United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 114th CONGRESS, FIRST SESSION

Vol. 161 WASHINGTON, WEDNESDAY, SEPTEMBER 16, 2015 No. 133

Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. HATCH).

PRAYER

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

Let us pray.

God of grace and love, You guard our lives with Your peace. Help us to not attempt to build a relationship with You on the basis of our merit and goodness.

Give our lawmakers the wisdom to make Your grace the foundation for their living. May Your righteousness that comes from faith energize them to dare more boldly, attempting to accomplish great things for Your glory. Lord, grant that their childlike trust in You will free them to serve others, inspired by Your love.

Oh God, You are our help and hope. Thank You for Your gifts of liberty and grace, unconditional love, and generous mercy.

We pray in Your marvelous Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. COTTON). The Democratic leader is recognized.

NUCLEAR AGREEMENT WITH IRAN AND GOVERNMENT FUNDING

Mr. REID. Mr. President, in one week Congress will host one of the world's great faith leaders, His Holiness Pope Francis. Every Member of Congress is looking forward to the Pope's historic address.

Since beginning his papacy, Pope Francis has been admired for his humility and honesty. Rather than shirk responsibility from important and controversial global challenges, he has confronted them. While he and I don't agree on everything, his statements on climate change, immigration reform, and income inequality have challenged world leaders, and that is an understatement.

Yesterday His Holiness and the Vatican stated their support for the nuclear agreement with Iran. A spokesperson for His Holiness told the International Atomic Energy Agency that this agreement ''will be a definitive step toward greater stability and security in the region.'' That is certainly the truth.

Supporting the nuclear agreement between the permanent five members of the U.N. Security Council, Germany, and Iran is the best way to ensure that Iran does not get a nuclear weapon. That is what the agreement is all about. That is why last week the Senate clearly stated the agreement will stand. No matter how you talk about all these other things, the agreement is to stop Iran from getting a nuclear weapon. That is what it is all about.

Last night the Senate again rejected the Republican attempt to derail the nuclear agreement. Now for the second time, the Republican leader is refusing to accept the reality that, in fact, it is going to go forward. He is doubling down and committing the Senate to vote on other issues.

We have seen this strategy before. It never works, whether it was with homeland security, ObamaCare or all the other issues. All it does is waste time that we cannot afford.

When the Republican leader tried this approach on homeland security, remember what JOHN MCCAIN, the Senator from Arizona, said: It was the ''definition of insanity.'' What he was talking about was what Albert Einstein said, that if you keep doing the same thing over and over, knowing you will get the same result, it is insanity.

Today a news report described the Republican leader's strategy as ''the second kick of a mule,'' and said ''it's not working.''

It is unbelievable what the Republican leader is trying to do. We have 7 working days before a shutdown of the government. Why? Because we won't have any money. The Senate will take no votes today. If the Republican leader has his way, all the Senate will do this week is take yet another failed vote on Iran. At this rate the Senate will end this week with nothing to show for our time but two failed votes—nothing dealing with the most important issue facing this country, and that is, how to fund the government.

We have seen Republicans manufacture crises before. This one truly is embarrassing. The government runs out of money in a matter of days. Republicans have no plans to avoid a shutdown, and we have almost twoscore of Republicans in the House who said they will vote for nothing unless it defunds women's health care. We have a number of Senators saying if there is nothing in this to stop the funding of Planned Parenthood, they will vote against it.

The government runs out of money in just a few days. To do nothing, with no plans to avoid a shutdown, when we are standing around waiting for something to be done on the budget is unwise and wrong, and it is an insult to the American people.

Last Thursday's vote is not going to change. Last night's vote will not change. The Republicans lost those votes. What are their future plans? They will not prevent President Obama and his administration from implementing the Iran agreement.

There is precious little time left before a government shutdown. It is time

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

for the Republican leader to get serious about keeping the Federal Government open and funded. Are we just talking about something that is nonexistent as a problem? Two years ago the government was shut down for almost a month. I think it was 21 days that the government was shut down. It is very disturbing.

In 1 week, as I have indicated, the Pope will be here, and it is time that we make sure that we follow some of the advice and counsel that he has given us.

NOMINATION OF GAYLE SMITH

Mr. REID. Mr. President, the goodwill and humanitarian efforts of the United States are needed all across the world. Victims of civil wars, disease outbreaks, and natural disasters depend on the aid and compassion of the American people. To our credit, we try our best to help as much as possible.

Take one example. The Syrian refugee crisis is the worst humanitarian crisis since World War II. Four million Syrians are now refugees because of the country's civil war, and thousands and thousands are fleeing to any place they can go. Most of them are winding up in Europe to escape the violence.

There are almost another 8 million who are internally displaced within war-ravaged Syria. A lot of them are in cities and can't go anyplace. If they try to leave, they get killed. Tragically, 5½ million of these poor individuals are children. The United States is trying to help. We are the single largest donor of humanitarian aid to the Syrian crisis. There is not a close second.

The U.S. Agency for International Development, known as USAID, is one of the principal organizations by which the United States administers civilian foreign aid. This Agency plays an essential role in administering our Nation's foreign policy. Yet, while all these events continue to unfold before the world's eyes, Senate Republicans are blocking the next Administrator from taking her place.

Gayle Smith was nominated by President Obama 5 months ago. We had hearings weeks and weeks ago—now into months. It was right to nominate her. She is an experienced leader in administering international humanitarian assistance and global development, serving on the National Security Council at the White House.

During her time at the White House, Gayle Smith has worked on major typhoons in Asia, the Ebola outbreak in West Africa, and ongoing conflicts in Syria and Iraq. She has extensive experience in African affairs, both from her time at the National Security Council and from her work as a journalist covering international affairs for more than two decades. During her time as a journalist, she spent time in active war zones and other conflicts.

Gayle Smith's credentials are impeccable, and her hearing in the Foreign Relations Committee in June reflected that. In September she was voted out unanimously in a voice vote. Yet here we are post-June—that is an understatement. Her nomination was reported favorably, and we still have no confirmed Administrator.

With all the news accounts we watch every day of these thousands and thousands of lost people, the United States is being hampered in its ability to help because we don't have anyone running the Agency. It is just the latest example of Republican obstruction for obstruction's sake.

According to the Congressional Research Service, the current Republican Congress has confirmed far fewer nominees than any Congress in memory. Why?

What are Republicans accomplishing by preventing a qualified nominee such as Gayle Smith from leading the U.S. Agency for International Development? They are doing it, and in so doing they are undermining U.S. foreign policy. They are undoing decades of admirable American humanitarian efforts. But even more unsettling is that Republicans are impeding our ability to assist those around the world who need help.

It is time for the Republican leader and his Senators to change course and stop this blockade of the President's nominations.

I look forward to the Senate Republicans releasing their obstruction on the Gayle Smith nomination and working with Democrats to confirm her as the next Administrator of USAID immediately. All the Republican leader has to do is bring it to the floor. We will vote on it. If someone doesn't want to vote for her, don't vote for her. But it is really wrong to have our great country at a time of this huge humanitarian crisis having no one leading the Agency that does more to alleviate the problems these people face than anyone we have in our government.

Would the chair announce the business of the day.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein, with the majority controlling the first half and the Democrats controlling the final half.

The Senator from South Dakota.

MEASURES PLACED ON THE CALENDAR—S. 2035 AND H.R. 36

Mr. THUNE. Mr. President, I understand that there are two bills at the desk due for a second reading.

The PRESIDING OFFICER. The clerk will read the bills by title for the second time.

The senior assistant legislative clerk read as follows:

A bill (S. 2035) to provide for the compensation of Federal employees affected by a lapse in appropriations.

A bill (H.R. 36) to amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

Mr. THUNE. In order to place the bills on the calendar under the provisions of rule XIV, I object to further proceeding, en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will be placed on the calendar.

NUCLEAR AGREEMENT WITH IRAN

Mr. THUNE. Mr. President, back in May, Congress passed and the President signed legislation guaranteeing Congress the chance to take an up-or-down vote on any nuclear deal with Iran. It was widely debated here in the Senate and in the House of Representatives. Votes were held, and in the Senate, 98 Senators on both sides of the aisle agreed that we should pass legislation requiring that Congress have a voice—and through Congress the American people have a voice—in something that is so important to America's national security interests.

Yet here we are 4 months later, and the same Democrats who voted for that at the time and joined Republicans—98 Senators voted for the American people to have their voice heard on this—these same Democrats have now chosen to stifle the voices of the American people by refusing to allow an up-or-down vote on the President's nuclear agreement. Twice now, when we attempted to move to a final vote on the deal, only four Democrats broke ranks with their colleagues and stood up to the President. That is a deeply disappointing result, especially given the stakes on this agreement.

I would have to say that in some ways I suppose if you are trying to protect your President from having to make a decision about whether to sign or veto this legislation—maybe they were pushed into that position by the administration—but the fact is, this is something that was voted on in the Senate, in the House of Representatives, overwhelmingly supported, and sent to the President. The President of the United States reluctantly signed it into law, but the understanding was from that point forward that when this was actually brought to the floor of the Senate, there would be an open debate and there would be a vote. All that I think is simply expected by the American people is an opportunity to be heard from, in the form of an up-or-down vote, through their representatives in the Senate.

I would think that even if Democrats in the Senate object to the vote that we would have on a resolution of disapproval and want to support the President's position, that they would allow it to be voted on and let it go to the President. If the President is so

proud of this deal—and clearly he is—why would he not then want the opportunity to veto a resolution of disapproval coming from Congress on this?

I think, clearly, Democrats in the Senate are doing their best to try and protect the President from having to make that decision, notwithstanding the President's assertions that this is a wonderful deal for our country, a wonderful deal for our allies. Of course, the facts tell an entirely different story. A nuclear-armed Iran is a direct threat to the security of the United States and our allies in the Middle East, and the American people deserved that chance to have their voices heard.

I wish to take just a moment to read some of the statements that have been made by Iran's Supreme Leader over the past few weeks. This is directly from the Twitter feed of the Ayatollah Khamenei. Speaking to Israel, he said: ''You will not see the next 25 years.'' That is the Supreme Leader of Iran speaking to Israel. He adds: ''God willing,'' there will be nothing of the ''Zionist regime'' in the next 25 years. Again, this is coming directly from the Twitter feed of the Iranian Supreme Leader.

Of the United States, he says something he has said before: ''U.S. is the Great Satan.'' That is exactly as I said coming directly from the Supreme Leader, the Ayatollah Khamenei, in Iran.

So I challenge my colleagues in the Senate to reflect on those statements. Think about them. Not only do they demonstrate Iran's hostility toward the United States and Israel, but they demonstrate another key point when it comes to this agreement; that is, Iran is playing the long game.

President Obama and Secretary Kerry may be thinking in terms of the next few months, may be thinking about their own legacy, but the Iranian regime is thinking in terms of years and decades. While this deal may slow down Iran in the near term, in the long term it legitimizes Iran's nuclear enrichment and drastically shortens its breakout period for a bomb.

Under this agreement, in 10 years, Iran will transition from its current IR–1 centrifuges—which is about, they say, 1960s technology—to the large-scale production of IR–2m centrifuges, which are four or five times faster than what Iran has today. In addition, this deal gives Iran the option of building still more advanced IR–6 and IR–8 centrifuges down the road, which are 15 times faster at enriching uranium. In other words, without once violating this agreement in a decade, Iran will have reduced its breakout period for a bomb from a few months to a few weeks. This agreement also allows Iran to keep its fortified nuclear facilities, and it gives Iran access to conventional weapons and ballistic missiles capable of delivering a warhead far beyond Iran's borders.

Plus, under this agreement, Iran will have full access to international markets and the materials and technical components it needs to build a bomb, material that right now it can only access through black-market channels. Iran is playing the long game, and in the long term this is a very good deal for Iran.

Let's be clear about Iran's intentions regarding its nuclear program. Iran is not simply interested in pursuing a nuclear enrichment program for its civilian energy needs. Iran is interested in building a bomb. Make no mistake about it, if Iran were only interested in producing electricity, it wouldn't need a nuclear enrichment program.

Look at other countries that use nuclear power to produce electricity. Sweden, for example, currently has 10 functioning nuclear powerplants, but it does not have a domestic nuclear enrichment program. Finland has four nuclear powerplants, but it does not conduct its own nuclear enrichment. Ukraine, which voluntarily gave up its post-Soviet nuclear arsenal in the 1990s, has 15 nuclear powerplants. It does not conduct its own nuclear enrichment. Mexico, Bulgaria, the Czech Republic, Spain, Switzerland, and South Africa—all these countries have nuclear powerplants, but none of these countries conducts its own nuclear enrichment and none of these countries needs to conduct its own enrichment because the fuel can easily be obtained in the world market, where there is actually a surplus of enriched uranium. No one worries that these countries are on the verge of building a bomb because their intentions are clear. They are only interested in the electricity they can obtain from nuclear power, and for this they don't need to enrich their own uranium.

Another striking example can be seen on the Korean Peninsula. South Korea, a thriving democracy, has 23 operating nuclear powerplants. Yet it does not have a commercial enrichment program or even a spent fuel reprocessing facility. North Korea, on the other hand, chose to pursue an undisclosed illicit nuclear enrichment program, and North Korea has produced a nuclear bomb.

Based on Iran's behavior, is Iran trying to be more like South Korea, with its multitude of powerplants and no enrichment capabilities, or North Korea, which fails to provide its population with electricity but still built a nuclear bomb. If Iran wants a peaceful, civilian, nuclear energy program, it does not need to be enriching uranium.

Plain and simple, the only reason Iran needs a nuclear enrichment program is if it is interested in developing a nuclear weapon. If Iran wanted to silence all of its critics, if it wanted to prove that it is operating in good faith, it could halt its nuclear enrichment facility at Fordow and halt its domestic enrichment program altogether.

