Federal Register on March 10, 2008 (73 Fed. Reg. 12699 et seq.).

(c) TECHNICAL CLARIFICATION.—Section 36(b) of the Small Business Act (15 U.S.C. 657f(b)) is amended by striking ''may'' and inserting ''shall''.

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, May 7, 2009, at 2:15 p.m. in Room 628 of the Dirksen Senate office building to conduct a hearing on the nomination of Larry J. Echo Hawk to be Assistant Secretary for Indian Affairs, U.S. Department of the Interior.

Those wishing additional information may contact the Indian Affairs Committee at 202–224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on May 6, 2009, at 9:30 a.m., to conduct a hearing entitled ''Regulating and Resolving Institutions Considered 'Too Big to Fail'.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 10 a.m., in room SD–366 of the Dirksen Senate office building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 9:30 a.m., to hold a hearing entitled ''Engaging Iran: Obstacles and Opportunities.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 2:30 p.m., to hold a subcommittee hearing entitled ''NATO Post-60: Institutional Challenges Moving Forward.''

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

COMMITTEE ON THE JUDICIARY

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct a hearing entitled ''Oversight of the Department of Homeland Security,'' on Wednesday, May 6, 2009, at 10 a.m., in room SD–224 of the Dirksen Senate office building.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 9 a.m. The Committee will meet in room 418 of the Russell Senate office building beginning at 9:30 a.m.

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

SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Communications, Technology, and the Internet of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 2:30 p.m., in room 253 of the Russell Senate office building.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, May 6, 2009, at 2:15 p.m.

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

SPECIAL COMMITTEE ON AGING

Mr. LEVIN. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate, on May 6, 2009, from 2 p.m.—4 p.m. in Hart 216 for the purpose of conducting a hearing.

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

PRIVILEGES OF THE FLOOR

Ms. COLLINS. Mr. President, I ask unanimous consent that Eric Cho, a detailee on my Homeland Security and Governmental Affairs staff, be granted the privileges of the floor during the duration of the debate on this legislation S. 454.

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

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that CAPT David Evans, of my staff, be granted the privilege of the floor for the remainder of the discussion of this bill.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 80, 85, 99, 100, 101, 102, 103, 104, 105, 106, 107, and all nominations on the Secretary's desk in the Foreign Service; that the nominations be confirmed en bloc, and the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that any statements relating to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ronald C. Sims, of Washington, to be Deputy Secretary of Department of Housing and Urban Development.

EXPORT-IMPORT BANK OF THE UNITED STATES

Fred P. Hochberg, of New York, to be President of the Export-Import Bank of the United States for a term expiring January 20, 2013.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Yvette Roubideaux, of Arizona, to be Director of the Indian Health Service, Department of Health and Human Services, for the term of four years.

DEPARTMENT OF HOMELAND SECURITY

Ivan K. Fong, of Ohio, to be General Counsel, Department of Homeland Security.

Timothy W. Manning, of New Mexico, to be Deputy Administrator for National Preparedness, Federal Emergency Management Agency, Department of Homeland Security.

DEPARTMENT OF THE TREASURY

Alan B. Krueger, of New Jersey, to be an Assistant Secretary of the Treasury.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

William V. Corr, of Virginia, to be Deputy Secretary of Health and Human Services.

EXECUTIVE OFFICE OF THE PRESIDENT

Demetrios J. Marantis, of the District of Columbia, to be a Deputy United States Trade Representative, with the rank of Ambassador.

DEPARTMENT OF STATE

Johnnie Carson, of Illinois, to be an Assistant Secretary of State (African Affairs).

Ivo H. Daalder, of Virginia, to be United States Permanent Representative on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Luis C. de Baca, of Virginia, to be Director of the Office to Monitor and Combat Trafficking, with rank of Ambassador at Large.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

FOREIGN SERVICE

PN273 FOREIGN SERVICE nominations (7) beginning Gregory D. Loose, and ending Gregory M. Wong, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of April 2, 2009.

PN274 FOREIGN SERVICE nominations (154) beginning Laszlo F. Sagi, and ending Daniel E. Harris, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of April 2, 2009.

PN275 FOREIGN SERVICE nominations (224) beginning John M. Kowalski, and ending Jeremy Terrill Young, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of April 2, 2009.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2009—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to proceed to Calendar No. 55, which is H.R. 627, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the H.R. 627, the Credit Cardholders' Bill of Rights.

Patrick J. Leahy, Barbara Boxer, Mark Udall, Robert P. Casey, Jr., Kent Conrad, Patty Murray, Herb Kohl, Jeff Bingaman, Russell D. Feingold, Bernard Sanders, Ben Nelson, Ron Wyden, Debbie Stabenow, Bill Nelson, Richard Durbin, Jack Reed, Amy Klobuchar, Harry Reid.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

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

Mr. REID. I now withdraw the motion, Mr. President.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

COMMENDING HEROIC EFFORTS OF PEOPLE FIGHTING FLOODS IN NORTH DAKOTA

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 132, submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 132) commending the heroic efforts of the people fighting the floods in North Dakota.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 132) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 132

Whereas 47 of the 53 counties in North Dakota have been declared Federal disaster areas;

Whereas wide swaths of North Dakota have faced unprecedented flooding crises, including cities along the Des Lacs, Heart, James, Knife, Missouri, Little Missouri, Park, Pembina, Red, Sheyenne, Souris, and Wild Rice Rivers and Beaver Creek;

Whereas the people of North Dakota have suffered tremendous damage to their homes, livelihoods, and communities;

Whereas the ranchers of North Dakota are estimated to have lost nearly 100,000 head of livestock;

Whereas many of the roads and bridges, and much of the other infrastructure, in North Dakota are in need of repair;

Whereas, despite terrible conditions, the people of North Dakota have shown the strength of their shared bond, coming together in large numbers to save their cities, towns, businesses, farms, and ranches;

Whereas stories of exceptional efforts abound, from people filling millions of sandbags on short notice, to people saving lives and effecting rapid emergency evacuations;

Whereas Federal, State, and local officials have provided outstanding leadership and effective service throughout the crisis in North Dakota; and

Whereas the response of the people of North Dakota to the disaster has shown the world how communities can unite, fight, and win in a crisis: Now, therefore, be it

Resolved, That the Senate—

(1) commends the people of North Dakota for their heroic efforts in fighting the floods in North Dakota;

(2) commends the many people from around the United States who assisted the people of North Dakota during this time of need;

(3) expresses appreciation to the officials of the numerous Federal agencies working on the ground in North Dakota for their consistently rapid, efficient, and effective response to the disaster; and

(4) continues to stand with the communities of North Dakota in the efforts to recover from the flooding during 2009, and to improve protections against flooding in the future.

NATIONAL PHYSICAL EDUCATION AND SPORT WEEK

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 133, submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 133) designating May 1 through May 7, 2009, as ''National Physical Education and Sport Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 133) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 133

Whereas childhood obesity has reached epidemic proportions in the United States;

Whereas the Department of Health and Human Services estimates that, by 2010, 20 percent of children in the United States will be obese;

Whereas a decline in physical activity has contributed to the unprecedented epidemic of childhood obesity;

Whereas regular physical activity is necessary to support normal and healthy growth in children;

Whereas overweight adolescents have a 70 to 80 percent chance of becoming overweight adults, increasing their risk for chronic disease, disability, and death;

Whereas Type II diabetes can no longer be referred to as ''late in life'' or ''adult onset'' diabetes because it occurs in children as young as 10 years old;

Whereas the Physical Activity Guidelines for Americans recommend that children engage in at least 60 minutes of physical activity on most, and preferably all, days of the week;

Whereas children spend many of their waking hours at school and therefore need to be active during the school day to meet the recommendations of the Physical Activity Guidelines for Americans;

Whereas teaching children about physical education and sports not only ensures that they are physically active during the school day, but also educates them on how to be physically active and its importance;

Whereas only 3.8 percent of elementary schools, 7.9 percent of middle schools, and 2.1 percent of high schools provide daily physical education or its equivalent for the entire school year, and 22 percent of schools do not require students to take any physical education at all;

Whereas research shows that fit and active children are more likely to thrive academically;

Whereas participation in sports and physical activity improves self-esteem and body image in children and adults;

Whereas the social and environmental factors affecting children are in the control of the adults and the communities in which they live, and therefore this Nation shares a collective responsibility in reversing the childhood obesity trend; and

Whereas Congress strongly supports efforts to increase physical activity and participation of youth in sports: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of May 1 through May 7, 2009, as ''National Physical Education and Sport Week'';

(2) recognizes ''National Physical Education and Sport Week'' and the central role of physical education and sports in creating a healthy lifestyle for all children and youth;

(3) calls on school districts to implement local wellness policies as defined by the Child Nutrition and WIC Reauthorization Act of 2004 that include ambitious goals for physical education, physical activity, and other activities addressing the childhood obesity epidemic and promoting child wellness; and

(4) encourages schools to offer physical education classes to students and work with community partners to provide opportunities and safe spaces for physical activities before and after school and during the summer months for all children and youth.

NATIONAL CHARTER SCHOOLS WEEK

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 134, which was introduced earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 134) congratulating the students, parents, teachers, and administrators at charter schools across the United States for their ongoing contributions to education and supporting the ideas and goals of the 10th annual National Charter Schools Week, May 3 through May 9, 2009.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. MURRAY. Mr. President, I further ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 134) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 134

Whereas charter schools deliver high-quality education and challenge all students to reach their potential;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that respond to the needs of communities, families, and students in the United States and promote the principles of quality, choice, and innovation;

Whereas, in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 40 States and the District of Columbia have passed laws authorizing charter schools;

Whereas approximately 4,700 charter schools are now operating in 40 States and the District of Columbia, serving more than 1,400,000 students;

Whereas, during the last 14 years, Congress has provided more than $2,478,288,000 in financial assistance to the charter school movement through facilities financing assistance and grants for planning, startup, implementation, and dissemination;

Whereas many charter schools improve the achievements of students and stimulate improvement in traditional public schools;

Whereas charter schools must meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in the same manner as traditional public schools and often set higher and additional individual goals to ensure that charter schools are of high quality and truly accountable to the public;

Whereas charter schools give parents new freedom to choose public schools, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and their communities;

Whereas more than 50 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill more than 1,100 average-sized charter schools;

Whereas the President has called for increased Federal support for replicating and expanding high-performing charter schools to meet the dramatic demand created by the more than 365,000 children on charter school waiting lists; and

Whereas the 10th annual National Charter Schools Week is May 3 through May 9, 2009: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the students, parents, teachers, and administrators of charter schools across the United States for their ongoing contributions to education, especially their impressive results in closing the persistent achievement gap in the United States, and improving and strengthening the public school system in the United States;

(2) supports the ideas and goals of the 10th annual National Charter Schools Week, a week-long celebration to be held May 3 through May 9, 2009, in communities throughout the United States; and

(3) encourages the people of the United States to conduct appropriate programs, ceremonies, and activities during National Charter Schools Week to demonstrate support for charter schools.

MILITARY SPOUSE APPRECIATION DAY

Mrs. MURRAY. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of S. Res. 135, which was submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 135) designating May 8, 2009, as ''Military Spouse Appreciation Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mrs. MURRAY. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 135) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 135

Whereas the month of May marks National Military Appreciation Month;

Whereas military spouses provide vital support to men and women in the Armed Forces and help to make their service to the Armed Forces possible;

Whereas military spouses have been separated from their loved ones because of deployment in support of the Global War on Terrorism and other military missions carried out by the Armed Forces;

Whereas the establishment of Military Spouse Appreciation Day would be an appropriate way to honor the spouses of members of the Armed Forces; and

Whereas May 8, 2009, would be an appropriate date to establish as ''Military Spouse Appreciation Day'': Now, therefore, be it

Resolved, That the Senate—

(1) designates May 8, 2009, as ''Military Spouse Appreciation Day'';

(2) honors and recognizes the contributions made by spouses of members of the Armed Forces; and

(3) encourages the people of the United States to observe Military Spouse Appreciation Day to promote awareness of the contributions of spouses of members of the Armed Forces and the importance of their role in the lives of members of the Armed Forces and veterans.

ORDERS FOR THURSDAY, MAY 7, 2009

Mrs. MURRAY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, May 7; following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 10:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the second half; further, I ask that at 10:30 a.m. the Senate resume consideration of S. 454, the Weapon Systems Acquisition Reform Act of 2009.

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

PROGRAM

Mrs. MURRAY. Mr. President, roll-call votes in relation to the procurement bill are expected during tomorrow's session. Senators will be notified when the votes are scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mrs. MURRAY. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:01 p.m., adjourned until Thursday, May 7, 2009, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF THE INTERIOR

WILMA A. LEWIS, OF THE VIRGIN ISLANDS, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR, VICE C. STEPHEN ALLRED, RESIGNED.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CARMEN R. NAZARIO, OF PUERTO RICO, TO BE ASSISTANT SECRETARY FOR FAMILY SUPPORT, DEPARTMENT OF HEALTH AND HUMAN SERVICES, VICE DIANE D. RATH.

DEPARTMENT OF STATE

ERIC P. SCHWARTZ, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF STATE (POPULATION, REFUGEES, AND MIGRATION), VICE ELLEN R. SAUERBREY.

ANDREW J. SHAPIRO, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF STATE (POLITICAL-MILITARY AFFAIRS), VICE MARK KIMMITT, RESIGNED.

ELLEN O. TAUSCHER, OF CALIFORNIA, TO BE UNDER SECRETARY OF STATE FOR ARMS CONTROL AND INTERNATIONAL SECURITY, VICE ROBERT JOSEPH, RESIGNED.

DEPARTMENT OF LABOR

JANE OATES, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE EMILY STOVER DEROCCO.

DEPARTMENT OF HOMELAND SECURITY

TARA JEANNE O'TOOLE, OF MARYLAND, TO BE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY, DEPARTMENT OF HOMELAND SECURITY, VICE JAY M. COHEN, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. HERBERT J. CARLISLE

CONFIRMATIONS

Executive nominations confirmed by the Senate, Wednesday, May 6, 2009:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RONALD C. SIMS, OF WASHINGTON, TO BE DEPUTY SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

EXPORT-IMPORT BANK OF THE UNITED STATES

FRED P. HOCHBERG, OF NEW YORK, TO BE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2013.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

YVETTE ROUBIDEAUX, OF ARIZONA, TO BE DIRECTOR OF THE INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOR THE TERM OF FOUR YEARS.

DEPARTMENT OF HOMELAND SECURITY

IVAN K. FONG, OF OHIO, TO BE GENERAL COUNSEL, DEPARTMENT OF HOMELAND SECURITY.

TIMOTHY W. MANNING, OF NEW MEXICO, TO BE DEPUTY ADMINISTRATOR FOR NATIONAL PREPAREDNESS, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY.

DEPARTMENT OF THE TREASURY

ALAN B. KRUEGER, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

WILLIAM V. CORR, OF VIRGINIA, TO BE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES.

EXECUTIVE OFFICE OF THE PRESIDENT

DEMETRIOS J. MARANTIS, OF THE DISTRICT OF COLUMBIA, TO BE A DEPUTY UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR.

DEPARTMENT OF STATE

JOHNNIE CARSON, OF ILLINOIS, TO BE AN ASSISTANT SECRETARY OF STATE (AFRICAN AFFAIRS).

IVO H. DAALDER, OF VIRGINIA, TO BE UNITED STATES PERMANENT REPRESENTATIVE ON THE COUNCIL OF THE NORTH ATLANTIC TREATY ORGANIZATION, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

LUIS C. DE BACA, OF VIRGINIA, TO BE DIRECTOR OF THE OFFICE TO MONITOR AND COMBAT TRAFFICKING, WITH RANK OF AMBASSADOR AT LARGE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING WITH GREGORY D. LOOSE AND ENDING WITH GREGORY M. WONG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 2, 2009.

FOREIGN SERVICE NOMINATIONS BEGINNING WITH LASZLO F. SAGI AND ENDING WITH DANIEL E. HARRIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 2, 2009.