If President Obama had reached a deal that would accomplish this, the Senate would not have sought a vote upon a resolution of disapproval. Instead, Republicans and Democrats alike would have been supporting the agreement praising the success of the negotiations, but that is not what happened. Instead, the President agreed to a deal that validates Iran's enrichment program, allows it to maintain its nuclear facilities, and explicitly permits Iran to continue researching and manufacturing advanced centrifuges. In other words, in a few short years, this deal gives Iran everything it would need for the speedy development of a nuclear weapon.

If Iran genuinely wants a peaceful nuclear energy program, it can put everyone's concerns to rest and dismantle its uranium enrichment structure. Short of that, Iran is telegraphing to the world that it wants a nuclear bomb.

Mr. President, I wish to shift gears for just a moment and address an assertion that Secretary Kerry has made numerous times throughout this debate.

As we all know, one of the major points of contention surrounding this deal is the side agreements between Iran and the International Atomic Energy Agency, or the IAEA, that remain a secret. The nuclear deal grants inspections at Iran's known nuclear sites, but the details of these inspections are being kept secret between the IAEA and Iran. Secretary Kerry has asserted that keeping these side agreements secret is standard practice for the IAEA, but is that really the case? Are private agreements between Iran and host countries the norm?

I wanted to find out. So last week I sat down with the former Deputy Director of the IAEA, Olli Heinonen, and discussed the policies and procedures of the IAEA with him at length. Mr. Heinonen is an expert on this topic, having served with the IAEA for 27 years and personally inspected, I might add, sites in Iran in the past. He was able to tell me that keeping side agreements a secret is not standard for the IAEA. It is an exception that has periodically been used to protect proprietary information for commercial reasons.

Let me repeat that. In contrast to what Secretary Kerry is claiming, refusing to disclose these side agreements is not the IAEA's normal procedure; it is an exception. When commercially sensitive information is not at risk, the IAEA's practice is to make the details of the agreements public.

So then why is the IAEA keeping its side agreements with Iran a secret? So far as we know, no proprietary concerns exist, which leads to the inevitable conclusion that these agreements have been kept a secret because they outline a weak inspections regime that would be unlikely to stand up to scrutiny, and the limited information that has been leaked so far backs up this conclusion. According to leaked documents made available to the Associated Press, the side agreements with the IAEA allow Iran to collect its own

samples, with cameras recording the process. Iran will then deliver these samples to the IAEA to be tested for radioactive material.

If that is true, there is reason to be deeply concerned because a process such as that would give Iran the opportunity to hide its nuclear activities from the IAEA. It is like having the fox guard the hen house.

One of the agreements made by Secretary Kerry when the discussion of the 24-day waiting period for inspections of undisclosed sites came up was that traces of radioactive material could not be hidden in 24 days. That was the Secretary's argument. Samples taken from surfaces, where activities involving radioactive materials have taken place, will still have radioactive traces after the materials themselves are taken away. That has been the argument that has been made by Secretary Kerry. The Secretary is right about that. Traces of radioactive material do remain, but what the Secretary doesn't mention is that those traces can be hidden. If tabletops, floors or walls are painted over with certain materials—not just once but several times—samples taken from their surfaces will not reveal radioactive material, and that makes allowing Iran to take its own samples very dangerous, even if cameras are present.

If inspections are intrusive enough—meaning actual human IAEA inspectors are walking through a facility looking not only for illicit activity but for signs of someone trying to cover up such activity—it is pretty easy to identify newly painted surfaces and to know that something is amiss. That is the difference between actual inspections by the IAEA and having Iran collect samples and having cameras cover it.

If, as reports suggest, the IAEA has agreed to allow monitoring by camera instead of sending inspectors into the facilities, it will be very difficult for the IAEA to pick up on efforts to hide illicit activities, such as repainting surfaces. If the IAEA's secret side deals allow Iran to conduct its own inspections, then it is no wonder Iran wants to keep such deals a secret.

Given the possibility that these secret side deals significantly weaken the inspections regime authorized by this agreement, it is imperative that the contents of these deals be made public. In addition, if these agreements are not made known, the IAEA will be setting a dangerous precedent that could undermine its credibility moving forward. If Iran gets off the hook on inspections and the IAEA allows this, what happens next time there is a rogue regime pursuing an illicit nuclear program? Well, I will tell you what is going to happen. That nation will ask for the same inspections deal Iran got.

If the White House is serious on any level about preventing future nuclear proliferation, it needs to consider very carefully what it is doing right now because right now the White House is establishing a precedent that if a country is belligerent enough and hostile enough and pursues a nuclear program in violation of international agreements, eventually the international community will validate that country's nuclear program and possibly even allow the country to conduct its own inspections. That is an incredibly dangerous precedent to set.

I understand that Senators have different ideological foundations from which we form our views and that sometimes political pressures come into play when Senators are looking at legislation, but it is very unfortunate that so many of my colleagues on the other side of the aisle chose to ignore the text of this agreement and cast their vote on ideological grounds.

The truth is that this agreement will provide a hostile nation which has an expressed hatred of the United States and Israel with a clear path to a nuclear bomb, and I am deeply disappointed that Senate Democrats could not even allow a vote on a deal of this magnitude—a deal that will shape the situation in the Middle East for years to come.

As we move forward, Republicans will do everything we can to protect our country and our allies from the worst consequences of this agreement, starting with Leader MCCONNELL's amendment to require a show of good faith from Tehran before congressional sanctions are lifted. I hope Democrats will join us. They still have that chance. I really do hope they will. This is that important. It is important to America's national security interests. It is important to our allies in that region of the world.

This agreement is a bad agreement. It needs to be rejected. At a minimum, it needs to at least be voted on by the people's elected representatives of this country—something 98 Senators agreed to do just 4 months ago, and now all of a sudden, because the President evidently doesn't want to have to deal with a decision about whether to veto this resolution of disapproval, Democrats have dug in here in the Senate and are preventing the very thing 98 of us as Senators voted to allow to happen just 4 months ago. That is wrong. The American people deserve better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I rise to address this issue the Senator from South Dakota has been speaking on as well. I am extremely disappointed and frustrated, as the Senator from South Dakota is and many of us are, that 42 of our Democratic colleagues would choose to block the Senate from even being able to consider and have an up-or-down vote on whether we should proceed with this incredibly important, in my view, extremely dangerous deal with Iran despite the fact, as has been observed, that 98 Senators voted to create this very mechanism—a mechanism by which we could consider whether Congress wanted to pass a resolution of disapproval to prevent this dangerous deal from going forward. Nevertheless, they subsequently voted not to allow the Senate—and it is mystifying. We know what the outcome would be. We know there is a bipartisan majority in the Senate that opposes the deal, as there is a bipartisan majority in the House that opposes the deal, as there is a bipartisan majority across America that opposes the deal. But somehow we have to I guess pretend that is not the case and avoid a vote that would clearly manifest that bipartisan majority here in the Senate.

If we did have that vote and we passed the resolution of disapproval—it has passed the House—it would go to the President, and he would veto it. He has made that clear. And those of us who disapprove of this deal don't have enough votes to override the President's veto. So in the end the President would still get his way.

But somehow we have to hide from the fact that there is a clear bipartisan majority in both Houses of Congress that reflects the wishes of the American people about this. That is pretty frustrating and pretty surprising and strange, that my Democratic colleagues who say they are all for this deal nevertheless are afraid to acknowledge where the consensus really is.

Well, I want to talk a bit about the specifics of the deal, but mostly I want to talk about the context of entering into a deal with a regime like the Iranian regime. There are a few things we should bear in mind when we are entering into negotiations with any other country, but first and foremost, let's remember that this isn't an agreement with Switzerland; this isn't an agreement with Canada; this is an agreement with the regime in Iran.

The first point I would make about this regime is to remember how hostile they have been to the United States. Thirty-six years ago, radical Islamists in Tehran overran the U.S. Embassy, stormed the compound, and took 52 American hostages and held them for 444 days. And I would argue that our relationship with Iran has not improved a whole lot since then. They are still holding American hostages today. They have killed over 500 American troops in Iraq and Afghanistan. They regularly call for ''Death to America.'' They call us the Great Satan. This is a very hostile regime indeed.

The second point we should keep in mind is the consistent, demonstrated aggressive nature and the regional ambitions of this regime. This is, after all, the world's No. 1 state sponsor of terrorism. They actively support Hezbollah. They actively support the Assad regime as he massacres his own people. And when the government in Yemen was cooperating with the United States—cooperating with us in attacking and killing terrorists who were trying to kill Americans—during

the midst of the negotiations, the Iranian regime decided that was unacceptable, so they essentially overthrew the Government in Yemen and launched a civil war, which rages to this day. Of course, they continue to consistently threaten the very existence of Israel. That has been a consistent message from this regime.

The third point I would make is how fundamentally untrustworthy this regime is. They are currently in violation of over 20 international agreements; yet we think they are going to comply with this one? It escapes me why we think that history isn't going to repeat itself. Even during the negotiations, they were caught trying to buy nuclear parts. That is a violation of their own commitments. They were recently caught again using Hezbollah to supply arms to Assad in violation of agreements to which they committed. The bottom line is very clear: This regime in Iran cannot be trusted.

Maybe the fourth point I want to make is the most important in some ways. It seems to me, in my experience in business and in life, in order to successfully complete a deal of almost any kind, to reach an agreement, it starts with a meeting of the minds. It starts with an agreement about a desired outcome. That is true in business, in multinational organizations, and it is true in negotiations we engage in here in Congress. The starting point is agreeing on a fundamental objective, and when two parties reach that agreement, then you can document it. You can draft the legal documents that then manifest and bring that agreement about. In my view—and I think this is a widely shared view—the Iranian regime has not decided to abandon their pursuit of nuclear weapons, and that makes all the difference in the world.

I will take a contrasting point that I think is worth thinking about—the case of Muammar Qadhafi. We can probably all agree that Muammar Qadhafi was a very bad guy, probably a human being with no redeeming qualities at all. But after the United States went into Iraq and when our government presented him with the evidence we had about the Libyan weapon of mass destruction program, Muammar Qadhafi came to a conclusion. His conclusion was that it was in his interest to abandon his pursuit of weapons of mass destruction because he was afraid of what we would do to him if he didn't. He didn't become a good guy; he made a rational analysis of his situation and decided it was in his best interest. His ability to hold on to power would be enhanced if he gave up those programs, so he did. We reached an agreement, it was documented, and there is every reason to believe that would have succeeded because he had decided it was in his interest to make that agreement.

I don't think the Iranian Government has in any way come to the conclusion that they have to give up the pursuit of nuclear weapons. They have been at it for decades, and the very conditions they insisted on in this agreement, in my view, make it clear they have every intention of continuing to pursue nuclear weapons.

To summarize these points, when you are dealing with a country that is extremely hostile to the United States and our allies, that is aggressively seeking to dominate that region, that has demonstrated by its actions that it is completely untrustworthy, and that shows no evidence of having actually decided to abandon the pursuit of nuclear weapons, given those aspects, the reality we face, it is very difficult to complete an acceptable negotiation to ensure that country will be nuclear-free. At a minimum, you would need an absolutely bulletproof, airtight agreement in order to be successful.

Instead, what do we have? We have an agreement where we give many tens, maybe over $100 billion virtually up front, which Iran will certainly use, at least in part, to fund their terrorist activities. The agreement allows them to retain an industrial-scale uranium enrichment program. You don't need any uranium enrichment to have peaceful nuclear energy. There is a very dubious inspection and verification process which allows up to 24 days before inspectors can get to certain sites. The whole deal is temporary. After Iran gets its money, Iran can walk away with the deal with 35 days' notice at any time. There is a little process they have to go through that is 30 days long, and then they can give 35 days' notice and just walk away. That is codified in the agreement. Of course, I think it is extremely dangerous for Israel and diminishes the ability of Israel to defend itself, and I think it is very likely to lead to nuclear proliferation throughout the Middle East.

Those are plenty of reasons, in my view, to oppose this deal, but those are the parts we know about. What is truly amazing, what is absolutely shocking to me is that we don't have all the documents. I don't know how anyone can support a deal when they know they haven't seen some of the important documents that are part of the deal, but we know that is the case.

There are two documents, negotiated apparently between the IAEA—which is responsible for enforcement of essential parts of this agreement—and Iran, that not only has Congress not seen, the administration hasn't even seen. Secretary Kerry has not seen them. Our negotiators haven't seen them. Nobody has.

Mr. President, I ask unanimous consent to have an additional 2 minutes.

The PRESIDING OFFICER. Is there objection?

Ms. KLOBUCHAR. No objection.

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

Mr. TOOMEY. I thank the Chair.

So it is shocking to me that we would proceed and that people would support an agreement when they know there are essential parts of enforcement and discovery about the previous military dimensions that are unknown to us.

There is another point I need to make, and I will close with this. We had the minority leader, the Democratic leader, who was here last time we had this vote saying: This is over. You guys need to accept it, deal with it. This deal is going forward, and there is nothing you can do about it. It is done.

I strongly disagree with that. This is not over. We are not finished with this. The reason we are not finished with this is because the President made a conscious decision. His decision was not to treat this as a treaty, not to respect the constitutional requirement to get two-thirds of the Senate to support this, and had he brought us in early on, we might very well have been able to get there. Instead, he decided to circumvent the Constitution, the Congress, the United States Senate, and the will of the American people. So the result is that if the President goes forward with this, which it certainly looks as though he will, this deal will not be binding on the United States past this administration. That is by virtue of the decision the President made. The President could have gone a different way, but he didn't, so the deal can be undone by the next President. And with bipartisan majorities in both Houses of Congress, that is entirely plausible.

There is another consideration, and that is that the President will be doing so in violation of the law. The law—the Corker-Cardin legislation—clearly and unambiguously requires the President to turn over all documents to Congress before the 60-day window even begins, and only after that is he permitted to lift the sanctions. But the President has not given all the documents to Congress. In fact, he hasn't even gotten all the documents himself. This is a clear, explicit violation of the law we all passed.

I know the administration says: But it is customary for the IAEA to enter into these secret negotiations. As the Senator from South Dakota indicated a little while ago, it is not at all clear that it is customary, but more importantly, that doesn't matter. The law of the United States of America is more important than whatever is customary between the IAEA and other parties.

So I think this is a very dangerous deal. I am very disappointed that we don't have a chance to have a clean up-or-down vote on this as we should have. But it is important for companies thinking about doing business with Iran and countries around the world to realize this is a deal between the current administration and Iran and it does not necessarily succeed this administration. No. 2, if the President goes ahead and lifts sanctions, he will be doing it in violation of the law he signed.

This is not over, and we should not be giving up.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

REAUTHORIZATION OF THE EXPORT-IMPORT BANK

Ms. KLOBUCHAR. Mr. President, I rise to speak today on another topic, and that is the reauthorization of the Export-Import Bank. Senator CANTWELL is going to be here shortly, and I thank her for her strong leadership. We will also be hearing at some point from Senator MCCASKILL and Senator HEITKAMP. This has been a bipartisan effort. I thank the other Senators who have joined in this fight—Senator GRAHAM and Senator KIRK.

The reason I am here today is to say that America needs to be a country that exports, a country that thinks, that invents, that builds things, and that exports to the world. When 95 percent of the world's customers live outside of our borders, there is literally a world of opportunity out there for U.S. businesses. We simply can't afford to pass this up.

We know there are about 85 credit export agencies in over 60 other countries. So all of these other countries, over 60 countries—major developed nations—have an Ex-Im type bank. Our businesses in the United States are competing against companies in those countries, so when they are bidding against each other for a contract, the companies in the other countries can say: Well, I may not be a huge business, I am a small business, but I know I can get financing from my country's bank—whether they are in Germany or whether they are in China.

Do you know what our companies have to say right now? Well, the Ex-Im Bank's charter has lapsed. We can't get financing.

And if you don't think their competitors know this—their competitors know it. We have already heard that they have lost contracts because of this shortsightedness of letting the Ex-Im Bank lapse. So they are competing against these foreign businesses that are backed by other countries' credit export programs, and they often also receive government subsidies. So why, I ask, would we want to make it harder for our own companies to compete across the globe and create jobs right here at home?

In 2014, the Ex-Im Bank provided support for $27 billion worth of U.S. exports. That sounds like a lot, but in the same year—are you ready for this?—China financed more than double that amount, $58 billion. So their Ex-Im type bank financed $58 billion, ours only did $27 billion, and now we are not doing anything. South Korea and Germany have already provided more support for their exports than we have in the United States of America.

So if we don't get this done and reauthorize the Ex-Im Bank, countries like China are going to eat our lunch. That is why I am urging my colleagues to include the reauthorization of the Ex-Im Bank in the spending bills we must pass to keep the government open and running. If we want to level the playing field for our businesses, we need to have the U.S. Ex-Im Bank open and running too. This is about jobs.

In June I led a meeting of the Steering and Outreach Committee on the importance of the Ex-Im Bank. Several of my colleagues were at that meeting, too, and I will tell you what we heard. We heard from small business owners from all over the country. They did not mince words. Frankly, they were furious and frustrated after watching some Members of Congress throw up roadblock after roadblock and refuse to do the commonsense thing—reauthorize the Ex-Im Bank. These small business owners, like the many small business owners I have met in my State, told me the Ex-Im Bank is essential for their ability to export. Many of these smaller businesses don't have an expert on every country in the world. They rely on the Ex-Im Bank to help them with that expertise, to get the financing. And what do they get now? This is what they get. This is what is on the Web site right now of the Ex-Im Bank:

> Due to a lapse in EXIM Bank's authority, as of July 1, 2015, the Bank is unable to process applications or engage in new business or other activities. For more information, please click here.

Then you click here, and it says:

> To Customers and Stakeholders of the Export-Import Bank of the United States:—

This is the United States of America. It says—

> Due to a lapse in our authority, as of midnight on June 30th the Export-Import Bank of the United States ceased processing new applications or engaging in new business.
>
> Last week, Congress adjourned for their August recess without reauthorizing EXIM. Both the Senate and the House of Representatives return to Washington on September 8th. This means that EXIM will focus on the management of our $107 billion portfolio . . .

But they cannot do anything new.

Guess who else is reading that. Our foreign competitors, companies and countries all over the world. They are able to show the people for whom they are bidding: Look what happens when you go to the Ex-Im type financing site in the United States. Guess what it says. It says: Sorry, we are lapsed; we can't do anything.

That is what these companies from other countries are seeing.

We heard from Boyle Energy Services in New Hampshire, Air Tractor in Texas, the Orbital Sciences Corporation in Virginia, and FirmGreen in California. Most were headed up by Republican CEOs. They all said the same thing—that Ex-Im Bank has been critical in building their businesses and supporting their ability to export all over the world. Many of them told us they would lose business, not be able to enter into contracts, and may even have to lay off workers if they lose the support of the Ex-Im Bank. And now it is not just the possibility of having to lay off workers; that is actually happening in our country due to this problem with the Ex-Im Bank.

At the end of June when the Ex-Im Bank expired, there were nearly 200 transactions totaling over $9 billion in financing pending. Letting the Ex-Im Bank's charter lapse meant lost contracts and layoffs. It means European and Chinese workers will be doing the jobs Americans are now doing.

My colleagues, I don't think we can wait any longer. I will put in the RECORD the evidence from my own State and what it has meant in my own State.

Every year I visit all 87 counties in Minnesota and I meet with all kinds of small business owners. One thing that I find over and over is that these small businesses are exporting and many are using the Ex-Im Bank to provide them with the expertise they need to enter new markets all over the world and the vital loans, loan guarantees or credit insurance they need to access these markets.

The list of Minnesota companies that have told me of their strong support for the Ex-Im Bank is long. Let me share a few examples.

I have met with the people at Balzer—an agricultural equipment manufacturer based in Mountain Lake—a town of 2,000. They told me that they have grown their exports to about 15 percent of total sales with the help of the Ex-Im Bank. They export from Canada to Kazakhstan—from Japan to Australia—and now South Africa too.

With the help of the Ex-Im Bank, Superior Industries in Morris has been able to export to Canada, Australia, Russia, Argentina, Chile, Uruguay, and Brazil.

I have heard from the Trade Acceptance Group in Edina which provides credit insurance to businesses that export. They rely on the Ex-Im Bank. I heard from Fastenal and Miller Ingenuity, both from Winona. They told me how the Ex-Im Bank helped them reach new markets in Mexico, Indonesia, and Africa. And the list goes on.

The Ex-Im Bank was helping these small businesses from all over Minnesota and all over the country compete and export globally. These are success stories and we need more of them. There are success stories like this in every State. And these are the stories we want to hear—not stories about losing jobs and business opportunities to Europe and China.

I have given speeches on this before. We cannot wait any longer. We need to reauthorize the Ex-Im Bank now.

I will end with this, as I see Senator CANTWELL, our great leader on this, is in the Chamber. The Ex-Im Bank has been reauthorized 16 times in its 81-year history, every time with broad bipartisan majorities, and Ex-Im has the support this year. The Senate has voted twice with bipartisan support to reauthorize the Ex-Im Bank, and over 250 House Members have cosponsored bills supporting the Ex-Im Bank.

The time is here. It is time to stop playing procedural games, get this reauthorized so our great U.S. companies no longer have to go to a Web site that says: Due to a lapse of authority, the Export-Import Bank of the United States is unable to process applications or engage in new business.

We are all about new business in this country. That is what we have always been all about. So it is time to change that Web site, and we do it by reauthorizing Ex-Im.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank the Senator from Minnesota for her work and her leadership position in the Senate and for focusing on economic policy and constantly doing the research and legwork on how our economy is moving forward and what key essentials we need to move forward. The fact that she is here this morning to speak about the Export-Import Bank and the fact that the lapse of the Bank itself is causing us great economic challenge—I certainly very much appreciate everything she is doing. She comes from a State that has businesses that are exporters. Minnesota has a lot of exporters, so she knows this is causing a big challenge.

I know my colleague Senator HEITKAMP, who is an original sponsor of this legislation, is speaking out on this issue as well. I think Senator MCCASKILL may be joining us this morning.

I don't know if the American people know, but many of our colleagues know that the Export-Import Bank is tooled to help U.S. manufacturers export products overseas by financing the deals—not really financing them so much as basically helping private banks finance them when the banks won't take all the risk. The program works just like the SBA—the Small Business Administration—does to help small businesses with bank financing. This helps businesses that are trying to export their products overseas get financing where these developing countries may not have banks to do that. So it has expired, which means it is cutting off economic opportunity here in the United States to grow jobs.

When we think about it, with 90 percent of consumers living outside of the United States, the biggest economic opportunity for our country is to sell those consumers products that the United States of America makes. But we have to have financing for developing countries.

There are 478 Ex-Im Bank guarantees and credit insurance policies worth $3.2 billion set to expire October 1. If we don't quickly reauthorize the Export-Import Bank, that money will be lost. And those are programs that are already underway. As this shows, there are 116 pending deals—deals we could do, deals we could get approved. That would be basically $9.3 billion in revenue to those companies, and obviously companies could grow their economic bottom line.

In my visits with companies in the State of Washington, I have seen that a lot of businesses are looking at maybe 20 percent of their revenues coming from overseas markets, so having the Ex-Im Bank helps them reach new market opportunities. Every time I talk to them—what happens if this program goes away and you can't get financing? Most of them will say: That 20 percent of our business will result in layoffs—those people who are associated with that business.

So right now what we need to do is to help these businesses that are in their fourth quarter have the certainty and guarantee that we are going to compete on the playing field of what is called a global economy. If you are not interested in that, if you think we are just going to make U.S. products and sell them to U.S. people, I guess that could be your strategy. I think it is a wrongheaded strategy.

So we are here today to talk about how this is impacting small businesses, big businesses, and what we need to do to get this reauthorized.

Why are we here this morning? Because yesterday we heard news from a major manufacturer that basically talked specifically about what is going to happen. It is not that the Koch brothers are going to win or the Heritage Foundation is going to win; it is that companies such as GE and others are going to ship their jobs overseas so they can get financing for the manufactured products they make. So what happened? GE basically has said it has been forced to move 500 jobs from the U.S. to France, China, and Hungary. Why? Why are they moving jobs overseas? Because they still have a credit agency. France has one and is willing to provide export financing as a major component of wind turbines that would otherwise have been built in the United States. Altogether, GE has $11 billion in contracts that require export credit agency support. So they are going to meet customer demand.

I worked in business for 5 years. I know what it is like to build and ship a product to meet customer demand. They cannot sit around and wait for Congress to stop catering to special interests to get their customer applications filled. They either do it or they lose business. And that is what is happening today—the American economy is losing business because people here are playing politics with an important tool that helps U.S. manufacturers.

GE isn't the only one. Boeing is also facing job loss. On July 31, Boeing announced that it had lost a contract for communications satellite ABS–8, which will provide service to millions of people in the Asia-Pacific region. We know this is important business, satellite communication. Think about the developing world in places such as the Pacific islands, Indonesia, the Philippines, New Zealand, Papua New Guinea. This company specifically cited Ex-Im's lapse as the reason they did something else besides going with a U.S. manufacturer. These satellites will still be launched. There will be massive growth in the middle class of Asia that demands it, and they will continue to get a product. It just won't be from a U.S. manufacturer. Why? Because we have chosen to let the Export-Import Bank fail.

All in all, this Export-Import Bank is on track to support 58,000 fewer jobs in 2015—jobs that, if they were able to operate, they would be able to continue. So the fact is that Boeing and GE may be hurting, but they will come up with strategies that work well for them because that is what you do when you are a big company—you figure out how to compete. But the small businesses in America that might be the job engine of growth for the future are not so easily able to move their company or move overseas to get the financing. For example, since 2007 Export-Import Bank has supported more than 230 business exporters in the State of Washington. Two thirds of those are small businesses. So these companies aren't going to be able to all of a sudden stop what they are doing, go to France or go to another country, and start a manufacturing facility just to get credit agency support. The damage that is being done to small businesses in America right now is acute, and we need to make sure we get this export agency reauthorized.

An example of this: My colleague Senator MERKLEY and I visited Bob's Red Mill. I think that about everybody in America, if they don't know Bob's Red Mill, knows they have bought a product from Bob's Red Mill when they have gone and bought oatmeal or grains. It has grown their export revenue about 35 percent since they started working with the Export-Import Bank in 2012. Think about that: Those consumers—90 percent outside of the United States—want to basically consume more products like Bob's Red Mill, a great product. I personally think these are the kinds of things the United States ought to be focusing on. We are still number one in agriculture. We still should be focused on shipping agriculture products to developing markets around the world. This is one of the biggest and easiest opportunities, feeding the world with a product like Bob's Red Mill. But no, no, no. Bob's Red Mill will lose business because they will not have an export authority. I doubt that Bob at his age—a great man, a very vibrant guy at 80-some years old—is going to start a business somewhere else in Europe or in Africa just to export to that market and try to get the financing.

Texas-based Air Tractor will lose up to 25 percent of their sales because the Export-Import Bank is stopping. Pennsylvania-based Precision Custom Components, which manufactures parts for the nuclear industry, says it has over 100 jobs linked to their ability to service people with export-import financing.