FOREIGN SERVICE NOMINATIONS BEGINNING WITH JOHN M. KOWALSKI AND ENDING WITH JEREMY TERRILL YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 2, 2009.

EXTENSIONS OF REMARKS

HONORING THE CORAM FIRE DEPARTMENT ON ITS 80TH ANNIVERSARY

HON. TIMOTHY H. BISHOP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. BISHOP of New York. Madam Speaker, I rise today to honor the members of the Coram Fire Department on the 80th anniversary of its founding. Like all of Long Island's volunteer fire services, the Coram firefighters reflect the best of the American spirit: bravery, loyalty, and commitment to public service.

As Coram has grown over the past 80 years, its fire department has expanded and enhanced its services to meet the needs of the community. Operating from three firehouses, the department offers firefighting, EMS and rescue services to nearly 55,000 area residents.

Mr. Speaker, as my primary district office is located in Coram, I deeply appreciate the firefighters' commitment to protecting my second home. On behalf of my staff and the residents of Coram, I offer my thanks and best wishes as the department continues its tradition of service for many years to come.

SUPPORTING NATIONAL TRAIN DAY

SPEECH OF

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 5, 2009

Mr. CASTLE. Madam Speaker, I rise in strong support of H. Res. 367. This resolution marks the 140th anniversary of the completion of the transcontinental railroad and the beginning of America's strong dependence on rail transportation.

Since the golden spike was driven into the final tie at Promontory Summit in 1869, our nation has relied on passenger and freight rail to build our communities and enhance our way of life.

And like then, our economic growth depends on the ability to move goods and people quickly and reliably.

For anyone who has driven on the I–95 corridor recently, it is strikingly clear that highway congestion has become a critical problem—threatening business productivity, increasing safety risks, and hindering efforts to improve air quality. In fact, studies have shown that travelers in the Northeast waste approximately 700,000 hours and 500,000 gallons of fuel sitting in traffic delays every year.

Fixing our transportation system will take a sustained, long-term investment. Last month, President Obama announced a new Strategic Plan to build a national high-speed rail network. Now, it is incumbent upon us to ensure this plan is effective in addressing the critical mobility challenges in heavily congested areas of the country, like the Northeast Corridor between Boston and Washington, DC.

In 2008, Amtrak set a new record with 28.7 million passengers—including millions of travelers and commuters in the Northeast. I commend Amtrak for its efforts to increase ridership and improve its on-time performance over the last several years.

As cochair of the House Passenger Rail Caucus, and more importantly one of the thousands of commuters who rely on Amtrak almost daily, I can attest to the accomplishments of our nation's railroads and I look forward to joining my colleagues in exploring their untapped potential.

I thank Chairwoman BROWN for her strong leadership on this important issue and I congratulate America's railroads in celebrating National Train Day.

HONORING JOHN BUCK OF NEW BLOOMINGTON, OHIO, 2009 ENVIRONMENTAL STEWARDSHIP AWARD RECIPIENT

HON. JIM JORDAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. JORDAN of Ohio. Madam Speaker, I am honored to commend to the House John Buck of New Bloomington, Ohio. John is among this year's recipients of the Environmental Stewardship Award, given by the Ohio Livestock Coalition in partnership with the Ohio Pork Producers Council.

The Environmental Stewardship Award program acknowledges superior conservation techniques among our Nation's livestock producers, who already take the lead in responsible land use practices. For nearly twenty years, winners have been recognized for their dedication to promoting air and water quality and protecting fish and wildlife habitats while operating successful and profitable livestock businesses. This commitment is especially important in Ohio, where one in every seven jobs is directly linked to our state's $100 billion agriculture industry.

John was recognized for his achievement at the 2009 Ohio Livestock Coalition's annual meeting on April 6. I am honored to add my congratulations to those of producers from throughout Ohio on this achievement. John's commitment to responsible stewardship is a fine example to landowners across the State and Nation.

PERSONAL EXPLANATION

HON. TIMOTHY V. JOHNSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. JOHNSON of Illinois. Madam Speaker, on May 4, 2009, I was unable to cast my votes on H. Res. 230 and H. Con. Res. 111 and wish the record to reflect my intentions had I been able to vote.

Had I been present for Roll Call No. 229, on suspending the Rules and passing H. Res. 230, Recognizing the historical significance of the Mexican holiday of Cinco de Mayo, I would have voted ''yea.''

Had I been present for Roll Call No. 230, on suspending the Rules and passing H. Con. Res. 111, Recognizing the 61st anniversary of the Independence of the State of Israel, I would have voted ''yea.''

STATEMENT ON THE 100TH BIRTHDAY OF MARIE WILKINSON

HON. BILL FOSTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. FOSTER. Madam Speaker, today I rise today to acknowledge the 100th birthday of Mrs. Marie Wilkinson.

A true living legend, Marie Wilkinson has spent a lifetime giving to others and her community.

Today I thank Marie Wilkinson for all her service to the city of Aurora and wish her a very happy birthday. It is an honor to celebrate such a momentous day and a remarkable life.

For more than six decades Marie Wilkinson has fought injustice and given voice to those most in need. Her activism has reached well beyond the local level to benefit countless across the state. In the late 1940s Mrs. Wilkinson won a case before the Illinois State Appellate Court that resulted in the integration of area restaurants. Through the Human Relations Commission she founded in 1964, Mrs. Wilkinson is credited with enacting the first Fair Housing Ordinance in Illinois.

Unyielding determination and a deep love of people have kept Marie Wilkinson going. Her work has led to the founding of more than 60 charitable organizations including Hesed House Homeless Shelter, Feed the Hungry Program, Breaking Free Drug Program, Catholic Social Action Conference, Sci-Tech Youth Science Museum, and the Quad County Urban League.

I ask my colleagues to please join me in recognizing Marie Wilkinson's 100th birthday, and celebrating her commitment to the betterment of community and humanity.

RECOGNIZING NURSING STAFF AT EL RIO COMMUNITY HEALTH CENTER

HON. RAÚL M. GRIJALVA

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. GRIJALVA. Madame Speaker, I rise today to recognize the nursing staff at El Rio Community Health Center in Tucson, AZ.

This week, we celebrate National Nurses Week, to honor the men and women that care for us in some of our hardest moments. I am humbled to recognize the nurses of El Rio who endure so much for the health of our community.

From its beginning, El Rio has had a strong community base which comes from advocating and working to ensure that quality and affordable health care were provided to underrepresented communities in the late 1960s. Today, it is among the largest community health centers in Southern Arizona.

The legacy of quality and affordable health care continues at El Rio, because of the sacrifice and commitment of its nurses.

El Rio nurses are often the unsung heroes; they are protective of their patients, are selfless in the care they provide, and are in tune with the needs of the patient. This is just what we see as patients or family of loved ones.

Behind the scenes and off the clock, El Rio nurses are constantly training or researching the newest techniques, health trends, nurse education, or how to provide culturally and ethnically competent care. They do this so that their patients can have the most up-to-date and personal care.

This year, Congress is preparing to undertake health care reform, a debate that is decades old to which we will hopefully find solutions. The work by El Rio nurses are actions and principles that my colleagues and I should embrace as we move forward on this important debate. El Rio nurses are committed to the idea that each patient deserves respect, receives quality care, and is part of the community. If we could replicate their concern, passion, energy, and success, our country's system would provide the quality health care we all hope to attain.

Words are not strong enough to thank the nurses at El Rio on behalf of their dedication, sacrifice, and work for a better future.

HARRY FRANCIS CUNNINGHAM, JR.

HON. LEE TERRY

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. TERRY. Madam Speaker, it is my honor today to recognize the 10th anniversary of the death of Harry Francis Cunningham, Jr., a patriotic American, a great Nebraskan and an unsung hero.

Harry Francis Cunningham devoted 31 years to the U.S. Foreign Service, serving in posts in Hungary, Spain, Germany, Vietnam, Sweden, Norway, Finland, and Canada during the tumultuous times of 1938–1969. During that time, Mr. Cunningham was personally responsible for the safety and survival of many families. At the tender age of 25, Mr. Cunningham was able to accomplish feats only achieved by real heroes, and through his noble actions, countless Jewish lives were saved.

One example of Mr. Cunningham's many accomplishments is the story of Mr. Zoltan Roth and Mrs. Elizabeth Foldes, two people that he helped escape Hungary just before the onslaught of World War II.

Both Zoltan and Elizabeth were graduate medical students seeking to escape Europe for America and facing dire circumstances. Both were brilliant students, but were banned by Hungarian medical school quotas against Jews. Instead, both graduated with honors from their respective schools, Zoltan from the University of Bologna in Italy and Elizabeth from Charles Medical University in Prague.

Upon her graduation, Elizabeth had been accepted at Columbia University in New York City to do graduate studies. She and Zoltan were about to be married, and wanted to come to America together. When she arrived at the American Embassy in Budapest, however, she learned for the first time that her student visa was unattainable. Six years before, her mother had, without Elizabeth's knowledge or consent, signed her up for permanent residency status and this had nullified the student visa process. A person applying for a student visa could not have signaled a desire to remain permanently. Their plight looked hopeless. They made an appointment, again at the American Embassy in Budapest, this time, fortuitously, being assigned to a Foreign Service Officer, who turned out to be Harry Francis Cunningham, Jr., 25 years old and on his first post. Creatively, Mr. Cunningham readjusted their visas giving Zoltan Roth, Elizabeth's permanent visa that she had not known about, as well as a quota number so he could leave Hungary within the next couple of months, freeing up her student visa application for her, and allowing them both entry into the United States.

Because of his kindness and creativity, Elizabeth and Zoltan came to the United States, each practicing medicine in Reading, Pennsylvania for over 50 years, they were generous philanthropists and community citizens. They raised three daughters who have been teachers, professors, authors, lecturers and leaders in the world-wide medical support community.

This was just one example of how Mr. Cunningham was able to assist refugees after the war by providing them safe entry into America to start new and productive lives.

Mr. Cunningham received a bachelor's of arts degree from the University of Nebraska-Lincoln in 1933 and was awarded an UNL Alumni Achievement award in 1984. He was a former trustee of the Nebraska State Historical Society Foundation and the UNL Alumni Association. He served on the Bishop's committee and was a church warden at St. Mark's Campus Episcopal Church.

Mr. Cunningham comes from a strong Nebraskan family as well. His father, Col. Harry Cunningham, took over the Nebraska State Capitol project after the death of Bertram Grosvenor Goodhue. He is survived by 11 grand children and 8 great grand children, several of which are still living in Nebraska.

Many families owe their survival, and the lives of their children and grandchildren, to Mr. Cunningham. So it is my true honor to remember this unsung hero here today.

PERSONAL EXPLANATION

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PASCRELL. Madam Speaker, I want to state for the record that on May 5th I was in my district attending the funeral of my Aunt Julia Taglibue Monda who recently passed away at the age of 96, and I therefore missed the three rollcall votes of the day.

Had I been present I would have voted "yea" on rollcall vote No. 231, on Motion to Suspend the Rules and Agree—H. Res. 299—Expressing the sense of the House of Representatives that public servants should be commended for their dedication and continued service to the Nation during Public Service Recognition Week, May 4 through 10, 2009, and throughout the year.

Had I been present I would have voted "yea" on rollcall vote No. 232, on Motion to Suspend the Rules and Agree—H. Res. 338—Supporting the goals and ideals of National Community College Month.

Lastly, had I been present I would have voted "aye" on rollcall vote No. 233, on Motion to Suspend the Rules and Agree—H. Res. 353—Supporting the goals and ideals of Global Youth Service Days.

BOSWELL ENGINEERING

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. ROTHMAN. Madam Speaker, I rise today to recognize the achievements of Boswell Engineering. In 1924, the late David C. Boswell recognized the need for engineering expertise in a world that was expanding and developing at a lightening-fast pace. It was then, in Ridgefield Park, NJ, that he founded Boswell Engineering. His leadership provided the solid foundation upon which the company is built.

Family ownership continued as both of David C. Boswell's sons—the late Howard L. Boswell, Sr. and David J. Boswell—became the second generation to own and operate the firm, each making his unique contribution toward establishing Boswell as a full-service engineering company. The company's third generation of family ownership and management headed by Stephen Boswell who together with his brothers Bruce and Kevin are presently providing the leadership for continuation and expansion of the superb quality of service and high standard of excellence Boswell is known for in the engineering community.

Through the company's fine history of engineering accomplishments—from a two-man field office concentrating on surveying and civil engineering to a 250 person multi-disciplined engineering firm serving numerous public sector clients at all levels of government, Boswell continues to play a major role in the structuring of the future and improving the quality of life for the cities, towns and counties with which it is associated.

Today, as the fourth generation is now actively engaged at the family owned business, Boswell Engineering, which has been headquartered in Bergen County since it's founding in 1924, looks forward to maintaining a reputation for excellence by continuing to provide superb engineering services envisioned by its founder 85 years ago.

STATEMENT IN SUPPORT OF THE UNITED STATES PATENT AND TRADEMARK OFFICE'S (USPTO) NATIONAL TRADEMARK EXPO

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. MORAN of Virginia. Madam Speaker, I rise today to express my support of the United States Patent and Trademark Office's (USPTO's) National Trademark Expo. In a time of great challenges for the American and global economy, I want to join the USPTO in its efforts to recognize the vital role trademarks play in the economy.

The 2008 National Trademark Expo was a great success and was attended by more than 7,000 from the trademark community as well as the public at large. This year's 2-day event will be held on Friday, May 8th, from 10 a.m. to 6 p.m., and Saturday, May 9th, from 10 a.m. to 4 p.m. at the USPTO headquarters in Alexandria, Virginia. The purpose of the Expo is to educate the public about the value and important role trademarks play in our society and the global marketplace.

Trademarks are words, names, symbols, sounds, or colors that identify and distinguish the goods and services of one party from those of others. The Trademark Expo will highlight the different types of trademarks including trademarks that identify shapes and configurations of products, century-old registered trademarks, the historical evolution and transformation of trademarks, and the history of people behind certain trademarks.

The USPTO campus will turn into a ''Trademark Theme Park'' featuring company booths, themed displays, costumed characters, and inflatables. Additions to this year's Trademark Expo include guided tours, activities for children, and educational lectures on anti-counterfeiting, how to file a trademark, and ''Trademarks 101.'' A large cast of costumed characters masquerading to tunes played by the United States Air Force Band's brass quintet promise a festive introduction for speakers at this year's opening ceremony.

During the Trademark Expo, costumed trademarked characters that the public has come to associate with particular goods and services, including the Pillsbury Doughboy®, Sprout®, Hershey's Kisses®, Maisy®, Curious George®, Peter Rabbit®, Energizer Bunny®, Mr. Jelly Belly®, and The Grinch®, among others, will parade about the USPTO campus, and large inflatable characters, including The Cat in the Hat®, Thomas the engine from Thomas & Friends®, and Green Giant®, will decorate the grounds. Costumed characters in the shape of crayons from Crayola®, displayed in a spectrum of colors, will escort children through the educational activities including a story time featuring literary trademarked characters sponsored by Hooray for Books!, a local children's bookstore. The Hershey's Kissmobile® and a UPS® truck will help tell the story of the prevalence of trademarks in our daily lives and their value as source indicators.

On average, people are exposed to 1,500 trademarks each day and more than 30,000 if they make a trip to the grocery store. In a time of globalization, counterfeit goods pose an increasing threat to American businesses, and trademarks assist the public in discerning between authentic and counterfeit merchandise.

Some of America's leading large corporations, small businesses with unfolding success stories, governmental agencies, and non-profit corporations will highlight the various types of trademarks and the benefits of Federal trademark registration. The exhibitors include Bridgestone Corporation, Burberry Limited, Callaway Golf Company, CMG Worldwide, Inc., Fred Gretsch Enterprises/The Bigsby Company, Galaxy Systems, Inc., International Trademark Association (INTA), Internet Keep Safe Coalition, The Hershey Company/Hershey Chocolate & Confectionery Corporation, The Pepsom Group, Inc., The Travelers Companies, Inc., United Parcel Service of America, Inc., Urangatang Web Design, LLC, U.S. Air Force, and U.S. Department of Energy.

The Trademark Expo will emphasize the essential role the USPTO plays in reviewing applications for trademarks and issuing federal trademark registrations. An award-winning leader in handling electronic filings, the USPTO will also showcase its electronic trademark application system.

During these uncertain economic times, I applaud the USPTO for its continued efforts to educate the public on the role of trademarks through the National Trademark Expo. I urge my colleagues to join me in recognizing the USPTO, at this time when trademark protection and intellectual property rights play an increasingly important role in our global economy.

MOMMA HARRIS

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. POE of Texas. Madam Speaker, in recognition of this Mother's Day, I rise to honor a special mother and grandmother, Sandra L. Harris—or Momma Harris as she is more affectionately known.

Sandra grew up in Cartersville, GA where she spent a good bit of time up on Red Top Mountain State Park. From a young age Sandra knew the value of a day's pay as she worked in the concession stand and as a lifeguard at the park.

Sandra would later meet Charles Harris from Cassville, GA and the two would become married. Sandra relocated with him to San Antonio and Wichita Falls, TX while he served in the military. In her personal career Sandra has worked in various occupations through the years including a bank teller and salesperson, but her passion lies in the real estate business where she has been quite successful.

After leaving Texas and moving back to Georgia Sandra had two sons, Chuck and James Harris. Momma Harris has taught her boys work ethic, faith, and the strength and character only a southern woman can instill into her sons. In addition to her two sons, Sandra has a vibrant grandson who she loves deeply, Wyatt Harris, who calls her Granny Harris.

Momma Harris is a woman of deep love, faith, and generosity. She is the type of person that anyone could hope to have for a mother. You can just ask anyone in Cartersville, GA and they will tell you that Sandra Harris will leave a lasting impression on anyone that spends just a few minutes around her.

Madam Speaker, I would like to wish the best to Sandra Harris, and thank her for representing the ideals of a loving and supporting mother on this Mother's Day. Let her commitment to her family serve as an example to us all. Sandra is a great American and I wish her a very happy Mother's Day with many more to come.

And that's just the way it is.

COMMENDING THE MIDLAND NORTHSTARS PEE WEE AA HOCKEY TEAM

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. CAMP. Madam Speaker, I rise today to commend the team members of the Midland Northstars Pee Wee AA hockey team on winning the USA Hockey Tier II 12-and-under Youth Nationals on Sunday, April 5, 2009. They have represented the state well with their perseverance and athleticism, and we are very proud of their national accomplishments.

The Northstars' 6–3 win over the East Coast Eagles of Raleigh, NC completed a six-game unbeaten run through the national tournament.

The Northstars—a travel team from the Midland Amateur Hockey League located in my district, outscored their opponents 36–7 in the five-day national tournament.

Team members include Turner Anderson, Tyler Angers, Samuel Brushaber, Drake Cergnul, Cam Fisher, Andrew Healey, Matthew Lee, Michael Leslie, Jacob Mackie, Travis McNally, Zachary Paisley, Steven Roberts, Joshua Ruthig, Derek Striker, Jacob Swartz, Brandon Veihl, Colin Walters. The team is Coached by Gregory Walters, assisted by Scott Cergnul, John Hollingsworth, Terry McNally, and James Roberts. The team manager is Kent Striker. The Northstars are also two-time Michigan state champions.

I am honored today to recognize the Midland Northstars Pee Wee AA team for their accomplishments, and congratulate them on their outstanding performance.

HONORING TAYLOR COURTER

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Taylor Courter a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 66, and in earning the most prestigious award of Eagle Scout.

Taylor has been very active with his troop participating in many scout activities. Over the many years Taylor has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Taylor Courter for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION ACT OF 2009

HON. GARY C. PETERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PETERS. Mr. Speaker, I rise today as a proud co-sponsor of H.R. 1913, the ''Local Law Enforcement Hate Crimes Prevention Act of 2009.'' According to FBI statistics, 118,000 hate crimes have been reported since 1991. During the same period of time, reported bias motivated crimes based on sexual orientation has more than tripled, yet the federal government currently has no jurisdiction to assist states and municipalities in dealing with even the most violent hate crimes against gay and lesbian Americans. The FBI's 2007 Uniform Crime Reports showed that reported violent crimes based on sexual orientation constituted approximately one out of six hate crimes committed in 2007, with 1,265 reported for the year.

The Local Law Enforcement Hate Crimes Prevention Act of 2009 will provide assistance to state and local law enforcement agencies and amend federal law to facilitate the investigation and prosecution of violent, bias-motivated crimes. This important legislation is backed by a number of major law enforcement organizations, including the International Association of Chiefs of Police, the National District Attorneys Association, and the National Sheriffs Association.

This bill will strengthen existing federal law by expanding its jurisdiction to provide protections for crimes directed at individuals because of their gender, gender identity, sexual orientation or disability. The bill only applies to bias-motivated violent crimes and does not impinge public speech or writing.

This bill includes an explicit First Amendment free speech protection. Pastors, Sunday school teachers, and religious leaders cannot be prosecuted for the content of their speech. Many religious groups have expressed support for the bill, including the Episcopal Church, the Evangelical Lutheran Church of America, the Interfaith Alliance, the Presbyterian Church, the United Synagogue of Conservative Judaism, the United Methodist Church, and the Congress of National Black Churches.

I am proud to support the Local Law Enforcement Hate Crimes Prevention Act of 2009 because it is grounded in fundamental American values: recognizing the dignity of every person, protecting religious freedom, and freedom of speech. This legislation protects people from violence based on who they are, and has explicit protections to ensure that the law does not punish what people think, feel, or believe, but rather actions that physically harm others. I urge passage of the Local Law Enforcement Hate Crimes Prevention Act of 2009.

CELEBRATING 100 YEARS OF SERVICE BY THE BUFFALO AUDUBON SOCIETY

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. HIGGINS. Madam Speaker, I rise to commend and congratulate the Buffalo Audubon Society on the occasion of their centennial of exemplary service to the communities of Western New York and New York State.

Established in 1909, the Buffalo Audubon Society is the oldest Audubon chapter in New York State and one of the four oldest Audubon Chapters in the United States serving the counties of Erie, Wyoming, Niagara, Orleans, Genesee and portions of Chautauqua, Cattaraugus and Allegany.

This outstanding organization is a membership-based not-for-profit that provides an invaluable contribution to our community as it continues to promote the enjoyment and appreciation of the natural world through education and stewardship.

Its educational experience credentials remain exemplary as The Buffalo Audubon Society provides nature and environmental education to as many as 35,000 children and adults each year through classroom presentations, field trips, workshops, festivals, and excursions and has inspired a deeper appreciation of nature among hundreds of thousands of children and adults over the last century.

The Buffalo Audubon Society's stewardship is best exemplified by its ownership and maintenance of six nature preserves in Western New York, whose total acreage exceeds 1,000 acres, including Beaver Meadow Audubon Center, the most active nature education center in upstate New York.

The Buffalo Audubon Society is and will remain a leader in building partnerships and collaborations with other environmental nonprofits, state and local governments, and businesses throughout the region to affect positive changes in the natural environment of Western New York.

Tonight, the community will come together for a Centennial Gala at the Buffalo Zoo celebrating a century of nature education, environmental advocacy and accomplishments. I am pleased and proud to ask that my colleagues join with me in adding the congratulations of the United States House of Representatives and extending our deepest appreciation for 100 years of caring for the environment.

We also add best wishes to the Buffalo Audubon Society for every success in its next century of service as it continues its dedication to work as a strong and effective voice for the protection of natural wonders and environmental quality in Western New York.

CONGRATULATIONS TO JACK LEONHARDT, MAYOR OF THE CITY OF WINDCREST

HON. LAMAR SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. SMITH of Texas. Madam Speaker, today I want to congratulate Mayor Jack Leonhardt on the occasion of his retirement as Mayor of the City of Windcrest.

First elected Mayor of Windcrest on May 5, 2001, Mayor Leonhardt has been consecutively elected to four terms. He announced his retirement in May 2009. As Mayor, he served as Chairman of the Alamo Area Council of Governments, President of the Texas Municipal League Region 7, Treasurer of the Greater Bexar Council Council of Cities and was appointed by Mayor Phil Hardberger and Judge Nelson Wolff to the Transportation Task Force.

Mayor Leonhardt is a member of the Windcrest Lions Club, the Windcrest Optimist Club, the Northeast Partnership, the Greater Randolph Chamber of Commerce, and serves as an elder at John Calvin Presbyterian Church. He also served in the United States Air Force from 1966 until 1987 when he retired as Lieutenant Colonel.

He is married to Barbara and has two daughters, Jacqueline Denham and Joanne Brickson, as well as four grandchildren.

He has done an exceptional job as Mayor and we are all grateful for his service to his community.

ROBERT KNISELY

HON. ADRIAN SMITH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. SMITH of Nebraska. Madam Speaker, I rise today in remembrance of Robert Knisely, a friend to all of Nebraska and a man whose philanthropy over the years—many times anonymous in nature—will be missed.

Born in Shubert, Nebraska, Bob served our country honorably during World War II, captaining B–17 and B–29 bombers in the U.S. Army Air Corps.

After the war, Bob founded Midwest Construction Company which became a nationally recognized heavy construction contractor for more than 56 years. He did not rest on his laurels, instead earning a reputation for a man who loved and lived his work. He returned this success to the State of Nebraska not only through private philanthropy, but also by working to make our State a better place.

Bob's strength was his ability to tap into the humor, empathy and charm which made him well-liked by everyone who knew him.

A driven man, a passionate Husker fan, and a loving husband, father and grandfather, Bob will be missed. My thoughts and prayers remain with his family.

ASIAN PACIFIC AMERICAN HERITAGE MONTH

HON. DAVID WU

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. WU. Madam Speaker, I rise today to recognize May as Asian Pacific American Heritage Month, a time when we reflect on the contributions that Asian Pacific Americans have made to our country.

I would specifically like to take this opportunity today to speak briefly about the Asian

Pacific American community and a topic close to my heart: organ donation. April was ''Donate Life Month,'' and my colleague, Mr. COSTA, one of the co-chairs of the Congressional Organ and Tissue Caucus, spoke eloquently about the need for everyone, particularly those in ethnic minority communities, to become organ donors and to inform their families of this important decision.

Organ and tissue donation is a topic that requires specific, culturally sensitive information to be provided to the Asian Pacific American community in order to get past the fear and cultural stigma associated with donation.

According to the Department of Health and Human Service's Office of Minority Health, the need for transplants is unusually high among some ethnic minorities. Some diseases of the kidney, heart, lung, pancreas, and liver that can lead to organ failure are found more frequently in ethnic minority populations than in the general population. For example, Asian and Pacific Islanders, along with African Americans and Hispanics, are three times more likely than Caucasians to suffer from kidney disease. Some of these diseases are best treated through transplantation; others can only be treated through transplantation.

Successful transplantation is often enhanced by using organs from members of the same racial and ethnic group. Generally, people are genetically more similar to people of their own ethnicity or race than to people of other races. Therefore, matches are more likely and timelier when donors and potential recipients are members of the same ethnic background.

Minority patients may have to wait longer for matched kidneys and therefore maybe be sicker at the time of transplant or may die waiting. Currently there are 7,108 Asian Pacific Americans on organ donor waiting lists. While Asians represent 6.4 percent of the current wait list, only 3.1 percent of organs donated in 2008 came from Asians. With more donated organs from minorities, matches will be found more quickly and the waiting time will be reduced.

I look forward to working with my colleagues to recognize the contributions of Asian Pacific Americans around the country who are addressing this problem. I am deeply grateful for people like Cammy Lee, who started the Cammy Lee Leukemia Foundation to help find matches for bone marrow transplants, and Dr. Samuel So of the Stanford Asian Liver Center and the Jade Ribbon Campaign, whose work addresses the high incidence of hepatitis B and liver cancer in Asians and Asian Americans through education and treatment.

Together as a country we recognize Asian Pacific American Heritage month, and together we can help increase the rate of organ and tissue donation within the Asian Pacific American community, as well as other ethnic minority communities.

INTRODUCING THE FAIR FUNDING FOR SCHOOLS ACT

HON. MAZIE K. HIRONO

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Ms. HIRONO. Madam Speaker, I rise today to reintroduce the Fair Funding for Schools Act, which reauthorizes and improves the Impact Aid program. Impact Aid benefits millions of American students attending elementary and secondary schools in every state in the country. Through this program, the federal government does the right thing by reimbursing local school districts for lost tax revenue due to federal lands within the borders of their districts and the number of military-connected students in the district.

The majority of public school funding in America comes from local property taxes. Unfortunately, this vital funding stream is drastically reduced in school districts where the federal government controls part of the land in the district. For instance, the many U.S. military bases located in Hawaii take up a vast amount of space and house large populations, but these bases do not generate local property taxes. In other states, large national parks and forests, federal prisons, and Indian lands all similarly decrease local property tax revenue. Left uncorrected, this loss of revenue would leave the children living in these areas with a second class education, funded by substantially fewer dollars than their peers living in areas with no federally impacted land.

In 1950, Congress recognized the need to address this inequity and created Impact Aid, a program by which we provide additional federal dollars to school districts feeling this financial strain.

Impact Aid is one of the most effective programs run by the Department of Education because it sends money directly to local school districts with very few strings attached. Just like the property tax revenue it replaces, Impact Aid dollars can be used to fund the most essential needs identified by the school district—textbooks, computers, utilities, and salaries, for instance. Many districts rely heavily on this money, and without it their students would be shortchanged. Therefore, we must reauthorize this program.

Even great programs need to be tweaked every so often, and this Fair Funding for Schools Act makes necessary changes in Impact Aid. The bill addresses the effects of military base realignment and troop redeployment by allowing Impact Aid payments to be calculated using current student counts instead of prior year data. This change will allow districts receiving an influx of new military families to receive their Impact Aid dollars in a timely manner.

The Impact Aid law also has become overly complicated during its 59-year history. This bill simplifies the law by eliminating some outdated provisions that added unnecessary complications. It also maintains the program's traditional focus on need, whereby payments to school districts are calculated based on the percentage of the budget lost due to federal actions and on the number of federally connected children in a district.

Madam Speaker, this is a vitally important bill for Hawaii and for many school districts across the country. The students most impacted are often from families serving in our military. Given the sacrifices we ask of military families, they deserve nothing less than the best education for their children. This bill will take us in that direction, and I urge my colleagues to join me in supporting it.

RECOGNIZING THE 50TH ANNIVERSARY OF THE FOUNDING OF THE LONGWOOD SCHOOL DISTRICT

HON. TIMOTHY H. BISHOP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. BISHOP of New York. Madam Speaker, I rise today to recognize the 50th anniversary of the founding of Longwood School District, which unites four central Long Island hamlets under a single purpose: providing a top quality education to the children of our community.

The first recorded area schoolhouse was established in Coram, New York, in 1811, nearly a century after permanent European settlement in the area known as ''The Plains'' due to its inland location. Division of the area into separate school districts soon followed, and schoolhouses for primary education proliferated. In 1959, local school boards moved to consolidate the schools in order to better serve area students, selecting the name of Longwood from a centrally-located estate.

For the past 50 years, Longwood School District has educated students from the communities in my district of Coram, Middle Island, Yaphank, East Yaphank, Shirley, Ridge, Lake Panamoka, Gordon Heights and portions of Medford, Miller Place and Shoreham. The district has grown to include four primary schools: Charles E. Walters, Coram, Ridge and West Middle Island, with students graduating to Longwood Middle School, Junior High School and High School.

Madam Speaker, on behalf of the families served by the dedicated teachers, administrators, and staff of the school district, I congratulate Longwood on reaching this important milestone and offer best wishes for continued success in the classroom, on the playing fields, and in post-secondary pursuits.