This is a loss of real jobs. When people talk about what we are dealing with in our fiscal crisis—the fact that people are talking about shutting down Government—to me, if you want to be a good fiscal steward, then reinstitute the Export-Import Bank.

In 2014 alone, Export-Import Bank paid $675 million into our Treasury. That is deficit reduction. In fact, in the previous 5 years, it had generated somewhere around $5 billion in deficit reduction. Not only are we taking away a key tool, where are you going to plug the hole in our budget from the hundreds of millions of dollars this year—to say nothing of next year and the next year—that you don't have from killing the Export-Import Bank? People need to realize, these people—small businesses, big organizations seeking financing—have to pay a fee. That fee generates revenue. That revenue is used to pay down the Federal deficit. Not only do we create jobs and not only do we reach market access, we actually have a government program that is helping us pay down the Federal deficit.

Why would you not want to reinstitute that? The good news is that the Senate voted to do that. From what I hear, there are enough people in the House of Representatives. People have continued to hold this program hostage because people are anxious about the politics of the Heritage Foundation, the Koch brothers, or people sending out emails or challenging them when in reality you just need to stand up and speak for the fact that you want U.S. job creation, and you believe that U.S. manufacturers making and building a product and selling it overseas is a winning economic strategy for the United States of America. It is. To boot, it pays down the deficit. We know that American businesses are obviously working hard to try to communicate this. Everybody from the manufacturers association to individual workforce organizations is trying to express this. I know my colleague Senator HEITKAMP has been working very hard on this on the banking committee.

With just a short period of time left before whatever this proposal is to shut down the government, which I certainly don't support, we have to say to our colleagues that you either have to get this on the highway bill—which it is as part of a package that we passed out of the Senate—and get either the package that was passed here in the Senate passed by the House or come up with another vehicle that gets this done, as my colleague from Minnesota just suggested, on the continuing resolution or some other bill so that we actually know we are giving American businesses the opportunity to continue to compete.

I hope we will get a long-term solution here. The fact that we have sent this message around the United States and the world—that there is no longer financing available—has really hurt our competitive opportunity at a time when America needs to embrace the fact that there is so much business in these developing middle-class markets around the globe.

You can sit here and trade away our opportunity to compete by saying I don't want U.S. job creation or deficit reduction. Instead, I want to ship jobs overseas. I don't get the strategy. I don't get what someone thinks is smart about allowing U.S. jobs to be shipped overseas just because they can't get financing here. If the market were willing to take those risks without some of the security put forth here, obviously people would want to see that. But that is not happening because if you are selling grain silos like we are to African nations, there is no bank there that is financing that deal. If you are selling product to Asian countries that are just developing, whether it is seafood or whether it is grain like Bob's Red Mill, they are not always able to get financing. This is a way for the United States to win. All we have to do is embrace this and make sure that we pass the Export-Import Bank as soon as possible.

I yield the floor.

Mr. DURBIN. Mr. President, how much time is remaining in morning business?

The PRESIDING OFFICER. The Democrats have 9 minutes remaining.

Mr. DURBIN. Mr. President, I want to thank my colleague from Washington for taking the floor and supporting the reauthorization of the Export-Import Bank. She has been diligent in coming to Congress and explaining that this agency not only facilitates exports from the United States, which creates jobs and helps businesses here, but it also generates a surplus for the Treasury. What is wrong with that picture? Why would the Republicans be so opposed to an agency that helps American businesses, large and small, export more goods and doesn't cost the Federal Government any money? Why do they want to kill this agency? Why do they want to kill these jobs? I don't understand it.

We had a vote on the floor of the Senate a few weeks ago on the Transportation bill to reauthorize the Export-Import Bank and it passed. We sent it over to the House of Representatives which, sadly, has become the graveyard for big issues, important issues when it comes to the future of America. I hope it changes. I hope they will listen to business leaders—that Republicans in the House will listen to business leaders and not just Boeing aircraft. Of course I am interested in that. It is headquartered in Chicago and is a major employer in the United States, but large and small companies alike feel the same. Export-Import Bank gives our companies in America the ability to finance export deals so they can compete with other countries.

When we decide—or at least some in the Senate decide—to take the United States out of the export business, who is going to step in? Who will take over and create the jobs? Sadly, our competitors, China. They are not waiting around for their legislature, whatever it may be, to give permission for them to dramatically increase exports. They are on the road to do that. I support what the Senator from Washington said.

NUCLEAR AGREEMENT WITH IRAN

Mr. DURBIN. Mr. President, on the floor we are going to return in a few minutes to the debate on the Iran agreement. This agreement, of course, has been in the works for a long time. President Obama set out to create a set of sanctions, punishment against Iran to force them to come to the table and to negotiate with us and other nations so they would not develop a nuclear weapon. The President invested a lot of capital in it, and it worked. Congress imposed sanctions. The President imposed sanctions.

The day came when the negotiations started, and we weren't sitting alone at the table. It is an amazing alliance of nations trying to stop Iran from developing a nuclear weapon. It included China, Russia, the United Kingdom, Germany, France, and the European Union. They all joined us in the sanctions, and many others too. But they joined us at the negotiating table, and they worked with us until we reached an agreement. That agreement didn't rely on trusting the Iranians. No. It relied on inspectors, real inspectors from the United Nations who have a sterling reputation. It was those inspectors who warned us before we invaded Iraq that there were no weapons of mass destruction. The Bush-Cheney administration paid no attention. We paid a heavy price for that dereliction of duty.

Now these inspectors are in place—will be when this agreement moves forward. We can not only find out what is going on in Iran when it comes to nuclear weapons, we can make sure we discourage them from ever violating this treaty or agreement. Should they violate it, automatically the sanctions will snap back. In fact, it takes only the vote of the United States in the Security Council of the United Nations for all of the sanctions to come back on Iran if they break the treaty. Inspectors, snapback on sanctions, and I hope it results in what we want to see: No. 1, stop Iran from developing a nuclear weapon, and No. 2, avoid the United States from going to war again in the Middle East. Those are our two goals.

Those who oppose this agreement come to the floor and say: Stop it. Don't do it. Walk away from it. It is nothing but bad.

Every single Republican in the House and Senate—every single one of them—has come out against this agreement. Not one is supporting it. It shouldn't surprise us.

On March 9, 2015, 47 Republican Senators sent a letter to the Ayatollah Khamenei. Do you know what they

said? Don't negotiate with the United States of America. Don't negotiate with this President or other nations. Whatever you do is going to be subject to congressional review. There is no guarantee we will support it. Even if it is supported by Congress, there is no guarantee that any future President would enforce this agreement.

You may even hear it tonight in the Republican Presidential candidate debate. Isn't it interesting that this was the first time in the history of the United States, the very first time that a group of Senators intervened in a Presidential negotiation in national security—the first time that has ever happened. And 47 Republican Senators, including every Member of the leadership, signed that letter. What would happen if 47 Democrats had sent a letter to Saddam Hussein prior to the invasion of Iraq saying: Don't pay any attention to President Bush. What do you think the reaction of Vice President Cheney would have been? He would have had us all up on charges—treason. That is exactly what happened here. There was a letter from 47 Republican Senators saying: Don't negotiate with the United States. The President ignored it. The negotiations continued.

The agreement is before us. There was a key vote last week, a critical vote. Every single Member of the Senate has publicly declared where they stand on this agreement. After some 8 weeks of deliberation and debate, the vote took place last week, but it wasn't enough for Senator MCCONNELL. He demanded that we replay the vote last night. We did, with the same result.

I don't know how many times he is going to bring this before us, but may I suggest to the Republican leader there are some items that he might consider moving to. We are 8 legislative days away from shutting down the Government of the United States. Should we be discussing that? Most Americans would say so. Most Americans think it is embarrassing that the U.S. Government would shut down because a willful group—a small minority—is determined to get that done. Too many people suffer when that happens. We have to do everything we can to keep this government open.

Let's get beyond this debate. We have already established what the vote is, and the Republicans didn't come up with the 60 votes necessary to move forward. That is the story. They don't like the ending, but that is the ending. Let's move forward in a responsible way to do two things—first, to make sure that Iran lives up to this agreement and do everything in our power to enforce it, and second, get on with the business of government. Let's fund this government. Let's not become a nation that people look at and say: Who is in charge here if a Republican Congress would shut down a government for a second time, as they did a couple of years ago? Who is in charge? Let's get into that issue and let's do it in a responsible and a bipartisan way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

REAUTHORIZATION OF THE EXPORT-IMPORT BANK

Mrs. MCCASKILL. Mr. President, I rise to talk about something very important to small businesses in Missouri. Ironically, tonight there is going to be a debate at the Ronald Reagan Presidential Library. I hear a lot of talk from my friends on the other side of the aisle about small businesses, but here we are today confronting the failure and the job losses associated with our not embracing the Export-Import Bank. President Eisenhower, President Ford, President Reagan, President George Bush—both President George Bushes.

This was not controversial, and it is really easy to understand why. The Export-Import Bank has never been controversial. This is a credit agency. There are 60 other credit agencies around the world that support companies in their countries—60 around the world. It is not a level playing field in the global economy if America decides to no longer support our manufacturing economy and the small businesses associated with that by removing this important tool for exports. It is real jobs. This is not fairytale stuff, and this is not crony capitalism. This is an analysis of risks done by a credit agency and that credit agency, when it analyzes the risk, can keep track of it. We can figure out if in fact they are taking good risks or if in fact it is scratching somebody's back by virtue of the fact that $7 billion has been put in our Treasury after the Bank has covered its expenses.

The PRESIDING OFFICER (Mr. SULLIVAN). All time for morning business has expired.

Mrs. MCCASKILL. Mr. President, I ask unanimous consent to speak in morning business for a couple more minutes.

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

Mrs. MCCASKILL. In 2014 this credit agency that all the other countries in the world have access to put $674 million in the U.S. Treasury.

Let me count off here. It creates jobs, supports manufacturing, and adds money into our Treasury. What is the problem?

My staff and I have met with nearly 100 companies in Missouri, and 90 percent of Ex-Im's work directly supports small businesses. I will say that again: 90 percent supports small businesses.

I will give a couple of examples. There is a small company in Joplin, MO. These kids started it in their garage. They build skateboard parks. They now have a manufacturing facility, and they are manufacturing skateboard parks which are exported around the world. They can't go to their local community bank to help their customer in Indonesia. They need what other countries have—a credit agency that analyzes risk on a global basis.

I toured a small Kansas City company now run by the third generation of the same family. They rely on Ex-Im Bank to help them manage their risk of extending credit in foreign markets. Sixty percent of their sales are exports. Do we want to shutter this company? Is that what we want to do? Do we want them to have to cut their employee base by 60 percent because they can no longer export?

There is a St. Louis company that makes cutting-edge play equipment for children and uses the insurance from Ex-Im Bank to work with customers in South America, Australia, and beyond. There is another small St. Louis manufacturer that was founded as a family-owned company in 1951 that sells electrical components to Saudi Arabia, Brazil, and Thailand. They depend on Ex-Im Bank.

What is going on in this place? How has this become controversial? This was never been controversial, and there is one representative that is in a key position in the House of Representatives that is shutting this whole thing down. The American people ought to be outraged. We can vote on Iran as many times as you guys want us to if it makes everybody feel better. I have no problem with that. It was a tough decision for me. I made up my mind. But to be wasting time on political posturing when these jobs—and I have real examples of contracts that aren't going through now because Ex-Im is not there.

I plead with my friends on the other side of the aisle: Make time in your busy schedule of scoring political points on the Iranian agreement to reauthorize Export-Import Bank. Jobs in my State depend on it. Yes, we have unemployment down to 5 percent in this country, but that doesn't mean we shouldn't still focus on jobs every day in the Senate.

With that, I yield the floor and ask for the help of all my Republican colleagues to help us get Ex-Im Bank across the finish line so small businesses in this country do not suffer at the hands of global competition that figures out that this ought to be easy.

I thank the Presiding Officer.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

HIRE MORE HEROES ACT OF 2015

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.J. Res. 61, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 61) amending the Internal Revenue Code of 1986 to exempt employees with health coverage under TRICARE or the Veterans Administration

from being taken into account for purposes of determining the employers to which the employer mandate applies under the Patient Protection and Affordable Care Act.

Pending:

McConnell amendment No. 2640, of a perfecting nature.

McConnell amendment No. 2656 (to amendment No. 2640), to prohibit the President from waiving, suspending, reducing, providing relief from, or otherwise limiting the application of sanctions pursuant to an agreement related to the nuclear program of Iran.

McConnell amendment No. 2657 (to amendment No. 2656), to change the enactment date.

McConnell amendment No. 2658 (to the language proposed to be stricken by amendment No. 2640), to change the enactment date.

McConnell amendment No. 2659 (to amendment No. 2658), of a perfecting nature.

McConnell motion to commit the joint resolution to the Committee on Foreign Relations, with instructions, McConnell amendment No. 2660, to prohibit the President from waiving, suspending, reducing, providing relief from, or otherwise limiting the application of sanctions pursuant to an agreement related to the nuclear program of Iran.

McConnell amendment No. 2661 (to (the instructions) amendment No. 2660), of a perfecting nature.

McConnell amendment No. 2662 (to amendment No. 2661), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 p.m. will be equally divided between the two leaders or their designees.

The Senator from Tennessee.

Mr. CORKER. Mr. President, I rise today to speak about the agreement before us. I find in this line of work that repetition is sometimes useful. I know my friend from Illinois mentioned how we ought to be focused on something else, but I think all of us understand that there is an assumed deadline on this topic, which is set for tomorrow.