CONGRATULATING CHICAGO COMMUNITY LOAN FUND, A 2009 RECIPIENT OF THE MACARTHUR AWARD FOR CREATIVE & EFFECTIVE INSTITUTIONS

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Ms. SCHAKOWSKY. Madam Speaker, I rise today to congratulate the Chicago Community an Fund (CCLF) on receiving the 2009 MacArthur Award for Creative and Effective Institutions from the John D. and Catherine T. MacArthur Foundation.

I would also like to commend the John D. and Catherine T. MacArthur Foundation, another exemplary Chicago institution, for its ongoing investments in knowledge, the arts, public policy, conservation, and justice. Their grants support diverse areas with critical needs. For example, other recipients of the MacArthur Award for Creative and Effective Institutions included groups working on natural resource conservation in the Caribbean, defense of human rights in the Don Region of Russia, and the promotion of equal justice and the rule of law in Nigeria.

CCLF is one of three U.S. organizations, and just eight worldwide, to receive the prestigious award, which recognizes implementing

creative, effective, and ultimately successful approaches to diverse challenges.

Through targeted lending to non-profit and for-profit community development organizations, CCLF works in low- and moderate-income Chicago neighborhoods to preserve and create affordable housing, develop social services infrastructure, and spur economic and commercial development. The Fund's presence is key for small and midsize real estate developers and non-profits in Chicago looking for low-cost, flexible financing. CCLF also offers technical assistance to its borrowers and works to promote sustainable building design.

CCLF and the other award-winning institutions are also notable for their ability to achieve substantial impact with limited resources. CCLF's borrowers have leveraged $36 million in loans into $808 million from public and private sources, resulting in the preservation or creation of over 1,000 jobs and 5,200 homes.

CCLF is also part of the Preservation Compact, an initiative supported by the MacArthur Foundation, which has the goal of preserving 75,000 affordable rental homes in Cook County by 2020. CCLF has created a revolving loan pool to help developers save up to 2,200 such units.

CCLF plans to use its $500,000 award to enhance its lending activities and to promote sustainable building technologies in its community development initiatives.

I would like to offer my sincere congratulations to the Chicago Community Loan Fund for its exemplary and forward-looking strategies to preserve and build affordable housing, promote sustainable economic development in low- and moderate-income areas, and bring good jobs to Chicago.

ENDANGERED FISH RECOVERY PROGRAMS IMPROVEMENT ACT OF 2009

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. SALAZAR. Madam Speaker, I'd like to share with you and my esteemed colleagues the importance of the Upper Colorado River and San Juan River Basin Endangered Fish Recovery Program.

This program is a premier example of how to recover endangered fish species while also providing more than 3 million acre-feet of water per year to Federal, tribal and non-Federal water projects.

It has been cited as the most successful fish recovery program in the United States and is used as a model for other recovery programs developed across the country.

Today I am introducing the ''Endangered Fish Recovery Programs Improvement Act of 2009'' to ensure this program can finish the restoration projects identified for complete success.

This bill extends the authorization of programs until 2023. At that time the fish species of concern will be fully recovered and the infrastructure in place to ensure continued success.

The projects completed to date on the Upper Colorado and San Juan River Basins are examples of outstanding cooperation among a diverse group of local, state and federal governmental agencies, environmental groups, water users and utility consumers.

People ask why they've never heard of this recovery program and that's because it has been so successful. The fish identified as being under threat have been substantially maintained.

This bill is critical for the continued and final success of the projects necessary for recovery of the endangered fish.

RECOGNIZING POLICE UNITY TOUR

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. FRELINGHUYSEN. Madam Speaker, I rise today to recognize the Police Unity Tour,'' which on May 9th will kick-off its 13th Anniversary bicycle tour to our nation's capitol.

The Police Unity Tour honors the memory and courage of law enforcement officers killed in the line of duty and raises money for the National Law Enforcement Officers Memorial in Washington, D.C. Over one thousand police officers from around the country will complete the tour, hundreds of whom will leave from northern New Jersey municipalities that I am proud to represent.

In May 1997, the first Police Unity Tour was organized by Officer Patrick P. Montuore of the Florham Park Police Department, with the hope of raising public awareness about police officers who have died in the line of duty and to honor their sacrifices. The tour started with 18 riders on a four day fund-raising bicycle ride and has grown to over 1,100 riders nationwide.

The Police Unity Tour honors the heroes who have lost their lives and reminds us that everyday our police officers, firefighters, and emergency service personnel, all brave men and women, devote their lives to protecting and serving our communities. Too many of these officers make the ultimate sacrifice and to them we are eternally grateful. We must never take their actions for granted and always remember the families and friends they leave behind.

Madam Speaker, I urge you and my colleagues to join me in congratulating the Police Unity Tour on their 13th Anniversary of honoring fallen law enforcement officers who have died in the line of duty.

SUPPORTING NATIONAL CHARTER SCHOOLS WEEK

SPEECH OF

HON. MICHELE BACHMANN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 5, 2009

Mrs. BACHMANN. Mr. Speaker, I rise in support of H. Res. 382, which supports the goals and ideals of National Charter School Week.

I know very well the great importance of charter schools in public education today as I helped establish one of America's first charter schools, the New Heights Charter School in Stillwater, Minnesota in 1993. This school is not only continuing its success today but has driven the establishment of other charter schools. And, today, children are educated at almost 3000 charter schools across the United States.

With so many new charter schools opening since these past two decades, it is clear that these schools fulfill a real need for parents, students, and teachers alike. These schools are held accountable for the progress of their students and they continue to thrive because their students perform so well.

Charter schools hold great importance in our educational system because they give parents options. They allow parents to choose from a variety of institutions to find the environment that will best help them succeed. The traditional public school is not always the right fit for every child. Because of charter schools, not only children from families with means have choices. Charter schools give underprivileged families choices that they might not otherwise have.

Madam Speaker, charter schools have set students and teachers on a path to achieve their goals and are an integral part in our constant efforts to improve education in the United States.

RESOLUTION HONORING FAMILY READINESS VOLUNTEERS

HON. SUSAN A. DAVIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mrs. DAVIS of California. Madam Speaker, I rise in support of military Family Readiness Volunteers and Ombudsmen.

This resolution honors the work of the Army's Family Readiness Volunteers, Air Force Key Spouse Volunteers, Navy Ombudsmen, Marine Corps Key Volunteers and Coast Guard Ombudsmen.

Each day, thousands of men and women volunteer their time and efforts to help improve the quality of life for military families by serving as a channel between deployed units and their loved ones at home. Frequently, these important volunteers are spouses themselves.

Family Readiness Volunteers and Ombudsmen help our families solve a variety of problems, and successfully meet the challenges service members and their families face before, during, and after deployments.

I firmly believe that the outstanding performance of our service members is a testament to their efforts, and with today's high operational tempo, their services are as important as ever. They could not do their jobs and execute the missions at hand if they were constantly worried about their loved ones back home.

As a proud San Diegan, I am fortunate enough to be able to meet with Navy Ombudsman several times a year to discuss these important issues.

These Ombudsmen provide invaluable insight into the struggles and challenges our military families face every day. They truly serve as the voice and as an advocate of those who serve our country and provide emotional support to spouses of deployed service members.

Specifically, the Navy Ombudsmen I have met with in San Diego have reiterated the importance of ensuring our military families have

a smooth deployment cycle, from when a family is preparing for a deployment to adjusting to life once the service member has returned home.

Family Readiness Volunteers and Ombudsmen can assist newly enlisted service members and spouses with a wide range of issues—from understanding their health and retirement benefits to serving as a conduit of information to the command.

They can also provide resources and support to families who are seeking support services, such as employment training, mental health counseling or where to find affordable day care services for their young children.

These men and women volunteer their time to selflessly take on the responsibility of helping other military families while they themselves are often coping with the deployment of a loved one.

Madam Speaker, since 2001, nearly two million members of the active duty and reserve force and the National Guard have deployed in support of overseas contingencies in Iraq and Afghanistan.

As we all know, deployments are a difficult time for service members and their families.

Inadequate communication between units abroad and families at home cause unnecessary stress on our service members and their families and can harm the overall readiness of our force. Family readiness equals mission readiness.

I have heard time and time again that when deployed service members know their families are being taken care of, that they can focus on the task at hand. Family Readiness Volunteers and Ombudsmen help reduce the uncertainty and ease anxiety around deployments by keeping families informed and our service members focused on their mission.

I hope you will help me recognize their important role to our national defense.

REMARKS HONORING SHARON WALDEN

HON. NICK J. RAHALL, II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. RAHALL. Madam Speaker, I rise before you today to honor a great West Virginian, Sharon Walden who will be inducted into the West Virginia Affordable Housing Hall of Fame on Thursday, May 7th, 2009. Her lifelong commitment to affordable housing, coupled with her tremendous career of leadership, has forever changed the McDowell county community where she was raised and where she continues to make her home.

Sharon's leadership has led to housing and safety for many domestic violence victims, homeless women and their children in West Virginia. Since 1990, she has served as the Executive Director of Stop Abusive Family Environments, Inc. (SAFE). Under her leadership, SAFE went from a small Domestic Violence program with two employees to the first transitional housing facility in my home state of West Virginia that serves victims of domestic violence.

Sharon has truly battled Goliath as David did in 1 Samuel Chapter 17. She worked tirelessly to raise over two million dollars in grants and forgivable loans in order to renovate a former school building into SAFE's facility. Her perseverance to improve her community did not end there. Next, she established the SAFE permanent housing program which would help first-time, low-income homebuyers in her county. Since then, SAFE has completed 40 rental townhouses with a community center that has been noted as the best rental housing in all of McDowell county.

Under Sharon's leadership, SAFE has formed a non-profit section called SAFE Housing and Economic Development (SHED) which focuses on permanent housing development. In these times of economic uncertainty, when becoming a homeowner can seem like an impossible dream, SHED has helped more than 35 community members reach that goal and become first time homeowners.

Sharon's community work doesn't stop with helping those in need of housing. She helps further economic development as the Executive Director of Travel Beautiful Appalachia. Linking tourism from the rail system to local entrepreneurs, she helps spread local West Virginia treasures across the country.

Sharon's lifetime commitment to helping her neighbors has made a permanent impression on West Virginia. I bring her extraordinary efforts to the attention of the U.S. Congress and urge my colleagues to join me in recognizing Sharon Walden, a hero to her community and the countless families she has helped.

SUPPORTING THE CREDIT CARDHOLDER'S BILL OF RIGHTS ACT OF 2009 (H.R. 627)

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. HOLT. Madam Speaker, I rise to express my strong support for the Credit Cardholder's Bill of Rights Act of 2009 (H.R. 627), which the House approved last week, and to commend my colleague Ms. MALONEY for her leadership in crafting and championing this measure.

As I am certain is true of all of my colleagues, I am inundated with calls and letters from constituents who are outraged by sudden and arbitrary increases in their credit card interest rates. Their hard-earned taxpayer dollars were used to shore up financial institutions to prevent an economic collapse, and in return, some of the very same financial institutions turned right around and doubled the interest rate they charged their customers.

A letter I received from one constituent, whose interest rate was doubled from 15 to 30 percent, said: ''[i]nterest rates such as these are confiscatory. . . . This starts to look like indentured servitude at best, and financial slavery at worst.'' A letter from another said: ''given how much of my taxes are going to bail out these companies, these rates are beyond outrageous and smack of greed.'' And a letter from another, which was entirely in capital letters, said: ''[t]he American people gave billions [in] bail out money because . . . the banks got themselves into trouble. Instead of helping the same taxpayers that helped them by lowering interest rates on credit cards they chose to raise the rates for no reason. . . . When people do the responsible thing it seems they get punished for it. There have to be more controls on what the banks can do to people who honor their commitments.''

I share the outrage of my constituents, and I am pleased to support the Credit Cardholder's Bill of Rights. It will tackle not only usurious interest rates, but a host of other abuses. In 2008 alone, credit-card issuers imposed $19 billion in penalty fees on families with credit cards according to an industry consultant for Consumer Reports. In 2009 it is estimated that credit card companies will break all records for late fees, over-limit charges, and other penalties, charging more than $20.5 billion for such fees and penalties.

The Credit Cardholder's Bill of Rights would prevent credit card companies from unfairly increasing interest rates on existing card balances. Credit card holders would be allowed to set their own lower credit card limits, at levels they consider appropriate for their financial circumstances.

The bill would end ''double cycle'' billing, prohibiting credit card companies from charging interest on balances cardholders have already paid on time. If a cardholder pays on time and in full, the bill prevents card companies from charging additional fees on balances consisting solely of left-over interest.

The bill would also require card companies to provide 45 days advance notice of all interest rate increases or significant contract changes such as the addition of new fees or penalties, and would enact into law recently proposed Federal Reserve Board regulations protecting consumers from abusive credit practices.

This bill establishes many long-overdue protections for consumers and credit card holders, and I am pleased to support it.

IN MEMORY OF CORINNE CONTE

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. MARKEY of Massachusetts. Madam Speaker, I rise to honor the memory of Mrs. Corinne Louise Conte, wife of our former colleague, the late Congressman Silvio Conte, who died on April 28, 2009.

Corinne was born on January 24, 1922, in Pittsfield, Massachusetts, to Charles and Kathleen Clemente Duval. As a teenager, she was a champion swimmer, winning the New England Championship for Breast Stroke Swimming at age 13. Following graduation from Pittsfield High School and St. Luke's School of Nursing in Pittsfield, Corinne served as a nurse in the Navy during World War II where she met her future husband, the late Congressman Silvio O. Conte when he was in the Seabees and recovering from an illness.

Corinne and Silvio were married in Pittsfield on November 8, 1947. After Silvio was elected to the U.S. Congress in 1958, Corinne moved to Bethesda, Maryland, where she raised their four children. While in the Washington, D.C. area, she worked as a real estate agent and was an active partner in her husband's political campaigns. Corinne met every U.S. President from Dwight D. Eisenhower to George H.W. Bush, and many of the world's leaders from the 1950s through the early 1990s. She also danced with Lyndon B. Johnson at his Inaugural Ball and served on President George

H.W. Bush's special Committee on Mental Health in the late 1980s.

Corinne was an avid Red Sox fan and was very thankful that she lived to see the "Curse of the Bambino" broken. She was committed to her Catholic faith and was a daily communicant for years at Little Flower Roman Catholic Church in Bethesda, Maryland, as well as Notre Dame Roman Catholic Church and St. Joseph Roman Catholic Church, both in Pittsfield. In her younger years, she had a private pilot's license. But, most of all, Corinne loved to play cards on a daily basis while living with her daughter in Mill Valley. She enjoyed a last game with her children a few days before her death, which she won, decisively.

Corinne was a friendly and cheerful person who was loved by everyone who knew her. She had a remarkable and full life, and I extend my condolences to the family on her passing.

DEDICATION OF THE BRUCE W. CARTER DEPARTMENT OF VETERAN AFFAIRS MEDICAL CENTER IN MIAMI

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. MEEK of Florida. Madam Speaker, today I want to express my deep gratification and support as the Miami Veterans Affairs Medical Center dedicates their building to Pfc. Bruce W. Carter, USMC. Although we can never truly do enough to honor his sacrifice, Pfc Bruce Carter, through the tireless efforts of his mother Georgi Carter Krell and so many others, will be remembered.

Pfc Carter, a member of the 2nd Battalion 3rd Marines 3rd Marine Division, died in the Quang Tri Canyon Province in the Republic of Vietnam in 1969. His Medal of Honor Citation reads in part that "while pinned down by vicious crossfire, with complete disregard for his safety, he stood in full view of the North Vietnamese Army soldiers to deliver a devastating volume of fire at their positions. The accuracy and aggressiveness of his attack caused several enemy casualties and forced the remainder of the soldiers to retreat from the immediate area. Shouting directions to the marines around him, Pfc. Carter then commenced leading them from the path of the rapidly approaching brush fire when he observed a hostile grenade land between him and his companions. Fully aware of the probable consequences of his action but determined to protect the men following him, he unhesitatingly threw himself over the grenade, absorbing the full effects of its detonation with his body. Pfc. Carter's indomitable courage, inspiring initiative and selfless devotion to duty upheld the highest traditions of the Marine Corps and the U.S. Naval Service. He gallantly gave his life in the service of his country."

The citation speaks volumes. In this time when we have two wars ongoing, it is such a good reminder of the kind of person who serves this country and commits him or herself to the protection of others, even until death. I am sure that Georgi would be the first to say that although this Center is named for Pfc Carter, it is a testament to the legacy of all of our brave veterans. In her work as President of the Gold Star Mothers Inc, she knows better than most the toll that war can take on families and I also take this opportunity to thank her for her dedication and tireless work on behalf of our veterans.

SUPPORTING FINANCIAL LITERACY MONTH

HON. RUBÉN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. HINOJOSA. Mr. Speaker, personal financial management skills and lifelong habits begin to develop during childhood. As such, it is essential that we begin preparing our youth as early as possible on how to make informed financial choices, manage money, credit, debt, and risk and eventually become responsible workers, heads of households, investors, entrepreneurs, business leaders, and citizens.

We need to begin working closely with the Department of Education and states and localities to ensure that we begin the financial literacy learning process at least by the time a child enters Kindergarten.

Policymakers of both parties, at the local, state, and federal levels, recently have increased their focus on financial literacy and economic education issues because national surveys reveal troubling gaps in students' and the public's knowledge of these subjects. Economic competency and financial literacy skills are critical for individuals to make sound decisions regarding home ownership, savings, investment, credit and borrowing, and retirement planning. An educated and financially literate populace will strengthen the national economy, especially as individuals improve their own economic well-being.

Our government should lead by example. We should coordinate and communicate a unified message on financial literacy across this Nation. We should authorize and appropriate such funds as necessary to create a broad-based public awareness campaign comprised of a substantial mass-market, multimedia effort in support of a national financial literacy initiative on the scale of the "truth" campaign, developed through the Public Education Fund to discourage smoking among young people.

I believe that the National Endowment on Financial Education and several other financial literacy nonprofits and community based groups would agree with me. My proposed financial literacy initiative would be in addition to the one recommended in the Office of Housing Counseling legislation as introduced by my fellow Financial and Economic Literacy Caucus Co-Chair, colleague and friend, Congresswoman JUDY BIGGERT. I am a proud cosponsor of her legislation and am pleased that it was incorporated into H.R. 1728, the "Mortgage Reform and Anti-Predatory Lending Act."

In 2004, Congress passed a bill known as the FACT Act. One of the provisions in that Act required Treasury and a Financial Literacy Education Commission to create a national financial literacy campaign. They failed miserably, and, consequently, I think we need to revisit Title V of the FACT Act to alter the composition and contributions and goals of the Financial Literacy and Education Commission housed at Treasury once the Deputy Assistant Secretary for the Office of Financial Education is selected.

Mr. Speaker, some disturbing facts.

A 2008 survey of high school seniors conducted by the Jump$tart Coalition for Personal Financial Literacy revealed that students in 2008 answered correctly only 48.3 percent of the survey's questions, a decline from those posted by students in 2006, who correctly answered 52.4 percent of the questions;

Eighty-four percent of undergraduates had at least one credit card in 2008, up from 76 percent in 2004, with the average number of cards increasing to 4.6 according to Sallie Mae's National Study of Usage Rates and Trends 2009 entitled "How Undergraduate Students Use Credit Cards";

Personal saving as a percentage of disposable personal income was 4.2 percent in February, compared with 4.4 percent in January, and up from a 12–month average of 1.7 percent in 2008, according to the Bureau of Economic Analysis;

The average baby boomer has only $50,000 in savings apart from equity in their homes, according to the Federal Reserve Board's Survey of Consumer Finances for 2007; and,

Studies show that as many as 10,000,000 households in the United States are "unbanked" or are without access to mainstream financial products and services.

These statistics are alarming.

All of us here in Congress and across the United States need to take actions necessary to address and improve upon these startling facts. I am pleased to announce that I am a proud cosponsor of Congresswoman CAROLYN MALONEY's Credit Cardholders' Bill of Rights. I supported it in Committee and voted for it when it passed the House.

One other way of addressing these alarming statistics is by increasing the number of Members of Congress dedicated to the financial literacy cause. By joining the Financial and Economic Literacy Caucus my colleague and friend

Congresswoman JUDY BIGGERT and I cofounded in 2005 and currently co-chair, Members can take a giant step forward and help us find the ways and means to improve financial literacy across the United States for all individuals during all stages of life.

As members of the Caucus, my colleagues in the House can collaborate on events such as the National Consumer Protection Week Fair, America Saves Week, Financial Literacy Month, and the Financial Literacy Day Fair held every other year in the House of Representatives.

By joining the Caucus, Members can collaborate with us to increase funding for the Council for Economic Education's Excellence in Economic Education (EEE) program. Congress authorized the EEE as part of the No Child Left Behind Act "to promote economic and financial literacy of all students in kindergarten through grade 12." In 2004, the Department of Education selected from a competitive process the Council for Economic Education (formerly named the "National Council for Economic Education") to administer and implement the Excellence in Economic Education program authorized in the No Child Left Behind Act (P.L. 107–110), Subpart 13, Sections 5531–5537).

Educating students in grades K–12 is the best way to help them develop the knowledge and skills they will need for a lifetime of economic and financial decisions. The EEE program accomplishes this through sub-grants to

state and local educational organizations for activities that include distribution of curricular materials, replication of best practices and teacher training.

EEE is a targeted, demand-driven, grass-roots program. Three quarters of the funding goes directly to ongoing state and local economic education and financial literacy initiatives with proven track records. The program also requires a thorough review and assessment of the use and effectiveness of the sub-grants. Finally, federal resources are leveraged through the requirement that sub-grant recipients match EEE funds dollar-for-dollar.

Since that time: 48 states and the District of Columbia have been served by Excellence in Economic Education (EEE) sub-grants in project years 2004–08; 495 sub-grants were awarded in that time-frame; $5,418,539 has been awarded to grass-roots organizations nationwide; over 1,500 copies the 2007 Survey of the States were distributed to individuals and agencies interested in improving economic and financial literacy.

During Financial Literacy Month 2009, the Jump$tart Coalition for Personal Financial Literacy, Junior Achievement, and the Council for Economic Education hosted the Financial Literacy Day Fair on Capitol Hill in collaboration with myself and Congresswoman BIGGERT in our roles as co-chairs of the Caucus. Over 800 people attended this year's Financial Literacy Day Fair on April 30, 2009 in the Cannon Caucus Room, 345 Cannon, and more than 50 vendors participated presented their financial literacy pamphlets, brochures, DVDs, and more at the Fair. The youngest participant was an 11 week old baby girl named Juliana and a man in his late 80s/early 90s who has worked on Capitol Hill for quite some time.

Also during Financial Literacy Month 2009, bankers across the United States taught savings skills to young people on April 21, 2009, during Teach Children to Save Day. This Day was started by the American Bankers Association Education Foundation in April of 1997 and has now helped more than 72,000 bankers teach savings skills to nearly 3,200,000 young people.

Staff from America's credit unions made presentations to young people at local schools on financial topics such as student loans, balancing a checkbook, and auto loans during National Credit Union Youth Week, April 19–25, 2009;

More than 100 Federal agencies have collaborated on a website, www.consumer.gov, which helps consumers shop for a mortgage or auto loan, understand and reconcile credit card statements and utility bills, choose savings and retirement plans, compare health insurance policies, and understand their credit report and how it affects their ability to get credit and on what terms.

In my district, I've held four different financial literacy events at four different schools. I was able to host financial literacy programs at four different schools in the Beeville as well as the Edinburg area of my district. We provided financial literacy workshops to well over 400 high school students in three days. I hope to add even more events in my district during Financial Literacy Month 2010.

Mr. Speaker, there are hundreds of other financial literacy programs out there for us to tap and integrate into resolutions, legislation, authorizations and appropriations.

It is important that we support the goals and ideals of Financial Literacy Month, including raising public awareness about financial education; recognize the importance of managing personal finances, increasing personal savings, and reducing personal debt in the United States; and, that the President, the Federal Government, States, localities, schools, nonprofit organizations, businesses, and the people of the United States observe the month with appropriate programs and activities with the goal of increasing financial literacy rates for individuals of all ages and walks of life.

I am pleased to insert at the end of my remarks a Presidential Statement I received April 30, 2009 from President Barack Obama. In it, he states that he is "pleased to join all who are observing Financial Literacy Month." He goes on to state that "It is more important than ever to understand how to balance a checkbook, budget wisely, plan for retirement and avoid accumulating debts that could harm your financial future. A strong American economy depends on everyone . . . We must pass along such fundamental knowledge to our family and friends, because financial literacy empowers all of us."

I am personally thrilled that President Obama has issued this Financial Literacy Month Statement, and I look forward to working with him, his staff at the White House, staff at Treasury, and other federal agencies on financial literacy issues now and well into the future.

I am also inserting at the end of my remarks a list of the Members of Congress who are part of the Financial and Economic Literacy Caucus and have given permission that their names be listed publicly as members of the Caucus.

Together we can improve our economy. Together, we can re-establish our prominence in the global marketplace, and together we can work to ensure that the United States remains at the top of the global economy by teaching our youth as early as possible how to manage their finances.

We need to act soon. We need to act fast, and we need to act prudently and decisively.

Si, Se Puede!

CURRENT LIST OF MEMBERS OF THE FINANCIAL AND ECONOMIC LITERACY CAUCUS WHO HAVE AGREED TO MAKE THEIR NAMES PUBLIC

Joe Baca, Melissa Bean, Judy Biggert, Brian Bilbray, Dennis Cardoza, William "Lacy" Clay, Emanuel Cleaver, Tom Cole, Jim Costa, and Joseph Crowley.

Elijah Cummings, Geoff Davis, Eliot Engel, Scott Garrett, Al Green, Jim Himes, Rubén Hinojosa, Eddie Bernice Johnson, Patrick Kennedy, Sheila Jackson-Lee, Carolyn McCarthy, Earl Pomeroy, and Loretta Sanchez.

THE WHITE HOUSE,
Washington, April 2009.

Sound financial planning and responsibility are essential to our families and our economy, and I am pleased to join all who are observing Financial Literacy Month.

It is more important than ever to understand how to balance a checkbook, budget wisely, plan for retirement, and avoid accumulating debts that could harm your financial future. A strong American economy depends on everyone—from individuals and homeowners, to investors and entrepreneurs—practicing financial responsibility. We must pass along such fundamental knowledge to our family and friends, because financial literacy empowers all of us.

The emphasis on financial literacy awareness and education must extend beyond April. I hope the insights you have gained this month will continue to improve the quality of life for you, your family and community, and I wish you all the best.

BARACK OBAMA.

CONGRATULATING THE KEYSTONE ADVENTURE SCHOOL AND FARM FOR WINNING THE PRESIDENT'S ENVIRONMENTAL YOUTH AWARD

HON. MARY FALLIN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Ms. FALLIN. Madam Speaker, I would like to congratulate and commend the Keystone Adventure School and Farm in Edmond, Oklahoma, which is in my congressional district. Through a dedicated school-wide effort the Keystone Adventure School and Farm has been awarded the President's Environmental Youth Award.

These hardworking and committed students have created an environmentally sustainable project called the Kid's Café. This Café is run entirely by the students and involves growing their own fruits and vegetables, maintaining bees to pollinate plants and create honey, and numerous other environmentally friendly enterprises. Much of the money brought in from these endeavors is used to help less fortunate children in Thailand create their own green gardens to supplement their diet.

This student run Café enhances their educational experience at the Keystone Adventure School and Farm by exposing them to some of life's most important lessons and offering them a chance to help their community and the world.

Madam Speaker, I ask that my distinguished colleagues join me in recognizing the achievements of Keystone Adventure School and Farm. I believe that they have set an outstanding example for all of Oklahoma and the nation to follow.

RECOGNIZING THE 2009 RECIPIENTS OF THE MCGOWAN COURAGE AWARD

HON. JIM JORDAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. JORDAN of Ohio. Madam Speaker, seven high school students in my congressional district will be recognized on May 12 for their efforts to overcome physical, economic, and social adversities. I am pleased to join the Rotary Club of Mansfield in honoring the achievements of these McGowan Courage Award recipients:

Kelby Lunsford, Crestview High School—Kelby has worked through numerous autism-related difficulties stemming from his premature birth. His work ethic, determination, and passion for reading and historical studies are an inspiration to his parents, teachers, and fellow students.

Nathan Volz, Lexington High School—Faced at age 10 with the divorce of his parents, Nathan has long been tasked with helping to raise his younger brothers and assisting with

the family's finances. After attending a church youth retreat, he worked to overcome some of his own poor personal choices and become a model of integrity for others.

Josh Teetsel, Lucas High School—Placed in a foster home after the death of his mother, Josh struggled to make the right choices in the face of pressure from friends. He has since turned his life around, earning the respect of his teachers and volunteering at the local fire department. Josh will soon enroll at Ohio's Hocking College.

Joseph (Joey) Bennett, Madison Comprehensive High School—Coping with hearing and vision impairments and enduring several open-heart surgeries before age 2, Joey is an inspiration to everyone at his school, where he is an eager volunteer at sporting and other extracurricular activities. He recently completed Madison's auto tech training program.

Ian Kent, Mansfield Christian High School—Various sleep disorders and other medical problems have slowed Ian's academic work, but he continues to persevere in his home studies. He enjoys volunteering at his church and at Mansfield's Kingwood Center, and looks forward to attending North Central State College.

Leona Smith, Mansfield Senior High School—In just the last year, Leona has suffered from three collapsed lungs requiring surgery. Despite these setbacks, she has maintained a 3.6 grade point average in college prep courses and is on course to graduate a year early—all while working two jobs to support herself financially.

Brandon O'Brian, Ontario High School—Brandon's positive attitude in working to overcome a cognitive disability is a model for his fellow students. In addition to his studies at Pioneer Career and Technology Center, he is an active member of the Mansfield Police Department's Explorer Post and works part-time at Ontario's Skyway Restaurant.

HONORING TRAVIS HOGLE

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Travis Hogle a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 66, and in earning the most prestigious award of Eagle Scout.

Travis has been very active with his troop participating in many scout activities. Over the many years Travis has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Travis Hogle for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

RECOGNIZING CRAY HENRY AS A 2009 SERVICE TO AMERICA MEDAL FINALIST

HON. GERALD E. CONNOLLY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. CONNOLLY of Virginia. Madam Speaker, I rise today to recognize the tremendous contributions of Cray Henry, of Annandale, Va., to our nation and specifically to improving the safety of our deployed military personnel. Mr. Henry, as director of the High Performance Computing Modernization Program, led the effort to provide supercomputer support allowing the Department of Defense to improve body and vehicle armor for troops in the field. The work of his team also helped enhance overall military performance and saved billions of taxpayer dollars. In recognition of those achievements, Mr. Henry and his team have been named finalists for the 2009 Service to America Medal for National Security and International Affairs.

As my colleagues know, the Service to America Medals, or Sammies as they are more commonly known, are presented annually by the nonprofit, nonpartisan Partnership for Public Service to celebrate our dedicated federal workforce, highlighting their commitment and innovation, as well as the impact of their work on addressing the needs of the nation.

The state-of-the-art supercomputing environment created by the High Performance Computing Modernization Program team, led by Mr. Henry, enabled DoD scientists and engineers to design and test innovative materials and weapons systems.

For example, the team helped speed the development and rapid deployment of the Hellfire missile that has been used to neutralize terrorists in buildings, bunkers and caves.

The team also was tapped to help the soldiers in Iraq, providing resources for complex modeling and simulations to develop new armor kits for Humvees to better adapt and protect against improvised explosive devices (IEDs) that were killing and wounding American soldiers.