I say to my friends on both sides of the aisle that the likelihood is that after tomorrow we will move on to the other types of business that we need to deal with. But this is not, as my friend from Missouri mentioned, an issue of political points. The issue with Iran is one of the most significant, if not the most significant, foreign policy issue that we will likely deal with while we are here in the Senate. I think it is important, while this is before us, to spend as much time as possible talking about this issue, focusing on this issue, debating this issue, and making sure that everyone understands what the contents of this Iranian deal are.

I will walk through it, if I could for a few moments, and lay out why we are where we are today.

I know the Presiding Officer is new here and brings a wealth of national security experience from previous posts that he had with the State Department prior to serving here. But what brought us here really was this body acting almost in a unanimous way to put sanctions in place four times since 2010. We worked with the House of Representatives to put sanctions in place because we knew that Iran was doing things, such as nuclear development, that were going to be damaging to the world. So we sanctioned and punished them. We put crippling sanctions on their economy, and we did that collectively.

This is something that very few people on either side of the aisle objected to. We acted in unison. It was the crippling sanctions that we put together that really brought Iran to the table. Let's face it. Their economy and standard of living were causing people in Iran to become restless, and so finally Iran said: OK, it is time to talk.

When these talks began, our President stated that what we would do in these talks was to end Iran's nuclear program. And just for what it is worth, I think people on both sides of the aisle celebrated that goal—ending Iran's nuclear program.

I might remind people who may be just tuning into this that Iran has 19,000 centrifuges right now, and 10,000 of those are operating. They built underground bunkers at a place called Fordow. It is hard to get to it. It is hard to take those out with munitions, if you will. They built a plutonium facility called Arak.

By the way, much of this was done in a clandestine way. All of it was done violating U.N. Security Council resolutions.

I will say everyone here understands fully that Iran has zero practical need for any of this. Iran has one nuclear facility. Everyone knows that it would be so much cheaper for them to just purchase enriched uranium to fuel that one facility. But they say: No, we want to be leaders in medical isotopes. For what it is worth, if Iran really wanted to develop the expertise around medical isotopes, they would have 500 centrifuges. So we all know that the purpose of this program has not been for civilian purposes. It has been to cause them to be a threshold nuclear country. We know that. Everyone knows that. They know that, we know that, and every country involved in the discussions with Iran knows that.

First of all, we know what their goals are. So when the President says that in these negotiations what we are going to do is end Iran's nuclear program, I think most people in this body would celebrate that. So he began the discussions, and as he started moving along, it became very apparent to those of us paying attention that what he planned to do was to enter into what is called an executive agreement.

Now, for people who don't do what we do on a daily basis, there are three ways that the President can enter into an international agreement. One way is through a treaty that requires a two-thirds approval by this body. A treaty is interesting because it binds future Presidents, and it binds future Congresses. But the President decided that was not the route he was going to take.

There is a second route he could have taken, and that is called a congressional-executive Agreement. While it is not as strong as a treaty, it does create a law that is binding on future Presidents and future Congresses. The President decided he was not going to go that route.

The President decided that he was going to do this unilaterally, through what is called an Executive agreement. As we know, an Executive agreement is something the President can do, if he chooses, on his own. The problem with it is that it doesn't survive his Presidency. Another President can do something very different.

In this case, however, as everybody has analyzed this deal, everyone understands that we lose all of our leverage over the next 9 months and give it away. When people in this body began to realize that we brought Iran to the table—or at least played a heavy role in bringing them to the table—and that the President was going to use what is called a national security waiver to waive away all the congressional sanctions so that he could enter into this Executive agreement without ever talking to us, we achieved something else that was very important. As a matter of fact, this is the first time this has happened since I have been in the Senate, and there are a lot of misunderstandings about it. For the first time in Congress since I have been in the Senate—on a strongly bipartisan basis—we took power back from the President. We said: Mr. President, we know that you can enter into Executive agreements, but in this particular case, since we put the sanctions in place that brought them to the table—by the way, over your objections—we want a chance to go through this agreement in detail, and we want the right to either approve or disapprove. But you have to present us with this, and it has to sit before us for 60 days, which it will have done as of tomorrow, and we want the right to weigh in as to whether we believe the substance of this deal is good for our Nation.

We had 98 Senators in this body vote for this. One of the Senators who was absent supported it, and that makes it 99. It is pretty remarkable that on a bipartisan basis 99 Senators said: No, we want this to lie before us because we believe this is one of the biggest foreign policy issues we are going to deal with, we believe that this is a vote of conscience, and we believe that every Senator and every House Member—which is unusual with these kind of agreements—should weigh in and be able to voice their opinion.

So we have gone through the deal, and what is fascinating about it is—I hate to be pejorative, but we had almost unanimity on putting sanctions in place to bring them to the table. We had almost unanimity on the fact that we should be able to weigh in. It is my strong belief that in lieu of the President achieving the deal that he did or the goals that he stated to end Iran's nuclear program, obviously, we have done anything but that.

So what has happened is we have totally squandered an opportunity to

unite this Nation, and others, around ending their program. Instead, our Nation, with other ''great nations'' have agreed to allow Iran not only to not end their program but to industrialize it. We have agreed to let them develop intercontinental ballistic missiles so they can deliver a nuclear weapon. We agreed to let them do research and development.

Right now they are using the old IR–1 centrifuges, which are like antiques, but we are going to allow them to do research and development on the IR–2s, IR–4s, IR–6s, and IR–8s, which we know are multiple times faster. We have lifted the conventional weapons embargo and the ballistic weapons embargo, for some reason, just throwing it in for good measure. We are allowing them, for the first time, to begin testing.

So what has happened is now in this body, there is some tepid support—I see my friend from Michigan, I have other friends, and I haven't heard anybody come out and say this is a great agreement. What they are saying—not necessarily the Senator from Michigan but others—is, well, we are where we are. We are where we are.

This is not a very good agreement. It is flawed. Even though Congress, 200 times, has sent international agreements back to the executive branch—200 times—in this case: We are where we are. And our friends in Russia—by the way, has anybody seen what our friends in Russia are doing in Syria right now? Yes, they are really good friends. Has anybody seen what China is doing right now in the South China Sea? They are building their third airstrip, claiming territory that for thousands of years has belonged to other countries from the standpoint of territorial waters. People are saying—our friends and allies—what will we do about our friends and allies?

So here is where we are. I could go on and on. I just cannot believe that our great Nation, with ''our friends'' from Great Britain, Germany, and France and ''our friends'' from China and Russia, squandered—squandered—an opportunity, had a rogue nation with a boot on its neck—a boot on its neck—we squandered the opportunity. Now, with our approval, they can industrialize their program. As a matter of fact, they don't have to violate the terms of this deal. They can just honor the terms of this deal. Their economy will flourish. By the way, it is hard for me to believe this, but I think most people understand that we are giving them back $100 billion. We are going to do that over the next 9 months. We are lifting the major sanctions that have crippled them. We are doing that without us even asking them to do much. From that point on, by the way, the leverage shifts from us to them.

We are very concerned about what they are doing in Syria. By the way, they have doubled down on that since the agreement was reached with the nuclear file. We are very concerned about what they are doing with Hezbollah in Lebanon. We are very concerned about what they are doing with Hamas, allowing rockets to be fired into Israel. We are very concerned about what they are doing in Lebanon with the Houthis. We are very concerned about what they are doing in Bahrain with thousands of men and women in uniform trying to keep the strait open. We are very concerned about that, but in 9 months, if we express our concerns, what are they going to do? They are going to say: We have all of our money, you have lifted all the sanctions, and if you press back against us for terrorism or human rights or violations in this agreement that are minor, we are just going to start a nuclear program again. So it is kind of unbelievable that we have ended up in this place.

What is happening on the floor now, just to explain to the American people, we have a process in the Senate which says that at the end of debate—by the way, we have had a lot of debate on this. We have had 12 hearings in the Foreign Relations Committee alone. The Presiding Officer serves on the Committee on Armed Services and they have had hearings. The Intelligence Committee has had hearings. We have had hearings as a body. We have had personal meetings. As a matter of fact, I would say this body knows more about this international agreement than any international agreement in modern times. As a matter of fact, thanks to us pushing back against this administration, the American people know more about this agreement than any agreement in modern times. It is amazing. Thank goodness we passed the Iran Nuclear Agreement Review Act; otherwise, none of this would be known—none of this.

So where we are today is we all said this was one of the biggest foreign policy issues to come before us; we want the American people to know where we stand on the substance of the deal. So for people tuning in, here is the way the Senate works.

When a vote comes before us—and right now, since there is a strong bipartisan majority of people who oppose this deal—as a matter of fact, the two most knowledgeable Democrats on foreign policy issues, the ranking member and the former chairman and ranking member, who know more about foreign policy than any Democrat in this body—both oppose this deal. So on a strong bipartisan majority, we have a group of people who think we can do better. Just like the 200-plus times we have sent agreements back to say do better, we are saying we think we can do better.

So here is what is happening. When a bill comes or a vote comes before the Senate, we have these rules, and there is a rule that says there is a cloture vote. What cloture means is that people say: OK. We have heard enough about this. We believe it is time to take a vote.

I just heard the Senator from Illinois say we have been talking about this way too long. It is time to move beyond it. He left out a minor detail; that is, it takes 60 Members of the Senate to say we have heard enough about it. It is time to vote. But what is happening is that we have 42 Members of one party who are in the minority—42 Senators who are saying: No, we are not going to allow this to move to a final vote. We are not going to do it.

We know it is not about debate. We know—as a matter of fact, the second highest officer on the Democratic side says we need to move on to other business. It is time to move on to other business, and what we need to do is invoke cloture and let's vote. But let me tell my colleagues what is really happening here. It has sort of taken on—I have said this several times—it has taken on kind of a Tammy Wynette kind of flavor: Let's stand by our man. Let's stand by our man. We don't want the President to have to deal with a resolution of disapproval; we want to protect him from that. We don't want to embarrass him, that there is a bipartisan—by the way, the smartest, most well-versed, deeply informed on policy Member on his side of the aisle is agreeing with the vast majority of the Senate—58 Senators—saying this is not good for our Nation because this does not end the program. By the way, if this ended the program, do we know what would be happening? We would have 100 Senators saying: Let's vote to approve this. This is outstanding. The President achieved his stated goal. But since that isn't the case, what we want to do is send a resolution of disapproval to the President. But we have 42 Senators on the one hand saying let's move on and let's deal with funding government but on the other hand are not agreeing to a final vote.

So we have one more chance. I just want to say this. We have a lot of partisanship that happens here. Let's face it, we do. I get it. It happens. I am going to have to say in this case, the majority leader has allowed me to work with my friends on the other side of the aisle. He has allowed me to move this through in an appropriate way. At every juncture—when my friends on the other side of the aisle felt as though something was occurring that was adding unnecessary temper or maybe something was getting out of line and we needed to alter our course of action—at every juncture, the majority leader said: Senator CORKER, if you think this is the best way of moving ahead to keep the bipartisanship that I have had with Senator CARDIN and Senator MENENDEZ and so many others, have at it.

I just want to remind people that as we entered this debate—as we know, there are all kinds of inflammatory amendments that could be added to this debate—the leader filled the tree. Now, for people out in the listening audience, fill the tree, what does that mean. What he did was he kept any inflammatory amendments from being offered. The only thing that is before

us—I know he has filed an amendment now. After two times, the minority will not let us move to a final vote. I know there is going to be one that is tough—I don't know if it is that tough or not—to vote on this Thursday, but the fact is that the purpose has been for us to move to a final vote. Forty-two Senators will not allow us to have that vote of conscience. I want to say again to those listening in, the process vote of any debate is not a vote of conscience. That is not a vote of conscience. The vote of conscience is, when we take the final vote, do we believe that this Iran deal—the President's Iran deal—is something that is good for our country, will create stability in the region, and certainly will keep them from getting a nuclear weapon. Fifty-eight of us don't think so. Actually, I have to believe, from listening to the comments of many of my friends when they talk about how flawed it is, I think there is actually a whole lot of concern, even though sometimes—and I understand when you have a President of your own party, sometimes it is hard to go against the President. I get that. I understand the pressures that come to play when that happens.

But where we are, I say to the American people and to my fellow Senators, is we want to move to a final vote, an up-or-down vote, which, by the way, by the rules of the Senate, is a majority vote. We want to move to that. We have 42 Senators who are keeping us from that. What I hope is going to happen over the course of the next 24 hours is that a couple Senators, a few, will say: Look, we did vote 98 to 1 to register our feelings about the substance of this most important agreement. We did. We really did do that. Maybe it is appropriate that we, on behalf of the American people, not get stuck on this procedural issue, this cloture vote. We have debated this plenty, so let's go ahead and move to a final vote. That is what I hope is going to happen.

I am thankful, though—I do want to say one more time—I thank people on both sides of the aisle for having the gumption to buck the administration and to put in place four tranches of sanctions to get them to the table. I thank both sides of the aisle—by the way, led by Senators MENENDEZ and KIRK, led by the two of them, one Democrat and one Republican—we did that together. I thank people on both sides of the aisle for putting us in the position to actually have the documents, to know what this deal is about, to have this debate, to be able to weigh in.

I want to say one more time that had the President done what he said he would do—and that is negotiate to end the program—we would have 100 people supporting it, but he didn't. We all know that. Everyone knows that is not what has happened. We have agreed to industrialize their program, let them do research and development, let them create delivery mechanisms to make sure they can send these nuclear warheads they are going to be on the verge of developing a long way across the oceans to places such as America and other places. I don't know why we did that, but we did.

So now we just want a chance to vote yes or no. Do we believe this is an agreement that will stand the test of time? Is it something that is good for our country? Do we believe this is something that if Iran wishes to, will keep them from developing a nuclear weapon?