In addition to its field applications, the supercomputing team has brought advances in weather forecasting to allow the U.S. Navy and Air Force to provide more accurate, up-to-the-minute and long-range information to ground forces anywhere in the world, which is a great asset in helping commanders plan military operations. Applying this capability to aircraft flight planning, the DoD anticipates saving $1 billion in fuel costs over 10 years.

The DoD's hurricane prediction models are so accurate that the National Hurricane Center is now using them together with other models to predict hurricane paths. The team's modeling also has been a tremendous resource in rebuilding the levees in New Orleans in the wake of Hurricane Katrina.

I ask my colleagues to join me in thanking Mr. Henry and his team for their tremendous contribution to protecting our troops and improving our national preparedness. His 27 years of public service and his drive for innovation serve as an example to us all, and his recognition as finalists for the 2009 Service to America Medal for Homeland Security is well deserved.

TEACHER APPRECIATION WEEK

HON. DEBBIE WASSERMAN SCHULTZ

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Ms. WASSERMAN SCHULTZ. Madam Speaker, today I rise to recognize the more than 40,000 teachers from Broward and Miami-Dade Counties during National Teacher Appreciation Week, taking place this year from May 3 through May 9, 2009.

This week all across America, our Nation's schoolchildren, their parents, PTAs and others are gathering to show their appreciation for the professional educators who work every day to make their futures brighter. Teacher Appreciation Week is a great opportunity to stop and pay tribute to the profession that shapes the world of tomorrow. Madam Speaker, it gives me great pleasure to recognize the lasting contributions that these men and women make to the lives of thousands of students in South Florida.

Today, I am pleased to commend the efforts of two special teachers in my district: Tony Dutra, a reading teacher from the Hallandale Community Center in Hallandale, Florida, teaches Extraordinary Student Education. When he was a student Mr. Dutra was learning disabled so he understands the challenges his student go through on a daily basis. Mr. Dutra was named Broward County's public school teacher of the year.

Patricia Fairclough, a second grade teacher from Airbase Elementary School in Homestead, Florida, was Miami-Dade County's public school teacher of the year. As a first-grader, Patricia struggled in class, but she was inspired by a caring teacher and now she is helping other children who need a little extra tough love.

I hope that you will all join me in thanking Mr. Dutra and Ms. Fairclough and all of our nation's teachers for everything they do each and every day to encourage, instruct and guide our students. All of America's teachers deserve more than a week of recognition for their investment in our country's most precious resource, our children.

Too often teachers are overworked and underpaid. They spend long hours in the classroom, many hours after the school day coaching our kids and leading their extracurricular groups, and then go home to spend more time grading papers.

Teachers invest their own lives in the lives of our children, and every day they empower young people with the knowledge and tools needed to be successful and confident. America's future is in the hands of our children and we owe our teachers a universe of thanks for their hard work.

ELIZABETH PORRAS

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Elizabeth Porras who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Elizabeth Porras is a senior at Jefferson High

School and received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Elizabeth Porras is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Elizabeth Porras for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

HONORING THE LIFE AND SERVICES OF MICHAEL AND MARIAN ILITCH, UPON THE 50TH ANNIVERSARY OF THE FOUNDING OF LITTLE CEASARS

HON. THADDEUS G. McCOTTER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. McCOTTER. Madam Speaker, today I rise to honor and acknowledge Michael and Marian Ilitch, entrepreneurs and pillars of the Michigan community, upon the 50th anniversary of the founding of Little Caesars.

On May 8, 1959, fifty years ago, Mike and Marian opened the first Little Caesars in Garden City, Michigan, under the name Little Caesars Pizza Treat. From this one store, Little Caesars would grow to include a pizza empire of many thousands of restaurants through franchising. The company eventually became widely known for its famous catchphrase, ''Pizza! Pizza!'' which was introduced in 1979. The phrase refers to two pizzas being offered for the comparable price of a single pizza from competitors. In 1998, Little Caesars filled what was then the current largest pizza order, filling an order of 13,386 pizzas from the VF Corporation of Greensboro, NC. Today, Little Caesars is the largest carry-out pizza chain in the world.

Mike was born in Detroit, Michigan in 1929. He is a first generation American of Macedonian descent. A graduate of Cooley High School, Mike also served his country in the United States Marine Corps for four years. After returning home from the Marine Corps, Mike was offered a contract by the Detroit Tigers baseball team and went on to play three years in the minor leagues before he was forced to prematurely end his promising career due to injury. In 1954 Mike met Marian on a blind date arranged by his father. Marian was born and raised in Dearborn, Michigan, a daughter of Macedonian immigrants. They were married a year later.

Over the course of their lives together Mike and Marian have expanded their business and personal partnership very successfully. Today, the family's entities remain privately held. In 1999, the Ilitches established Ilitch Holdings, Inc. to provide their various enterprises with professional and technical services. These enterprises include Little Caesars, the Detroit Red Wings, the Detroit Tigers, numerous property investments in and around Detroit, as well as the MotorCity Casino. They have been married for over 50 wonderful years and have seven children together: son Christopher Paul Ilitch (born June 1965) is CEO and President of Ilitch Holdings, Inc.; daughter Denise D. Ilitch (born November 1955) is an attorney and former co-President, with her brother, of Ilitch Holdings. Other children are Ronald ''Ron'' Tyrus Ilitch (born June 1957), Michael C. Ilitch, Jr., Lisa M. Ilitch Murray, Atanas Ilitch (born Thomas Ilitch) and Carole M. Ilitch Trepeck. Further, in Stanley Cup history, only 12 women have had their names engraved on the trophy including Marian and their three daughters.

The Ilitch family has also established a charitable foundation called Ilitch Charities for Children (ICC). Among other things, the ICC sponsors Little Caesars AAA Hockey Scholarship to encourage amateur sports. The ICC in 2009, so far, has given a total of $50,000 in grants to the Detroit Renaissance Foundation ($25,000) and the United Way of Southeastern Michigan ($25,000) for innovative community programs, demonstrating a broader scope for the charitable organization. Most recently, Ilitch Charities presented a total of $200,000 to benefit the Greening of Detroit's Conservation Leadership Corps and the Guidance Center's Project CEO.

Madam Speaker for 50 years Little Caesars has stood as a tribute to the hard work of Michael and Marian Ilitch and their family. As they celebrate this enormous milestone, they personify a legacy of excellence, ingenuity, and the irrepressible spirit of the American entrepreneur. Today, I ask my colleagues to join me in congratulating the Ilitches and recognizing their years of loyal service to our community and country.

GABBY RIVERA

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Gabby Rivera who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Gabby Rivera is an 8th grader at Arvada Middle School and received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Gabby Rivera is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Gabby Rivera for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

RECOGNIZING SEAN P. DENNEHY AS A 2009 SERVICE TO AMERICA MEDAL FINALIST

HON. GERALD E. CONNOLLY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. CONNOLLY of Virginia. Madam Speaker, I rise today to recognize the tremendous contributions of Sean P. Dennehy, of Vienna, Va., to our nation and specifically to our intelligence community. Mr. Dennehy and his colleague Don Burke, of Alexandria, Va., led an innovative effort to create a sensitive-information sharing system for the Central Intelligence Agency. In recognition of that achievement, they have been named finalists for the 2009 Service to America Medal for Homeland Security.

As my colleagues know, the Service to America Medals, or Sammies as they are more commonly known, are presented annually by the nonprofit, nonpartisan Partnership for Public Service to celebrate our dedicated federal workforce, highlighting their commitment and innovation, as well as the impact of their work on addressing the needs of the nation.

Mr. Dennehy and Mr. Burke developed and implemented a Wikipedia-like clearinghouse of sensitive intelligence information known as ''Intellipedia.'' The intelligence community has traditionally discouraged the wide sharing of intelligence for fear of compromising classified information, but the downsides of that strategy became apparent to us all after learning of how intelligence agencies failed to ''connect the dots'' in the months leading up to the September 11 attacks.

The pair spent four years developing the software, cobbling together financing and trying to overcome cultural resistance, but their persistence and dedication paid off.

Eric Haseltine, former chief technology officer of the intelligence community, said, ''It's hard to overstate what they did. They made a major transformation almost overnight with no money after other programs failed to achieve these results with millions of dollars in funding.''

Once they successfully created the web-based platform for sharing information, Mr. Dennehy and Mr. Burke then shifted their focus to recruiting their colleagues in the intelligence community to actually use it. They became ''evangelists,'' educating analysts and spreading the word about the potential benefits of Intellipedia and other social media tools. The system now boasts more than 900,000 pages and 100,000 user accounts. In fact, leaders in the intelligence community say we are reacting more quickly and more intelligently to potential threats than we would be without Intellipedia.

This initiative has increased the flow of information among the nation's 16 intelligence agencies around the world, and it is still working to break down institutional stovepipes.

I ask my colleagues to join me in thanking Mr. Dennehy and Mr. Burke for their tremendous contribution to our national security. Their commitment to public service and innovation serve as an example to us all, and their recognition as finalists for the 2009 Service to America Medal for Homeland Security is well deserved.

JUSTUS REID

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Justus Reid who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Justus Reid is an 8th grader at Arvada Middle School and received this award because his determination and hard work have allowed him to overcome adversities.

The dedication demonstrated by Justus Reid is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Justus Reid for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt he will exhibit the same dedication he has shown in his academic career to his future accomplishments.

MEGAN SCHELTINGA

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Megan Scheltinga who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Megan Scheltinga, of Hope House, received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Megan Scheltinga is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Megan Scheltinga for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

NORMA RODRIGUEZ

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Norma Rodriguez who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Norma Rodriguez is a senior at Arvada High School and received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Norma Rodriguez is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Norma Rodriguez for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

OLGA REPNITSKAYA

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Olga Repnitskaya who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Olga Repnitskaya is a senior at Arvada High School and received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Olga Repnitskaya is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Olga Repnitskaya for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

TANIA PRESCOTT

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Tania Prescott who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Tania Prescott, of Hope House, received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Tania Prescott is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Tania Prescott for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

VITALIY PSHICKENKO

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Vitaliy Pshickenko who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Vitaliy Pshickenko is a senior at Arvada High School and received this award because his determination and hard work have allowed him to overcome adversities.

The dedication demonstrated by Vitaliy Pshickenko is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Vitaliy Pshickenko for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt he will exhibit the same dedication he has shown in his academic career to his future accomplishments.

JOHANNA SERRANO

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Johanna Serrano who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Johanna Serrano is a senior at Jefferson High School and received this award because her determination and hard work have allowed her to overcome adversities.

The dedication demonstrated by Johanna Serrano is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Johanna Serrano for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt she will exhibit the same dedication she has shown in her academic career to her future accomplishments.

DEREK RIEMER

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 6, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Derek Riemer who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Derek Riemer is an 8th grader at Oberon Middle School and received this award because his determination and hard work have allowed him to overcome adversities.

The dedication demonstrated by Derek Riemer is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Derek Riemer for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt he will exhibit the same dedication he has shown in his academic career to his future accomplishments.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, May 7, 2009 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 8

9:30 a.m.
Joint Economic Committee
To hold hearings to examine the employment situation for April 2009.
SD–106

10 a.m.
Finance
To hold hearings to examine the nomination of Neal S. Wolin, of Illinois, to be Deputy Secretary of the Treasury.
SD–215

MAY 12

9:30 a.m.
Armed Services
To hold hearings to examine the nominations of Andrew Charles Weber, of Virginia, to be Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, Paul N. Stockton, of California, to be Assistant Secretary for Homeland Defense and Americas' Security Affairs, Thomas R. Lamont, of Illinois, to be Assistant Secretary of the Army for Manpower and Reserve Affairs, and Charles A. Blanchard, of Arizona, to be General Counsel of the Department of the Air Force, all of the Department of Defense.
SH–216

9:45 a.m.
Environment and Public Works
To hold hearings to examine proposed budget request for fiscal year 2010 for the Environmental Protection Agency.
SD–406

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine pending nominations.
SR–253

Finance
To hold hearings to examine financing comprehensive health care reform.
SD–106

Homeland Security and Governmental Affairs
To hold hearings to examine the nomination of Cass R. Sunstein, of Massachusetts, to be Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget.
SD–342

Judiciary
To hold hearings to examine helping state and local law enforcement.
SD–226

10:15 a.m.
Foreign Relations
Business meeting to consider the nominations of Harold Hongju Koh, of Connecticut, to be Legal Adviser of the Department of State, and Susan Flood Burk, of Virginia, to be Special Representative of the President for nuclear non-proliferation; to be immediately followed by a hearing to examine the United States strategy toward Pakistan.
SD–419

11 a.m.
Commerce, Science, and Transportation
To hold hearings to examine the nomination of Julius Genachowski, of the District of Columbia, to be Chairman of the Federal Communications Commission.
SR–253

2 p.m.
Foreign Relations
To hold hearings to examine energy security, focusing on historical perspectives and modern challenges.
SD–419

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine S. 967, to amend the Energy Policy and Conservation Act to create a petroleum product reserve, and S. 283, to amend the Energy Policy and Conservation Act to modify the conditions for the release of products from the Northeast Home Heating Oil Reserve Account.
SD–366

Environment and Public Works
To hold hearings to examine the nominations of Peter Silva Silva, of California, to be Assistant Administrator, and Stephen Alan Owens, of Arizona, to be Assistant Administrator for Toxic Substances, both of the Environmental Protection Agency, and Jo-Ellen Darcy, of Maryland, to be an Assistant Secretary of the Army, Department of Defense.
SD–406

Health, Education, Labor, and Pensions
Business meeting to consider an original bill entitled, Family Smoking Prevention and Tobacco Control Act, and any pending nominations.
SD–430

Homeland Security and Governmental Affairs
To hold hearings to examine the nomination of Robert M. Groves, of Michigan, to be Director of the Census, Department of Commerce.
SD–342

Judiciary
To hold hearings to examine the nominations of Gerard E. Lynch, of New York, to be United States Circuit Judge for the Second Circuit, and Mary L. Smith, of Illinois, to be Assistant Attorney General, Tax Division, Department of Justice.
SD–226

Appropriations
Military Construction and Veterans Affairs, and Related Agencies Subcommittee
To hold hearings to examine proposed budget request for fiscal year 2010 for military construction, Veterans Affairs, and related agencies.
SD–124

Appropriations
State, Foreign Operations, and Related Programs Subcommittee
Business meeting to markup proposed budget request for fiscal year 2009 supplemental for the Department of State, foreign operations, and related programs.
SD–138

Intelligence
To hold closed hearings to examine certain intelligence matters.
S–407, Capitol

MAY 13

9:45 a.m.
Appropriations
Labor, Health and Human Services, Education, and Related Agencies Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of Labor.
SD–138

10 a.m.
Commerce, Science, and Transportation
Competitiveness, Innovation, and Export Promotion Subcommittee
To hold hearings to examine tourism in troubled times.
SR–253

Banking, Housing, and Urban Affairs
Economic Policy Subcommittee
To hold hearings to examine manufacturing and the credit crisis.
SD–538

Homeland Security and Governmental Affairs
To hold hearings to examine the D.C. Opportunity Scholarship Program, focusing on preserving school choice for all.
SD–342

Judiciary
Administrative Oversight and the Courts Subcommittee
To hold hearings to examine torture and the Office of Legal Counsel in the Bush Administration.
SD–226

Rules and Administration
To hold hearings to examine problems for military and overseas voters, focusing on why many soldiers and their families cannot vote.
SR–301

2:15 p.m.
Commerce, Science, and Transportation
Aviation Operations, Safety, and Security Subcommittee
To hold hearings to examine reauthorization of the Federal Aviation Administration (FAA), focusing on perspectives of aviation stakeholders.
SR–253

Small Business and Entrepreneurship
To hold hearings to examine small business financing, focusing on a progress report on Recovery Act implementation and alternative sources of financing.
SR–428A

2:30 p.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine the nomination of Peter M. Rogoff, of Virginia, to be Federal Transit Administrator, Federal Transit Administration, Department of Transportation.
SD–538

3 p.m.
Homeland Security and Governmental Affairs
To hold hearings to examine the nominations of Florence Y. Pan, of the District of Columbia, and Marisa J. Demeo, of the District of Columbia, both to be an Associate Judge of the Superior Court of the District of Columbia.
SD–342

MAY 14

2:30 p.m.
Intelligence
To hold closed hearings to examine certain intelligence matters.
S–407, Capitol

MAY 21

9:30 a.m.
Veterans' Affairs
Business meeting to mark up pending legislation.
SR–418

Daily Digest

HIGHLIGHTS

Senate passed S. 896, Helping Families Save Their Homes Act.