I look forward to the comments of my friend from Michigan, and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, first of all, let me agree with the distinguished chairman of the Foreign Relations Committee that, in fact, we did come together on strong sanctions against Iran that has brought us to this situation on a bipartisan basis. We did come together on the process that would create legislatively a way for us to make a decision. That was done on a bipartisan basis. What I regret is, at this point, even though we are following through on the legislative process we adopted, it now has become so partisan. That is not good for America, it is not good for Israel, and it is not good for, frankly, the world to see this happen.

So while agreeing on part of what the distinguished chairman said, I have to disagree on many things, although I am not going to take my time to go into them now. But certainly the process we are using is no different than any other major bill—health care reform, financial services reform—and it was set up in what we passed. So we can try to make it into some partisan issue now. The reality is we have all thoughtfully taken a position. We have voted. Everyone knows everyone's position. So now we are just in the process right now, unfortunately, I believe, of politics, which does not help us move forward for our country or for our allies.

AMENDMENT NO. 2656

Mr. President, I wish to speak to an issue I am deeply concerned about, which is the next vote we are going to have on Thursday, and speak to a very important young man who is an American hero and who is caught in the politics of what is happening right now.

Amir Hekmati from Flint, MI, is an American hero. He served his country as a marine between 2001 and 2005 in Iraq and Afghanistan. He served with valor. He served with honor. He was awarded the Combat Action Ribbon and the Good Conduct Medal. But this morning, Amir woke up in an Iranian prison. He has been in that prison for 4 years and 19 days. During that time, Amir has been tortured. The prison is notorious for its deplorable conditions. While he has been there, his father, in Flint, MI, has been battling terminal brain cancer.

The Iranian Government is playing politics with Amir Hekmati's life. Unfortunately, though, now, today, the Senate Republican leader is also playing politics with Amir's life. The imprisonment of this veteran, this American hero, is being used by the Senate majority leader in a transparent effort to score some cheap political points, in my judgment, and it is appalling. No American should ever be used in this way—none of us. This is a young man whose parents are desperately worried about his safety, who have been waking up every day for the last 1,479 days hoping this would be the day they would learn their son Amir would be freed. How does it show respect to Amir's mom and dad to use their son's plight and possibly even threaten the negotiations that are going on now in order to make a partisan political point and jeopardize his release?

We have had a rigorous debate on the international Iran agreement, and I know from talking to colleagues and being in many meetings that those on our side have been very thoughtful and thorough—and certainly the chairman has as well—in coming to our positions in a highly charged, difficult, and very complicated situation. I spent many weeks in classified briefings, meetings with nuclear experts, meetings with the Ambassadors, and personally calling each of those involved in the negotiations in the P5+1 countries, meeting with constituents in Michigan who feel very passionately about this issue on both sides, and I have made my decision—the decision I believe is best for America, for Israel, and for our allies. I did not make my decision on the day the agreement was announced, before I had ever read it, or even before it was announced—regrettably, as many Republican colleagues in the House and Senate did.

We have had a vote in the Senate. We have now had two votes on this issue. Today or tomorrow we will have a third vote, not because the majority leader is expecting a different result—we have all taken our positions—but because he wants to score political points and bring in as part of that vote four American hostages and what is happening to them. Those political points will be scored at the expense of Amir Hekmati from Flint, MI, who has served his country honorably.

Mr. President, I have gotten to know the Hekmati family, and I know how much their son's freedom means to them. Any of us who have children can understand what they are going through. I have personally talked with the President and other officials at the highest levels of our government who are working tirelessly to secure Amir Hekmati's release and return him to his loving family, along with the other Americans held hostage.

This is a diplomatic mission. It is a humanitarian mission. Yet the majority leader is on a political mission that is not going to help. He wants to interfere with and disrupt the international

nuclear agreement with Iran. I understand that. I understand his and others' position. But they are willing to use Amir and other American hostages in the process, and that is wrong. This political stunt by the majority leader does not help bring Amir home. It doesn't help bring the other three Americans home. It just adds more politics to the situation.

What is very disturbing to me, after always having bipartisan support—one of the things I could always say to my constituents was that when it comes to the issues around Israel and the Middle East, we have always been together on a bipartisan basis—until now and what has happened over the last few months.

Unfortunately, what is happening on this debate and the vote we will have tomorrow—bringing the American hostages into this debate on Iran is not the first time we are seeing partisan politics interjected into this debate. I still will never forget the 47 Republican Senators who wrote a letter to the Supreme Leader in Iran—our enemy, the Ayatollah—to tell him not to pay any attention to the President of the United States.

I have to say that if it were reversed and if there were 47 Democrats, everything would have halted in this Chamber. There would have been impeachment hearings. We would have been called traitors. It would have gone on and on. It is shocking to me. If this had happened—when we were debating going into Iraq, if we had written a letter to Saddam Hussein saying ''Don't listen to the President of the United States'' or anybody else, for that matter, any other President, that would have been a national crisis and there would have been outrage. Yet, somehow, 47 Republican Senators can write to the Ayatollah in the middle of an international negotiation that was difficult at best, when we know that Iran is within 3 months of having a nuclear weapon right now, by the way, that we should all be concerned about. I know we are, except some of us act as if we can go back to renegotiate something, which will take years, when they are going to have enough materials within 3 months.

In the middle of all that, almost half of this Chamber writes to the people who are funding terrorism and who are our opponents and enemies in terms of the Ayatollah, saying: Hey, by the way, the President of the United States—don't listen to him. Don't listen to him.

Interestingly, Senator COTTON said in that letter that of course it will take 60 votes to pass anything in the Senate—which, of course, it does and which, of course, we are debating now. And folks are acting as though it doesn't. But the Ayatollah was sent a letter that said it would take 60 votes, so whoever wrote him might want to check in with him.

So here we are now. We have seen the ultimate politics of Members in this body writing to our enemies and saying: Don't listen to the President of the United States. And now we are in a situation, after voting twice on a serious, difficult, emotional, controversial issue where there are serious, thoughtful people on both sides—because the vote is not going the way the majority wants, now they bring in the four hostages and Amir.

There is a tradition in our country when it comes to issues of national security and the lives of men and women who serve in America. This quote was coined by a former Michigan Senator, Arthur Vandenberg: ''Politics stops at the water's edge.''

This picture we are very proud of. It is right outside here in the Reception Room. Very few U.S. Senators have their portraits painted on the wall in the Reception Room, and I am very proud one of those is a former Republican Senator from west Michigan, Senator Arthur Vandenberg. He was a great nemesis of President FDR. He hated the New Deal. He went after President Roosevelt at every turn on his domestic agenda. But as chairman of the Foreign Relations Committee, when we were being attacked at Pearl Harbor and World War II was happening, he stepped up and said, ''Politics stops at the water's edge.''

For over 70 years, that was the way the United States of America acted. That is the way the Senate operated. We have lost that, and I am deeply concerned—not as a Democrat but as an American—about where we find ourselves today on matters of such seriousness, international threats to our country. We can debate them. We can have differences. If someone loses the vote, it becomes time to come back together and find a way to move forward to keep America strong. There are many opportunities for us to do that, many opportunities on this agreement to make it stronger, to focus on the nonnuclear sanctions and other things that we need to do together against Iran, to focus on bringing our heroic Americans home. But this is not the way to do it. This is not the way to do it.

So I stand today to object to what I view as a political stunt, and the vote tomorrow is deeply concerning to me and to people in Michigan who want to bring Amir Hekmati home. This is not politics; this is somebody's life. It is about the future national defense of our country and our allies and the world.

The vote is the vote. We have taken our positions. It is time to come back together as Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

I want to thank my colleague from Michigan for pointing something out today that I haven't heard before, which is that this vote we are going to have tomorrow, which is a revote on the Iran nuclear agreement, adding a couple of pieces regarding hostages and sanctions regarding Israel, is actually a dangerous vote, and I agree with her completely that it is a political vote.

If you ask the people on the street what they think of Congress, we just are not thought of very well because the people see through this. They see through the politics of this.

You know, we have already voted on this agreement. My friend Senator CORKER, my chairman—I serve on that committee. I am very proud to serve with him. He says: Well, all we want is a vote on the agreement. We gave them a vote. We wanted an up-or-down vote on the agreement. Senator REID asked for that twice, for a 60-vote threshold. Oh, no. Suddenly, even though Senator MCCONNELL has said over the years that every single important vote is a 60-vote threshold, suddenly—this is an important vote. How well I remember a vote cast here on climate change legislation where we got—counting the people who weren't here who said they were for it—56 votes. We fell four votes short. Wouldn't it have been nice if I had gone to the floor and said: This is outrageous. This is outrageous. Let's have a 51-vote threshold.

Well, we knew we needed 60. We didn't play games. We didn't play games with it. That is what we have here. We are playing games with an agreement which already has been voted on, and we had enough people voting in favor of the agreement, if I can say, to derail the Republican plan.

Now derailing this agreement, in my view, means war. And I see my friend on the floor here from Arkansas, and he was the one person who said it. Let's just essentially, he said, bomb this thing away. Well, he is honest about it. Other people say: Oh, just go back and get another agreement. That is code word for ''no agreement.'' That is code word for ''war.''

We have spoken out on this very clearly, and it isn't as if we don't have other issues we need to deal with. The fact is, enough Senators said they support the agreement to derail the effort to stop it. Grow up, accept the fact, and move on. Use it in your campaigns just as we will use it in our campaigns.

I do not think the people in this country want another war in the Middle East, and I feel very strongly that this is a conscience vote. So bring it up 10 times. I am not going to change my vote, especially when I see playing politics has become the way my Republican friends are dealing with this most sober issue.

As you look on the horizon, we know there are a couple of real problems facing us. The budget runs out in 14 days. Are we going to have a government shutdown because some people don't think women should have the right to choose? Are we? I don't know, but we have 14 days to deal with it. Why aren't we dealing with it? We voted on the Iran agreement. It is not going to change. It is just politics as usual. People are sick of it.

Mr. President, let's take a look at the Republican budget. The proposed

Senate Republican budget would cut over one-half billion dollars from the Environmental Protection Agency's budget. I just came from a hearing—a very important and good hearing—where we looked at a horrible tragedy that happened in Colorado. EPA went in there, at the request of the State, to check whether this old mine that hadn't been cleaned up in generations caused a risk of a blowout. And when they started to do their testing, there was a blowout. EPA was devastated with that.

What our committee looked at is how are we going to move forward. Well, we are not going to move forward, I say to my friends, when we cut one-half billion dollars out of the EPA budget that could be used to clean up these mines. When there is a devastating blowout, horrible chemicals, such as cyanide and lead, get into drinking water supplies and it destroys communities. Why would we want to have a budget that cuts so much from the Environmental Protection Agency that 80 percent of the people support? It is so popular. Congress is so unpopular; the EPA is popular. People want a clean environment.

In all my years in office, no one has come up to me and said: The air is too clean. The water is too clean. They say the opposite. They say: You know what. My kid has asthma, clean up the air or they say: I am worried that I can't drink the water. I have to purify it.

So instead of revoting on something we already voted on—and every Member, it is not like anyone was hiding. We all came out. We were either for the agreement or against it. I have to say my colleagues were wonderful in explaining their positions, and I was proud, but I am not proud to see us now go right back to the same thing.

When we have all of these problems facing us, the Republican budget cuts $400 million from community health centers, preventing 620 new clinics from opening and keeping 2.6 million Americans from getting preventive and lifesaving care—that is right, 400 million from community health centers.

How about the HOME Program, the Nation's primary affordable housing program? It would be practically eliminated with a 93-percent cut. This means a loss in production of about 40,000 affordable housing units across the country.

The Centers for Disease Control, we know how important they are when we have an epidemic looming. It would be slashed by the Republican budget by $245 million, hurting our efforts to protect communities from diseases such as Ebola and the measles. We all thought the measles were gone. It came back in California and thank God for the CDC for helping us when we needed them.

Then there is the Export-Import Bank. We extended its life and attached it to the Transportation bill, which is great, but the Export-Import Bank expired 78 days ago. And the Transportation bill that I worked so closely on with Leader MCCONNELL, Senator INHOFE, Senator DURBIN, and others—it is stuck in the House of Representatives. I don't know what to think about what they are doing over there, but they need to get going and get that Transportation bill into conference so we can do this. This is a bipartisan bill. But instead of pushing and working on that, we are revoting on an issue we already voted on.

The Ex-Im Bank has real consequences. GE, General Electric, announced it will shift 500 jobs overseas because of the Bank's closure. So anyone who tells you it doesn't have an impact, they are wrong; it does have an impact. Five-hundred families are suffering because the Ex-Im Bank—which we did the right thing in the Senate—is stuck in the Transportation bill in the House. They have yet to mark their bill, and I hope they will.

Then we have the debt ceiling, something Ronald Reagan warned us about over and over again: Don't play politics with the debt ceiling. I remind everybody, when Bill Clinton was President, we balanced the budget. I was here. That shows you how long I have been around. I didn't have these gray hairs then.

So in those years we balanced the budget, created a surplus. And then what happened after Bill Clinton? Immediately, we had this humongous tax cut for the rich, and we had huge deficits under Republican President George W. Bush. Thank God, President Obama has cut that deficit in half, but we still have a debt. That is because two wars were put on the credit card and there were these tax cuts to the rich, which caused huge deficits, so the debt kept climbing up. Now we have to raise the debt ceiling to accommodate the past spending of this Congress.

President Reagan was right: Don't play politics with the debt—even thinking you will hurts our economy. The last time we played these games it cost us a fortune, and it caused huge uncertainty in the markets.