House Committees ordered reported 18 sundry measures.

Senate

Chamber Action

Routine Proceedings, pages S5169–S5248

Measures Introduced: Ten bills and five resolutions were introduced, as follows: S. 983–992, S.J. Res. 15, and S. Res. 132–135. **Pages S5231–32**

Measures Reported:

Special Report entitled "Activities of the Committee on Banking, Housing, and Urban Affairs During the 110th Congress Pursuant to rule XXVI of the Standing Rules of the United States Senate". (S. Rept. No. 111–17) **Page S5231**

Measures Passed:

Helping Families Save Their Homes Act: By 91 yeas to 5 nays (Vote No. 185), Senate passed S. 896, to prevent mortgage foreclosures and enhance mortgage credit availability, as amended, after taking action on the following amendments proposed thereto: **Pages S5173–75, S5179–S5205**

Adopted:

Dodd (for Reed) Modified Amendment No. 1039 (to Amendment No. 1018), to address impediments to liquidating warrants. **Page S5173**

Dodd (for Boxer) Amendment No. 1035 (to Amendment No. 1018), to require notice to consumers when a mortgage loan has been sold, transferred, or assigned to a third party. **Pages S5173–74**

Casey Amendment No. 1033 (to Amendment No. 1018), to enhance State and local neighborhood stabilization efforts by providing foreclosure prevention assistance to families threatened with foreclosure and permitting Statewide funding competition in minimum allocation States. **Page S5173**

Dodd (for Grassley/Baucus) Modified Amendment No. 1020 (to Amendment No. 1018), to enhance the oversight authority of the Comptroller General of the United States with respect to expenditures under the Troubled Asset Relief Program. **Pages S5173–74**

By 57 yeas to 39 nays (Vote No. 182), Dodd (for Kerry) Modified Amendment No. 1036 (to Amendment No. 1018), to protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property. **Pages S5173–75**

Reed/Bond Amendment No. 1040 (to Amendment No. 1018), to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act. **Pages S5173, S5180–81**

By 95 yeas to 1 nay (Vote No. 184), Dodd (for Grassley/Baucus) Modified Amendment No. 1021 (to Amendment No. 1018), to amend Chapter 7 of title 31, United States Code, to provide the Comptroller General additional audit authorities relating to the Board of Governors of the Federal Reserve System. **Pages S5173, S5181–82**

Dodd/Shelby Amendment No. 1018, in the nature of a substitute. **Pages S5173, S5182**

Withdrawn:

Dodd (for Schumer) Modified Amendment No. 1031 (to Amendment No. 1018), to establish a multifamily mortgage resolution program. **Pages S5173, S5179**

During consideration of this measure today, Senate also took the following action:

By 50 yeas to 46 nays (Vote No. 183), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to waive section 202 of S. Con. Res. 21, FY08 Congressional Budget Resolution, with respect to Coburn Amendment No. 1042 (to Amendment No. 1040), to establish a pilot program for the expedited disposal of Federal real property. Subsequently, the pay-as-you-go point of order that the amendment would cause or increase an on-budget deficit for either of the applicable time periods set out in S. Con. Res. 21, was sustained, and the amendment thus fell. **Pages S5173, S5179–80**

Commending the Heroic Efforts of People Fighting North Dakota Floods: Senate agreed to S. Res.

132, commending the heroic efforts of the people fighting the floods in North Dakota. **Page S5246**

National Physical Education and Sport Week: Senate agreed to S. Res. 133, designating May 1 through May 7, 2009, as ''National Physical Education and Sport Week''. **Page S5246**

National Charter Schools Week: Senate agreed to S. Res. 134, congratulating the students, parents, teachers, and administrators at charter schools across the United States for their ongoing contributions to education and supporting the ideas and goals of the 10th annual National Charter Schools Week, May 3 through May 9, 2009. **Page S5247**

Military Spouse Appreciation Day: Senate agreed to S. Res. 135, designating May 8, 2009, as ''Military Spouse Appreciation Day''. **Page S5247**

Measures Considered:

Weapon Systems Acquisition Reform Act: Senate began consideration of S. 454, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, taking action on the following amendments proposed thereto: **Pages S5205–25**

Adopted:

Collins/McCaskill Amendment No. 1045, to require the Secretary of Defense to apply uniform earned value management standards to reliability and consistently measures contract performance, and to ensure that contractors establish and use approved earned value management systems. **Pages S5215–19**

Levin (for Inhofe) Amendment No. 1044, to require a report on certain cost growth matters following the termination of a major defense acquisition program for critical cost growth. **Pages S5219, S5220–21**

Levin (for Chambliss) Amendment No. 1053, to clarify an exception to conflict of interest requirements applicable to contracts for systems engineering and technical assistance functions. **Pages S5219, S5222–24**

Levin (for Coburn) Amendment No. 1046, to require reports on the operation and support costs of major defense acquisition programs and major weapons systems. **Pages S5219–20**

Levin (for McCaskill) Amendment No. 1051, to enhance the review of joint military requirements. **Pages S5220–22**

Levin (for McCaskill) Amendment No. 1049, to specify certain inputs to the Joint Requirements Oversight Council from the commanders of the combatant commands on joint military requirements. **Pages S5220–22**

Levin (for McCaskill) Amendment No. 1050, to provide for a review by the Comptroller General of the United States of waivers of the requirement for competitive prototypes based on excessive cost. **Pages S5220–22**

Levin (for Whitehouse) Amendment No. 1047, to further improve the cost assessment procedures and processes of the Department of Defense. **Page S5220**

Levin (for Carper) Amendment No. 1048, to require consultation between the Director of Defense Research and Engineering and the Director of Developmental Test and Evaluation in assessments of technological maturity of critical technologies of major defense acquisition programs. **Page S5220**

Levin (for Bingaman) Amendment No. 1055, to clarify the submittal of certifications of the adequacy of budgets by the Director of the Department of Defense Test Resource Management Center. **Pages S5224–25**

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 10:30 a.m., on Thursday, May 7, 2009, and that the following be the only first-degree amendments in order to the bill, other than the committee reported amendment in the nature of a substitute, that the listed first-degree amendments be subject to second-degree amendments which are relevant to the amendment to which offered; provided that with respect to any subsequent agreement which provides for a limitation of debate regarding an amendment on the list, then that time be equally divided and controlled in the usual form; that if there is a sequence of votes with respect to these amendments, the there be 2 minutes equally divided and controlled prior to a vote on or in relation thereto; provided that upon disposition of the listed amendments, the substitute amendment, as amended be agreed to, and Senate vote on passage of the bill: Snowe Amendment No. 1056 relative to small business contracting, Thune Amendment relative to weapons systems, Coburn Amendment relative to financial management, Chambliss Amendment No. 1054 relative to ''make buy'', and Murray Amendment No. 1052 relative to National Security objectives. **Page S5225**

Credit Cardholders' Bill of Rights Act—Cloture: Senate began consideration of the motion to proceed to consideration of H.R. 627, to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan. **Page S5246**

A motion was entered to close further debate on the motion to proceed to consideration of the bill and, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Friday, May 8, 2009. **Page S5246**

Subsequently, the motion to proceed was withdrawn. **Page S5246**

Nominations Confirmed: Senate confirmed the following nominations:

Ronald C. Sims, of Washington, to be Deputy Secretary of Department of Housing and Urban Development.

Alan B. Krueger, of New Jersey, to be an Assistant Secretary of the Treasury.

Ivo H. Daalder, of Virginia, to be United States Permanent Representative on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador.

Ivan K. Fong, of Ohio, to be General Counsel, Department of Homeland Security.

William V. Corr, of Virginia, to be Deputy Secretary of Health and Human Services.

Demetrios J. Marantis, of the District of Columbia, to be a Deputy United States Trade Representative, with the rank of Ambassador.

Johnnie Carson, of Illinois, to be an Assistant Secretary of State (African Affairs).

Yvette Roubideaux, of Arizona, to be Director of the Indian Health Service, Department of Health and Human Services, for the term of four years.

Luis C. de Baca, of Virginia, to be Director of the Office to Monitor and Combat Trafficking, with rank of Ambassador at Large.

Timothy W. Manning, of New Mexico, to be Deputy Administrator for National Preparedness, Federal Emergency Management Agency, Department of Homeland Security.

Fred P. Hochberg, of New York, to be President of the Export-Import Bank of the United States for a term expiring January 20, 2013.

Routine lists in the Foreign Service.

Pages S5245, S5248

Nominations Received: Senate received the following nominations:

Wilma A. Lewis, of the Virgin Islands, to be an Assistant Secretary of the Interior.

Carmen R. Nazario, of Puerto Rico, to be Assistant Secretary for Family Support, Department of Health and Human Services.

Eric P. Schwartz, of New York, to be an Assistant Secretary of State (Population, Refugees, and Migration).

Andrew J. Shapiro, of New York, to be an Assistant Secretary of State (Political-Military Affairs).

Ellen O. Tauscher, of California, to be Under Secretary of State for Arms Control and International Security.

Jane Oates, of New Jersey, to be an Assistant Secretary of Labor.

Tara Jeanne O'Toole, of Maryland, to be Under Secretary for Science and Technology, Department of Homeland Security.

1 Air Force nomination in the rank of general.

Pages S5247–48

Messages from the House: **Page S5230**

Measures Referred: **Page S5230**

Executive Communications: **Pages S5230–31**

Executive Reports of Committees: **Page S5231**

Additional Cosponsors: **Pages S5232–33**

Statements on Introduced Bills/Resolutions: **Pages S5233–42**

Additional Statements: **Pages S5228–30**

Amendments Submitted: **Pages S5242–44**

Notices of Hearings/Meetings: **Page S5245**

Authorities for Committees to Meet: **Page S5245**

Privileges of the Floor: **Page S5245**

Record Votes: Four record votes were taken today. (Total—185) **Pages S5174–75, S5179–80, S5182, S5185**

Adjournment: Senate convened at 9:30 a.m. and adjourned at 7:01 p.m., until 9:30 a.m. on Thursday, May 7, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S5247.)

Committee Meetings

(Committees not listed did not meet)

REUSE OF CARBON DIOXIDE

Committee on Appropriations: Subcommittee on Energy and Water Development concluded a hearing to examine the range of innovative, non-geologic applications for the beneficial reuse of carbon dioxide from coal and other fossil fuel facilities, after receiving testimony from Scott M. Klara, Director, Strategic Center for Coal, National Energy Technology Center, and Marjorie L. Tatro, Director of Fuel and Water Systems, Sandia National Laboratory, both of the Department of Energy; Jeff D. Muhs, Utah State University Energy Laboratory, Logan; and Brent Constantz, Calera Corporation, Los Gatos, California.

BUSINESS MEETING

Committee on Armed Services: Committee ordered favorably reported the nominations of Ines R. Triay, of New Mexico, to be Assistant Secretary of Energy for Environmental Management; and Elizabeth Lee King, of the District of Columbia, to be Assistant Secretary for Legislative Affairs, Michael Nacht, of California, to be Assistant Secretary for Global Strategic Affairs, Wallace C. Gregson, of Colorado, to be Assistant Secretary for Asian and Pacific Security Affairs, Jo-Ellen Darcy, of Maryland, to be Assistant Secretary of the Army for Civil Works, and 296

nominations in the Army, Navy, Air Force, and Marine Corps, all of the Department of Defense.

SPACE ISSUES

Committee on Armed Services: Subcommittee on Strategic Forces received a closed briefing to examine space issues from Janet Fender, Chief Scientist, Air Combat Command, Gary O'Connell, Chief Scientist, National Air and Space Intelligence Center, General C. Robert Kehler, USAF, Commander, Air Force Space Command, and Lieutenant General Larry D. James, USAF, Commander, 14th Air Force, all of the Department of Defense.

REGULATING AND RESOLVING INSTITUTIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine regulating and resolving institutions considered too big to fail, after receiving testimony from Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation; Martin Baily, former Chairman, Council of Economic Advisors; Gary H. Stern, Federal Reserve Bank of Minneapolis, Minneapolis, Minnesota; Peter J. Wallison, American Enterprise Institute, Snowmass, Colorado; and Raghuram G. Rajan, University of Chicago Booth School of Business, Chicago, Illinois.

FUTURE OF JOURNALISM

Committee on Commerce, Science, and Transportation: Subcommittee on Communications, Technology, and the Internet concluded a hearing to examine the future of journalism, after receiving testimony from Senator Cardin; Marissa Mayer, Google Inc., Mountain View, California; Alberto Ibarguen, John S. and James L. Knight Foundation, Miami, Florida; James M. Moroney III, *The Dallas Morning News*, Dallas, Texas; Arianna Huffington, *The Huffington Post*, Los Angeles, California; Steve Coll, Washington, D.C.; and David Simon, Baltimore, Maryland.

ENGAGING IRAN

Committee on Foreign Relations: Committee concluded a hearing to examine engaging Iran, focusing on obstacles and opportunities, after receiving testimony from Nicholas Burns, former Under Secretary of State for Political Affairs, Harvard University Kennedy School, Cambridge, Massachusetts; Robert M. Morgenthau, former United States Attorney for the Southern District of New York; and Adam Kaufmann, Central Office of the District Attorney Investigation Division, New York, New York.

NATO MOVING FORWARD

Committee on Foreign Relations: Subcommittee on European Affairs concluded a hearing to examine NATO post-60, focusing on institutional challenges moving forward, after receiving testimony from Daniel S. Hamilton, Johns Hopkins University School of Advanced International Studies, Damon Wilson, Atlantic Council of the United States, Robert Hunter, former Ambassador to NATO, RAND Corporation, and Joseph Wood, German Marshall Fund, all of Washington, D.C.

DEPARTMENT OF HOMELAND SECURITY OVERSIGHT

Committee on the Judiciary: Committee concluded an oversight hearing to examine the Department of Homeland Security, after receiving testimony from Janet Napolitano, Secretary of Homeland Security.

NOMINATIONS

Committee on Veterans' Affairs: Committee concluded a hearing to examine the nominations of Roger W. Baker, of Virginia, to be Assistant Secretary for Information and Technology, William A. Gunn, of Virginia, to be General Counsel, Jose D. Riojas, of Texas, to be Assistant Secretary for Operations, Security, and Preparedness, and John U. Sepulveda, of Virginia, to be Assistant Secretary for Human Resources, all of the Department of Veterans Affairs, after the nominees testified and answered questions on their own behalf.