So we have the budget crisis, we have a Republican budget with huge cuts to programs we need, such as the Centers for Disease Control; we have a transportation bill, the authority for which runs out in October. We have all of these things. Yet what are we doing today? We are voting again on Iran. No one, in my view, is going to change their mind.

I was thinking maybe some of my Republican friends might come over to our side in favor of the agreement since Colin Powell is for the agreement, Richard Lugar is for the agreement, John Warner is for the agreement, and Brent Scowcroft is for the agreement—these are all leading Republican voices—and others, many others. I don't see that happening.

For those people who say it has been partisan, it has been partisan. Several Democrats joined Republicans against the agreement. Not one Republican—not one—despite all the leadership on their side outside the Senate—joined us, so the partisanship has been coming from the other side of the aisle. We are voting again on Iran, so maybe I thought next week we could take up some of these serious issues that I just outlined, these pressing, pressing issues: the budget, the debt ceiling, the Ex-Im Bank, all these incredibly important issues that we are facing. But, no, next week the majority leader has decided to take up abortion—abortion.

What we are going to be faced with is a bill that says to a woman: You cannot have an abortion after a certain period of time. It is a ban—no exception for the health of the women. I wish to talk a little bit about that today.

The bill, as it is coming forward, is extreme. It is a direct attack on women, on doctors, and on the law of the land called Roe v. Wade. It is unconstitutional because it offers no health exception. It bans abortion at a certain point in pregnancy, with no exception, no health exception: no help for a woman facing cancer, no help for a woman facing kidney failure, no help for a woman facing blood clots or other tragic complications during their pregnancy. This is a war on women, and that is what they are going to do. They are not going to the debt ceiling, they are not going to the budget, which must be fixed, and they are not going to Ex-Im, even though jobs are leaving the country.

This bill they are taking up next week will revictimize survivors of rape and incest by assuming they are lying, forcing women to go through multiple medical visits to prove they have been victimized. It would throw doctors in jail for up to 5 years for helping a woman after a certain point in her pregnancy, when that doctor knows she risks paralysis, infertility, a woman who has cancer whose life would actually be in danger if that pregnancy is continued.

But don't take it from me, take it from the women who have had to have these abortions, women who desperately wanted a child, such as Thais from California, who learned at the 20-week ultrasound there were multiple tragedies facing her baby's heart and lungs. The baby had no diaphragm, which means her baby would have suffocated to death once outside the womb. You would force that woman to go through a pregnancy, not to mention the impact on the baby.

Then there is Emily from South Carolina, a 26-year-old mother of two girls. During her third pregnancy, she suddenly had extreme health symptoms, including blurred vision and intense abdominal pain. After testing, she was diagnosed with preeclampsia, which posed a serious threat to her health. Under this bill, she could not have been spared the risks to her health.

So when we say there is a war on women, we mean it. We are not just saying words. Frankly, I am confused

with everything else facing us. We had such a bipartisan breakthrough on the Transportation bill. I was so proud to work with the majority leader, so proud of the product that came out of that. I was proud to work with the Democrats and Republicans on the Environment and Public Works Committee—every one of whom was involved and supported the deal that went through. As a matter of fact, we had a majority of both caucuses. Why can't we build on that bipartisanship? Why do we have to go back to the usual corners? It is sad and unnecessary.

But, you know what, we are going to be voting on Iran, so I am going to tell you why I am backing the deal. If you have to go through it again, I am going to go through it again.

The key points of this agreement: No. 1, it cuts off the uranium pathway to a bomb; No. 2, it cuts off the plutonium pathway to a bomb; and, No. 3, it uses the most intrusive inspections regime ever negotiated. When people say: Oh, but they have 24 days to stall if somebody wants to look at their program, let's be clear, not one party in the world who is a party to a nuclear agreement has any deadline, even the United States. If there is a suspicion of a program being hidden, you can stall it off—but not this one. You have to let them in, in 24 days, or they are in breach. There is a mechanism to require Iran to provide the IAEA with access to those suspicious sites—that 24 day-limit that is not present in any other agreement. It requires the Iranians to disclose their past nuclear activities before they receive a penny of sanctions relief, and the United States and our allies have the ability to snap back multilateral sanctions.

The bill that is going to come before us for another vote talks about how we cannot lift sanctions in this deal until certain conditions are met. But it ignores the fact that there is a whole other set of sanctions that are in place for Iran's terrorist activities, and those sanctions are not touched. Don't conflate the two and confuse people. There are sanctions for their nonnuclear activities, which include their horrific support of terrorism; and then there are sanctions for their nuclear activities, which we will be lifting if they agree and carry out the terms of this agreement, particularly since they will not have one penny lifted until they disclose every bit of their past activities.

So let us see what else I can share with my colleagues as to why I support this deal. I have to say, at a time when Congress is not trusted and has the worst approval rating—I am so embarrassed by that—I have come to the point where I look at third parties to make my case. So, 29 of our Nation's top nuclear scientists, including 6 Nobel laureates, say this is a good deal; 60 bipartisan national security leaders say this is a good deal; over 100 former U.S. ambassadors say this is a good deal; three dozen retired U.S. generals and admirals say this is a good deal; 340 U.S. rabbis say this is a good deal; and 53 Christian leaders and the U.S. Conference of Catholic Bishops—and we are going to be seeing the Pope here next week—say this is a good deal.

So the religious leadership on the side of this deal, for the most part, is overwhelming because our religious people who lead us here want peace in the world. They do not want to see an escalation of war. We see what war brings. We lost, in the Iraq war, more than 4,000 of our people.

I ask unanimous consent for 1 more minute.

The PRESIDING OFFICER (Mr. SASSE). Is there objection?

Without objection, it is so ordered.

Mrs. BOXER. Mr. President, this is what our allies are saying:

If the U.S. were to walk away from this deal, international unity would disintegrate, the hardliners in Iran would be strengthened, and we would lose the most effective path to stop Iran from developing a nuclear weapon.

That is a direct quote from Philip Hammond, the UK's foreign secretary. He speaks for all of our partners in this—100 nations who support this deal—100 nations who support this deal.

Why would we want to stand with the hardliners in Iran? I know my colleagues wrote to them. And they are partners with them, make no mistake—the hardliners here and the hardliners in Iran.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. But I believe if you are a moderate person, support this deal.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. COTTON. Mr. President, I feel at times as if I have exhausted my words against the nuclear deal with Iran. I have inveighed against the wickedness of the Ayatollahs, their responsibility for the deaths of hundreds of American troops in Iraq and Afghanistan, their support for terror, and their attacks on Israel and other American allies. It is the height of folly, weakness, and credulity to give Iran tens of billions of dollars in sanctions relief and put them on the path to nuclear weapons.

Indeed, I feel as if I can say nothing more than I have already said. But, fortunately, the Democrats who support the Iran nuclear deal have supplied cogent arguments against the deal. Thus, rather than speak myself, I will simply let the Democrats speak in their own astonishing words.

Here are the Democrats on the expiration of the deal.

I remain extremely concerned that after 15 years, the restrictions on how much uranium Iran can enrich and to what level expire and Iran will once again return to its current status as a nuclear threshold state with a breakout time of just a couple of months, if not weeks. It is disconcerting that Iran can achieve this status without breaking the rules or bending the agreement. To be clear, in fifteen years, Iran will be allowed to be a legitimized threshold nuclear state. . . . My fear is that 15 years from now, America and the world will face an Iran that sees its enrichment power as legitimized, that is wealthier and more economically powerful, and an Iran that is fortified with new weapons and air defenses as embargoes on conventional arms and ballistic missiles expire five and eight years from now.

That was Senator PETERS.

I acknowledge that legitimate concerns have been raised about Iranian activities after the first 10 years of the agreement, sometimes referred to as the ''out years.'' During this time, Iran's breakout time could shrink substantially.

Senator REED of Rhode Island.

When key restraints begin to expire in 10 to 15 years—a blink of an eye to a country that measures its history in millennia—our country will still have to deal with an Iranian leadership that wants to build an industrial-scale nuclear enrichment program. That's a big problem.

Senator WYDEN.

None of us knows what lies 10 or 15 years on the horizon. I have deep concerns about what the shape of Iran's nuclear program could look like beyond this horizon. . . .

Senator BENNET.

And here are the Democrats on Iran's financing of terrorism:

Iran will be disruptive in the Middle East and fund terrorist activities. This regime will continue to deny Israel's right to exist. The Quds Force will still be listed as a terrorist organization, and Iran will continue to exacerbate tensions with allies in the region.

Senator GILLIBRAND.

Let's be clear, Iran is a sponsor of terrorism and an abuser of human rights. This deal doesn't change that.

Senator HEITKAMP.

It is certainly possible, perhaps probable, that Iran will use its additional resources and access to conventional arms to increase its support for terrorist groups.

Senator MERKLEY.

I do share concerns about parts of the agreement, including how Iran could use funds from sanctions relief to continue funding Hezbollah and other terrorists around the world. It is clear they have been funding these activities despite crippling sanctions. And we are right to be concerned that additional funds from sanctions relief, or any other sources from other countries if this agreement is not approved, could be used to continue these outrageous activities.

Senator STABENOW.

Here are the Democrats on Iran's continued nuclear activities and enrichment:

With this deal, we are legitimizing a vast and expanding nuclear program in Iran. We are in effect rewarding years of their deception, deceit, and wanton disregard for international law by allowing them to potentially have a domestic nuclear enrichment program at levels beyond what is necessary for a peaceful civil nuclear program.

Senator BOOKER.

It is certainly possible that Iran will use its nuclear research or nuclear energy program to provide a foundation for a future nuclear weapon program.

Senator MERKLEY.

Here are the Democrats on Iran's adherence to the deal:

Iran is a bad and dangerous actor. We all agree on that.

Senator BOXER.

Critics insist America cannot trust Iran. I agree . . ., I still have serious doubts about their government.

Senator CARPER.

We need not, and indeed should not, trust the Iranian regime. Implementation of this agreement may be challenging and we need to be prepared for the possibility that Iran will violate the agreement.

Senator CASEY.

When Iranian extremist leaders chant ''Death to America'' and ''Death to Israel,'' the first question we have is, ''How in the world can we trust them to live up to an agreement?'' The answer is: We cannot.

Senator STABENOW.

Even under the deal, we should expect that Iran will cheat when it can, particularly at the margins; that it will continue or even ramp up its destabilizing activities and sponsorship of terrorism with the additional resources provided by increased sanctions relief; that it will seek to break out if the opportunity presents itself after 15 years when specialized inspections fade and many limits on its nuclear program are lifted.

Senator BOOKER.

Iran has misled us in the past when it comes to their nuclear program.

Senator MARKEY.

What a condemnation of Iran, what an indictment of this nuclear deal with Iran. But this indictment comes from the supporters of the deal. Despite their own words, these Democrats have chosen to give Iran billions of dollars that will be used to fund terror and war and ultimately put Iran on the path to nuclear weapons.

So let there be no mistake for history about the consequences of these Democrats' choice: When Iran detonates a nuclear device, these Democrats will bear responsibility. When Iran launches a missile capable of hitting the United States, these Democrats will bear responsibility. When Iran kills more Americans, as it has in Iraq and Afghanistan, Lebanon, Saudi Arabia, and elsewhere, these Democrats will bear responsibility. When Iran imprisons American hostages, these Democrats will bear responsibility. When Iran attacks Israel through Hezbollah's missiles or Hamas's tunnels, these Democrats will bear responsibility. When Iran kills Jews around the world in places like Argentina and Bulgaria, these Democrats will bear responsibility. When Iran massacres its own citizens, these Democrats will bear responsibility.

President Obama and these 42 Democrats bear a direct political, moral, and personal responsibility for the coming crimes and outrages of Iran's ayatollahs. There will be grave consequences for them and for all of us.

The PRESIDING OFFICER. The Senator from Maryland.

CELEBRATING 25 YEARS OF SUCCESS FROM THE OFFICE OF RESEARCH ON WOMEN'S HEALTH AT THE NATIONAL INSTITUTES OF HEALTH

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor and Pensions be discharged from further consideration of S. Res. 242 and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 242) celebrating 25 years of success from the Office of Research on Women's Health at the National Institutes of Health.

There being no objection, the Senate proceeded to consider the resolution.

AMENDMENT NO. 2663

Ms. MIKULSKI. Mr. President, I call up amendment No. 2663 to the resolution and ask that it be reported by number.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI] proposes an amendment numbered 2663.

The amendment is as follows:

(Purpose: To amend the resolving clause)

On page 4, line 1, strike ''it is the sense of the Senate that'' and insert ''the Senate''.

On page 4, strike line 2 and all that follows through page 5, line 23, and insert the following:

(1) commends ORWH for its work over the past 25 years to improve and save the lives of women worldwide and expresses that ORWH must remain intact for this and future generations;

(2) recognizes that there remain striking sex and gender differences among many diseases and conditions on which ORWH should continue to focus;

(3) encourages ORWH to continue to focus on ensuring that NIH supports biomedical research that considers sex as a biological variable across the research spectrum; and

(4) encourages the Director of the NIH to continue to consult and involve ORWH on all matters related to the influence of sex and gender on health, especially those matters pertaining to the consideration of sex as a biological variable in research with vertebrate animals and humans.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2663) was agreed to.

The PRESIDING OFFICER. Is there further debate on the resolution?

If not, the question is on agreeing to the resolution, as amended.

The resolution (S. Res. 242), as amended, was agreed to.

Ms. MIKULSKI. I further ask unanimous consent that the Mikulski-Collins amendment to the preamble be agreed to; the preamble, as amended, be agreed to; the title amendment be agreed to; and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The amendment (No. 2664) was agreed to, as follows:

(Purpose: To amend the preamble)

In the eighteenth whereas clause, strike ''CDC'' and insert ''Centers for Disease Control and Prevention''.