MEDICARE AND MEDICAID FRAUD

Special Committee on Aging: Committee concluded a hearing to examine solutions to stop Medicare and Medicaid fraud from hurting seniors and taxpayers, after receiving testimony from R. Alexander Acosta, United States Attorney for the Southern District of Florida, Department of Justice; Daniel R. Levinson, Inspector General, Department of Health and Human Services; Robert A. Hussar, New York State Office of the Medicaid Inspector General, Hauppauge, New York; James Frogue, Center for Health Transformation, Washington, D.C.; and Steve Horne, Dow Jones Enterprise Media Group, Edgewater, New Jersey.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 29 public bills, H.R. 2265–2293; and 10 resolutions, H. Con. Res. 120; and H. Res. 404–405, 407–413 were introduced. **Pages H5306–07**

Additional Cosponsors: **Pages H5308–09**

Report Filed: A report was filed today as follows:

H. Res. 406, providing for further consideration of the bill (H.R. 1728) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices and to provide certain minimum standards for consumer mortgage loans (H. Rept. 111–98). **Page H5279**

Mortgage Reform and Anti-Predatory Lending Act: The House began consideration of H.R. 1728, to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices and to provide certain minimum standards for consumer mortgage loans. Further proceedings were postponed until tomorrow, May 7th. **Pages H5174–88**

H. Res. 400, the rule providing for consideration of the bill, was agreed to by voice vote after agreeing to order the previous question without objection. **Pages H5174–79**

Suspensions: The House agreed to suspend the rules and pass the following measures:

Recognizing May as "National Foster Care Month": H. Res. 391, to recognize May as "National Foster Care Month" and to acknowledge that the House of Representatives should continue to work to improve the Nation's foster care system; **Pages H5188–90**

Honoring the life and recognizing the far-reaching accomplishments of the Honorable Jack Kemp, Jr.: H. Res. 401, to honor the life and to recognize the far-reaching accomplishments of the Honorable Jack Kemp, Jr.; **Pages H5190–99**

Authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha: H. Con. Res. 80, to authorize the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha; **Pages H5199–H5201**

Enacting certain laws relating to public contracts as title 41, United States Code, "Public Contracts": H.R. 1107, to enact certain laws relating to public contracts as title 41, United States Code, "Public Contracts"; and **Pages H5201–58**

Fraud Enforcement and Recovery Act of 2009: S. 386, amended, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs and for the recovery of funds lost to these frauds, by a ⅔ yea-and-nay vote of 367 yeas to 59 nays with 1 voting "present", Roll No. 235. **Pages H5260–70, H5271–72**

Suspensions—Proceedings Resumed: The House agreed to suspend the rules and agree to the following measures which were debated on Tuesday, May 5th:

Supporting the goals and ideals of National Train Day: H. Res. 367, to support the goals and ideals of National Train Day, by ⅔ yea-and-nay vote of 426 yeas with none voting "nay", Roll No. 234 and **Pages H5270–71**

Congratulating the University of North Carolina men's basketball team: H. Res. 348, to congratulate the University of North Carolina men's basketball team for winning the 2009 NCAA Division I Men's Basketball National Championship, by a ⅔ recorded vote of 423 ayes with none voting "no", Roll No. 236. **Page H5272**

Suspension—Proceedings Postponed: The House debated the following measure under suspension of the rules. Further proceedings were postponed:

Recognizing the importance of the Border Patrol in combating human smuggling and commending the Department of Justice for increasing the rate of human smuggler prosecutions: H. Res. 14, amended, to recognize the importance of the Border Patrol in combating human smuggling and to commend the Department of Justice for increasing the rate of human smuggler prosecutions. **Pages H5258–60**

Senate Message: Message received from the Senate today appears on page H5293.

Senate Referral: S. 896 was held at the desk. **Page H5293**

Quorum Calls—Votes: Two yea-and-nay votes and one recorded vote developed during the proceedings of today and appear on pages H5270–71, H5271 and H5272. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:23 p.m.

Committee Meetings

RENEWABLE FUEL STANDARD LAND USE BIOMASS PROVISIONS

Committee on Agriculture: Subcommittee on Conservation, Credit, Energy and Research held a hearing to review the impact of the indirect land use and renewable biomass provisions in the renewable fuel standard. Testimony was heard from Joe Glauber, Chief Economist, USDA; Margo T. Oge, Director, Office of Transportation and Air Quality, EPA; Michael Pechart, Deputy Secretary, Marketing and Economic Development, Department of Agriculture, State of Pennsylvania; and public witnesses.

LEGISLATIVE BRANCH APPROPRIATIONS

Committee on Appropriations: Subcommittee on Legislative Branch held a hearing on the House of Representatives Budget. Testimony was heard from the following officials of the House of Representatives: Dan Beard, Chief Administrative Officer; Loraine C. Miller, Clerk; and Bill Livingood, Sergeant-at-Arms.

ARMY, NAVY/MARINE CORPS BUDGETS

Committee on Appropriations: Subcommittee on Military Construction, Veterans Affairs and Related Agencies held a hearing on the Army Budget. Testimony was heard from GEN George W. Casey, Jr., USA, Army Chief of Staff.

The Subcommittee also held a hearing on the Navy/Marine Corps Budget. Testimony was heard from ADM Gary Roughhead, USN, Chief of Naval Operations; and GEN James T. Conway, USMC, Commandant of the Marine Corps.

HIGH RISK AREA ACQUISITION REFORM; U.S. STRATEGIC POSTURE REPORT

Committee on Armed Services, Held a hearing on the Department of Defense at High Risk: The Chief Management Officer's Recommendations for Acquisition Reform and Related High Risk Areas. Testimony was heard from William Lynn, Deputy Secretary, Department of Defense.

The Committee also held a hearing on the report of the Congressional Commission on the Strategic Posture of the United States. Testimony was heard the following officials of the Congressional Commission on the Strategic Posture of the United States: William J. Perry, Chairman; and James R. Schlesinger, Vice Chairman.

GREEN PUBLIC SCHOOL FACILITIES

Committee on Education and Labor: Ordered reported, as amended, H.R. 2187, 21st Century Green High-Performing Public School Facilities Act.

PREVENTING LOAN MODIFICATION/ FORECLOSURE FRAUD

Committee on Financial Services: Subcommittee on Housing and Community Opportunity held a hearing entitled "Legislative Solutions for Preventing Loan Modification and Foreclosure Rescue Fraud." Testimony was heard from James Freis, Jr., Director, Financial Crimes Enforcement Network, Department of the Treasury; Peggy Twohig, Associate Director, Division of Financial Practices, Bureau of Consumer Protection, FTC; Martha Coakley, Attorney General, State of Massachusetts; and public witnesses.

SWINE FLU OUTBREAK

Committee on Foreign Affairs: Subcommittee on Africa and Global Health held a hearing on Global Health Emergencies Hit Home: The Swine Flu Outbreak. Testimony was heard from the following officials of the Department of Health and Human Services: Anthony Fauci, M.D. Director, National Institute of Allergies and Infectious Diseases, NIH; and RADM Anne Schuchat, M.D., USN, Interim Deputy Director, Science and Public Health Program, Center for Disease Control and Prevention; and Dennis Carroll, M.D., Special Advisor to the Acting Administrator on Pandemic Influenza, U.S. Agency for International Development, Department of State.

TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION ACT

Committee on Homeland Security: Subcommittee on Transportation Security and Infrastructure approved for full Committee action, as amended, H.R. 2200, Transportation Security Administration Authorization Act.

HOUSE OFFICE BUILDINGS RENOVATIONS

Committee on House Administration: Held a hearing on Necessary Renovations to House Office Buildings. Testimony was heard from Stephen T. Ayers, Acting Architect of the Capitol; and Terrell G. Dean, Director, Physical Infrastructure Issues, GAO.

U.S./MEXICO DRUG TRADE VIOLENCE

Committee on the Judiciary: Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on Escalating Violence in Mexico and the Southwest Border as a Result of the Illicit Drug Trade. Testimony was heard from the following officials of the Department of Justice: Stuart G. Nash, Associate Deputy Attorney General, and Director, Organized Crime Drug Enforcement Task Forces; and William

J. Hoover, Acting Deputy Director, Bureau of Alcohol, Tobacco, Firearms and Explosives; and the following officials of the Department of Homeland Security: Salvador Nieto, Deputy Assistant Commissioner, Office of Intelligence and Operations Coordination, U.S. Customs and Border Protection; Janice Ayala, Deputy Assistant Director, Office of Investigations, U.S. Immigration and Customs Enforcement; and Anthony Placido, Assistant Administrator, Intelligence, U.S. Drug Enforcement Administration.

MISCELLANEOUS MEASURES

Committee on Oversight and Government Reform: Ordered reported the following measures: H.R. 2812, Enhanced Oversight of State and Local Economic Recovery Act; H.R. 885, amended, Improved Financial and Commodity Markets Oversight and Accountability Act; H.R. 626, Federal Employees Paid Parental Leave Act of 2009; H. Con. Res. 84, Supporting the goals and objectives of a National Military Appreciation Month; H. Res. 356, Supporting support for the designation of February 8, 2010, as the ''Boys Scouts of America Day,'' in celebration of the Nation's largest youth scouting organization's 100th anniversary; H. Res. 370, amended, Expressing support for designation of April 27, 2009, as ''National Healthy Schools Day;'' H. Res. 388, Celebrating the role of mothers in the United States and supporting the goals and ideals of Mother's Day; H.R. 1817, To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the ''John S. Wilder Post Office Building;'' H.R. 2090, To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building;'' H.R. 2162, To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A. Littleton Postal Station;'' H.R. 2173, To designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the ''Carl B. Smith Post Office;'' and H.R. 2174, To designate the facility of the United States Postal Service, located at 18 Main Street in Howland, Maine, as the ''Clyde Hichborn Post Office.''

MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Committee on Rules: Committee granted, by a record vote of 9–4, a structured rule providing for further consideration of H.R. 1728, the ''Mortgage Reform and Anti-Predatory Lending Act.'' The rule provides that no general debate shall be in order. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI.

The rule makes in order only those amendments printed in the report. The amendments made in order 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 a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions. Testimony was heard from Perlmutter, Polis, Jackson-Lee of Texas, Dahlkemper, Titus, Bachus, Manzullo, Gary G. Miller of California, Garrett, Sessions, and Mario Diaz-Balart of Florida.

REAUTHORIZE AND MODERNIZE SBA'S ENTREPRENEURIAL DEVELOPMENT PROGRAMS

Committee on Small Business: Held a hearing entitled ''Legislation to Reauthorize and Modernize SBA's Entrepreneurial Development Programs.'' Testimony was heard from public witnesses.

VETERANS' MEASURES

Committee on Veterans' Affairs: Ordered reported the following bills: H.R. 23, amended, Belated Thank You to the Merchant Mariners of World War II Act of 2009; H.R. 466, amended, Wounded Veteran Job Security Act; H.R. 1088, Mandatory Veteran Specialist Training Act of 2009; H.R. 1089, amended, Veterans Employment Rights Realignment Act of 2009; and H.R. 1170, amended, To amend chapter 21 of title 38, United States Code, to establish a grant program to encourage the development of new assistive technologies for specially adopted housing.

HEALTH REFORM IN THE 21ST CENTURY

Committee on Ways and Means: Held a hearing to welcome the Secretary of Health and Human Services, and to continue hearings on Health Reform in the 21st Century, Testimony was heard from Kathleen Sebelius, Secretary of Health and Human Services.

RUSSIA

Permanent Select Committee on Intelligence: Subcommittee on Terrorism Human Intelligence, Analysis, and Counterintelligence met in executive session to hold a hearing on Russia.

Testimony was heard from departmental witnesses.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR THURSDAY, MAY 7, 2009

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: to hold hearings to examine the nominations of Krysta Harden, of Virginia, and Pearlie S. Reed, of Arkansas, both to be an Assistant Secretary, Rajiv J. Shah, of Washington, to be Under Secretary for Research, Education, and Economics, and Dallas P. Tonsager, of South Dakota, to be Under Secretary for Rural Development, all of the Department of Agriculture, 10:30 a.m., SD–106.

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies, to hold an oversight hearing to examine funding of the Department of Justice, 10 a.m., SD–192.

Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, to hold hearings to examine the 2009 H1N1 virus, 10 a.m., SD–124.

Subcommittee on Legislative Branch, to hold hearings to examine proposed budget estimates for fiscal year 2010 for the Office of the Architect of the Capitol, and the Office of Compliance, 2:30 p.m., SD–138.

Committee on Armed Services: to hold hearings to examine the report of the Congressional Commission on the Strategic Posture of the United States, 9:30 a.m., SH–216.

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Securities, Insurance and Investment, to hold hearings to examine strengthening the Securities and Exchange Commission's enforcement responsibilities, 2:30 p.m., SD–538.

Committee on Energy and Natural Resources: to hold hearings to examine a joint staff draft related to cybersecurity and critical electricity infrastructure, 10 a.m., SD–366.

Subcommittee on Energy, to hold hearings to examine net metering, interconnection standards, and other policies that promote the deployment of distributed generation to improve grid reliability, increase clean energy deployment, enable consumer choice, and diversify our nation's energy supply, 2:30 p.m., SD–366.

Committee on Environment and Public Works: business meeting to consider the nominations of Mathy Stanislaus, of New Jersey, to be Assistant Administrator, Office of Solid Waste, Cynthia J. Giles, of Rhode Island, to be Assistant Administrator for Enforcement and Compliance, and Michelle DePass, of New York, to be Assistant Administrator for International Affairs, all of the Environmental Protection Agency, Time to be announced, Room to be announced.

Committee on Finance: to hold hearings to examine auctioning under cap and trade, focusing on design, participation, and distribution of revenues, 10 a.m., SD–215.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the nominations of Seth David Harris, of New Jersey, to be Deputy Secretary, and M. Patricia Smith, of New York, to be Solicitor, both of the Department of Labor, 10 a.m., SD–430.

Full Committee, to hold hearings to examine the nomination of Margaret A. Hamburg, of the District of Columbia, to be Commissioner of Food and Drugs, Department of Health and Human Services, 2 p.m., SD–430.

Committee on Homeland Security and Governmental Affairs: Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, to hold hearings to examine recruitment in the Federal Government, 2:30 p.m., SD–342.

Committee on Indian Affairs: to hold hearings to examine the nomination of Larry J. Echo Hawk, of Utah, to be Assistant Secretary of the Interior for Indian Affairs, 2:15 p.m., SD–628.

Committee on the Judiciary: business meeting to consider S. 417, to enact a safe, fair, and responsible state secrets privilege Act, S. 257, to amend title 11, United States Code, to disallow certain claims resulting from high cost credit debts, S. 448 and H.R. 985, bills to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, S. 327, to amend the Violence Against Women Act of 1994 and the Omnibus Crime Control and Safe Streets Act of 1968 to improve assistance to domestic and sexual violence victims and provide for technical corrections, and the nominations of William K. Sessions III, of Vermont, to be Chair of the United States Sentencing Commission, and John Morton, of Virginia, to be Assistant Secretary of Homeland Security, 10 a.m., SD–226.

House

Committee on Appropriations, to mark up the Fiscal Year 2009 Supplemental Appropriations, 10 a.m., 2359 Rayburn.

Committee on Armed Services, to mark up H.R. 2101, Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009, 12 p.m., 2118 Rayburn.

Subcommittee on Terrorism, Unconventional Threats and Capabilities, hearing on Counterinsurgency and Irregular Warfare: Issues and Lessons Learned, 10 a.m., 2212 Rayburn.

Committee on Education and Labor,, hearing on Ensuring Preparedness Against the Flu Virus at School and Work, 10 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, hearing on An Examination of Competition in the Wireless Industry, 10 a.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, hearing entitled "Perspectives on Hedge Fund Registration," 11 a.m., 2128 Rayburn .

Committee on Foreign Affairs, Subcommittee on Africa and Global Health, hearing on Zimbabwe: Opportunities for a New Way Forward, 10 a.m., 2172 Rayburn.

Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism, hearing entitled ''Implementing the Western Hemisphere Travel Initiative at Land and Sea Ports: Are We Ready?'' 10 a.m., 311 Cannon.

Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, hearing entitled ''GPS: Can We Avoid A Gap in Service?'' 10 a.m., 2154 Rayburn.

Committee on Small Business, Subcommittee on Finance and Tax, hearing entitled ''How the Complexity of the Tax Code Hinders Small Businesses,'' 10 a.m., 2360 Rayburn.

Committee on Ways and Means, hearing on the Financial Status of the Airport and Airway Trust Fund, 10 a.m., 1100 Longworth.

Next Meeting of the SENATE

9:30 a.m., Thursday, May 7

Senate Chamber

Program for Thursday: After the transaction of any morning business (not to extend beyond 10:30 a.m.), Senate will continue consideration of S. 454, Weapon Systems Acquisition Reform Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Thursday, May 7

House Chamber

Program for Thursday: Complete consideration of H.R. 1728—Mortgage Reform and Anti-Predatory Lending Act (Subject to a Rule).

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