The preamble, as amended, was agreed to.

The resolution, as amended, with its preamble, as amended, reads as follows:

S. RES. 242

Whereas, on September 10, 1990, the Office of Research on Women's Health (in this resolution referred to as ''ORWH'') was established at the National Institutes of Health (in this resolution referred to as ''NIH'') to—

(1) ensure that women were included in NIH-funded clinical research;

(2) set research priorities to address gaps in scientific knowledge; and

(3) promote biomedical research careers for women;

Whereas ORWH was established in law by the National Institutes of Health Revitalization Act of 1993 (Public Law 103–43; 107 Stat. 122) and implemented the law requiring researchers to include women in NIH-funded tests of new drugs and other clinical trials;

Whereas today, more than ½ of the participants in NIH-funded clinical trials are women, enabling the development of clinical approaches to prevention, diagnosis, or treatment appropriate for women;

Whereas, in 2015, ORWH, with enthusiastic support from NIH leadership, announced that, beginning in January 2016, NIH-funded scientists must account for the possible role of sex as a biological variable in vertebrate animal and human studies;

Whereas ORWH, along with NIH leadership, enhances awareness of the need to adhere to principles of rigor and transparency, including the need to publish sex-specific results to inform the treatment of women, men, boys, and girls;

Whereas over the past 25 years, ORWH has helped expand research on women's health beyond its roots in reproductive health to include—

(1) the study of the health of women across the life-spans of women; and

(2) biomedical and behavioral research from cells to selves;

Whereas by studying both sexes, ORWH is leading the scientific community to make discoveries headed toward treatments that are more personalized for both women and men;

Whereas today, ORWH communicates through programs and policies that sex and gender affect health, wellness, and how diseases progress;

Whereas turning discovery into health for all, the NIH motto, means studying both females and males across the biomedical research continuum;

Whereas the ORWH Specialized Centers of Research on Sex Differences program supports established scientists who do basic, clinical, and translational research with a sex and gender focus;

Whereas all NIH Institutes and Centers fund and encourage scientists at universities across the Nation to conduct research on the health of women and on sex and gender influences;

Whereas over the past 25 years, ORWH has established several career-enhancement initiatives for women in biomedicine, including the Building Interdisciplinary Research Careers in Women's Health program that connects junior faculty with mentors who share interests in women's health research;

Whereas ORWH co-directs the NIH Working Group on Women in Biomedical Careers, which develops and evaluates policies to promote the recruitment, retention, and sustained advancement of women scientists;

Whereas the Women's Health Initiative (in this resolution referred to as ''WHI'') marked the first long-term study of its kind and resulted in a wealth of information so that women and their physicians can make more

informed decisions regarding postmenopausal hormone therapy;

Whereas WHI reduced the incidence of breast cancer by 10,000 to 15,000 cases per year, and the overall health care savings far exceeded the WHI investment;

Whereas ORWH supported the National Cancer Institute's development of a vaccine that prevents the transmission of Human Papilloma Virus, resulting in a decrease in the number of cases of cervical cancer;

Whereas, in 1994, ORWH co-sponsored with the National Institute of Allergy and Infectious Diseases a landmark study, the results of which showed that giving the drug AZT to HIV-infected women with little or no prior antiretroviral therapy reduced the risk of mother-to-child transmission of HIV by ⅔;

Whereas according to the Centers for Disease Control and Prevention, perinatal HIV infections in the United States have dropped by more than 90 percent;

Whereas ORWH co-funded a large clinical study of the genetic and environmental risk factors for ischemic stroke, which identified a strong relationship between the number of cigarettes smoked per day and the probability of ischemic stroke in young women, prompting the targeting of smoking as a preventable and modifiable risk factor for cerebrovascular disease in young women; and

Whereas over the past 25 years, ORWH has contributed support toward major advances in knowledge about the genetic risk for breast cancer, and discovery of the BRCA1 and BRCA2 genetic risk markers has enabled better-informed genetic counseling and treatment for members of families that carry mutant alleles: Now, therefore, be it

Resolved, That the Senate—

(1) commends ORWH for its work over the past 25 years to improve and save the lives of women worldwide and expresses that ORWH must remain intact for this and future generations;

(2) recognizes that there remain striking sex and gender differences among many diseases and conditions on which ORWH should continue to focus;

(3) encourages ORWH to continue to focus on ensuring that NIH supports biomedical research that considers sex as a biological variable across the research spectrum; and

(4) encourages the Director of the NIH to continue to consult and involve ORWH on all matters related to the influence of sex and gender on health, especially those matters pertaining to the consideration of sex as a biological variable in research with vertebrate animals and humans.

The amendment (No. 2665) was agreed to, as follows:

(Purpose: To amend the title)

Amend the title so as to read: ''A resolution celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health.''.

Ms. MIKULSKI. Mr. President, I think the parliamentary choreography does not show what we just did.

We are now, through a resolution cosponsored by Senator COLLINS and me, cosponsored by all the women of the Senate on both sides of the aisle, celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health.

Twenty-five years ago, on September 10, 1990, the Office of Research on Women's Health was established at NIH. It ensured that women were included in NIH-funded research protocols. It set research priorities, scientific peer review and scientific knowledge, and it promoted medical research.

There were two outcomes that I am so proud of—No. 1, what we have done to improve women's health, and No. 2, we showed that a process of working on a bipartisan basis actually worked.

This is not to tell old war stories about legislative issues. Twenty-five years ago women were not included in the protocols at NIH. There were many reasons given, most of them not scientifically reliable or accurate. Working together, Senator Nancy Kassebaum and I—the only two women in the Senate at the time—joined hands with the House—Congresswoman Pat Schroeder, Connie Morella, and Senator Olympia Snowe—and we worked together to get legislation passed to get women included in the protocols, scientifically appropriate, and to establish the office of women's health. We worked then with Senator Tom Harkin and Arlen Specter here and Senator Ted Kennedy and Senator Kassebaum to get it done. These rollcalls of people who are no longer with us in this institution and some who passed by showed we got it done. It was modest in money, big in dreams. I will give one outcome of what they did.

George Bush the elder appointed Dr. Bernadine Healy to be head of NIH. Dr. Healy led a scientific study on hormone replacement. She was able to get the money because of Tom Harkin, Arlen Specter, and all of us, all working together. I was an appropriator as well who helped and assisted, Senator Kennedy, Senator Nancy Kassebaum—now, of course, Baker. And guess what. This is the outcome: Because of that hormone replacement study, medical practice was changed because of the excessive use of hormones in inappropriate situations. As a result, it is estimated by public health epidemiologists that we save 15,000 lives a year. Because of the hormone replacement study, breast cancer rates went down 12 percent.

So when they say: Can't you guys and gals work together? When we do, we save lives. We save lives. It is estimated that over 600 lives were saved because of this one study alone, and more will happen every year. So when we get it together, yes, we save lives, hundreds of thousands at a time.

So I commemorate the great work of the Office of Research on Women's Health, and I want to once again, joining with my dear friend and esteemed colleague Senator COLLINS, show that when we work together, we can really make a change—a change that improves the lives of the American people, and women all over this country thank this body for the leadership we have provided.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am delighted to join with my friend and colleague, the Dean of the Senate women, Senator BARBARA MIKULSKI, in sponsoring this resolution to commemorate the 25th anniversary of NIH's Office of Research on Women's Health. This office has improved and saved the lives of countless women not only in our country but worldwide. It has been a great success.

Our resolution, as Senator MIKULSKI mentioned, is cosponsored by every single one of the women serving in the Senate today. I always point out that just as the men of the Senate span the ideological spectrum, so do the women of the Senate. But we have come together to endorse this resolution because each and every one of us recognizes the critical, lifesaving work that has been done by this office at NIH.

As the Senator from Maryland has pointed out, this was a collaborative effort among women—including my former colleague, Olympia Snowe—in both the House and the Senate 25 years ago to redress the fact that so many clinical trials that were being conducted by NIH or through NIH funding excluded women. I remember one on heart disease that was called Mr. Fit. Mr. Fit. Not a single woman was included in this groundbreaking study despite the fact that women die of heart disease more than any other disease and despite the fact that women react differently than men do to different therapies, to different drugs.

Our resolution commends the office for its work over the past 25 years to improve and save the lives of women. It recognizes that there remain striking gender differences among many diseases and conditions on which this office should continue to focus. It also encourages the office to continue to focus on ensuring that NIH supports biomedical research that considers gender as a biological variable across the spectrum of research projects that we are doing. And it encourages the Director of the NIH to continue to consult and involve the Office of Research on Women's Health on all matters related to the influence of gender on health, especially those pertaining to the consideration of gender as a biological variable in research with humans.

I am delighted that we have now been able to clear the obstacles to the adoption of this resolution and that it has been approved without dissent. As my colleague has indicated, it is an example of a development that was taken 25 years ago in response to a real problem of women being excluded from clinical trials, from health care research, and we have made a difference with this office. That is why I am proud to join with my friend the senior Senator from Maryland, the Dean of the women of the Senate, in sponsoring this legislation with each of our female colleagues serving the United States as Members of this great body.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SCOTT).

HIRE MORE HEROES ACT OF 2015—Continued

The PRESIDING OFFICER. The Senator from Massachusetts.

BAN ON DOMESTIC OIL EXPORTS

Mr. MARKEY. Mr. President, there is a proposal that is going to be made before the House of Representatives and before the Senate. That proposal will lift the ban on the exportation of American oil—oil that is drilled for here in the United States. The oil industry wants to have this ban lifted. You have to go back in history 40 years, to 1975, in order to find why that ban on exported oil is on the books. In 1975 we were at the height of the first oil embargo from OPEC. We were importing 30 to 35 percent of the oil we consumed in the United States. A ban was put in place for us to export our own oil if we were importing 30 to 35 percent of the oil that we were consuming in America. It put us at a big disadvantage if we took that approach to our own oil.

Today the United States imports 25 to 30 percent of all the oil which we consume. Mark Twain used to say that history doesn't repeat itself, but it does tend to rhyme. Today is a lot like 1975 in terms of the amount of oil that we import into our country. Right now we import 5 million barrels of oil a day. We import oil from Iraq, we import oil from Venezuela, and we import oil from the Persian Gulf in order to fuel our economy. Now the oil industry says: Let's start selling the oil we have and drill for in the United States out in the open market. Why does the oil industry want to do that? Because when oil is drilled for in the United States, the price that is set is set in Oklahoma. Cushing, OK, is where the price is set. On average that price is $3 to $6 less expensive per barrel than the oil that is on the open market. That is called the Brent crude price. But it is the world price. That is not our price. Our price is $3 to $6 less.

The oil industry in America wants to get our oil out in the open market so they can sell it to other countries. What countries? First in line would be China. After that, most likely, are other Asian nations. That makes a lot of sense for oil companies. It does not make any sense for American consumers. By keeping the ban in place, Barclays Bank estimated that all that oil here put pressure on prices and lowered prices for consumers by $11 billion last year. You can see it when you look at the price at the pump when you go to fill up.

This year Barclays Bank estimates that there will be a $10 billion reduction in cost for consumers. You can see it at the pump. You can see the price coming down. The pressure works for consumers. The oil industry does not like that. They want to get that oil out of America. They want to get a higher price on the global market.

As to national security, does it really make any sense for the United States to be sending young men and women over to the Middle East in uniform, into that highly unstable part of our planet in order to ensure that this stability leads to huge ships with oil in it coming from the Middle East into America, while simultaneously having the oil industry saying let's export our own oil that we already have? It makes no sense. As long as we are exporting young men and women over to the Middle East to fight, to protect ourselves, we should not be exporting our own oil domestically. It makes no sense whatsoever.

Our own Department of Energy says that our production in America is going to peak in the year 2020—peak—and then decline for the next 20 years. We import 5 million barrels a day. Our oil production will peak in the year 2020 and then start to decline, and the oil industry wants to start exporting our own oil. Many of the advocates of that say: You wouldn't have a ban on any other product being exported from the United States. That is probably right. We don't have a ban on the export of widgets or watches. But on the other hand, we don't fight wars over widgets. We don't fight wars over watches.

Oil is different. Oil has been at the center for 50 years of this powerful geopolitical battle that the United States has been drawn into in the Middle East. Let's not kid ourselves. We are living it every day, looking at the lead stories on every television network in our country—every day.

In terms of what we lose, the domestic refining industry is totally opposed to this. The oil refining industry of the United States is totally opposed to exportation. Why? Because they are investing in the construction of new refineries here to refine American oil here in refineries that are constructed and employing hundreds of thousands of people within our own country. The refining industry opposes it. It would be a $9 billion loss and a reduction by 1.6 million barrels of oil per day that could be refined in the United States. The shipbuilding industry is opposed to it.

We are seeing a 40-percent increase in the amount of shipbuilding in America. Here is what is happening. The oil is produced in the oil patches. It is put on ships, and it is sent to Pennsylvania, sent to New Jersey, sent to other parts of America. You need ships to do that. Then that oil gets refined in Pennsylvania, and it gets refined in other parts of the country. That would end this incredible shipbuilding boom that we have seen.

Where will these exports go? We are not like Russia. We are not like Saudi Arabia. We don't have state-run oil companies. We are a capitalists. Capitalists go for the highest price no matter where it is. You put the oil out on the open seas, and our companies will head toward the highest price.

Who is going to pay the highest price? China is going to pay the highest price. Other countries that are wealthy are going to pay the highest price. We can't pretend that it is going to go to where the geopolitical needs of the Secretary of State or Secretary of Defense are going to go. That is not how capitalism works. You go towards the highest price. That is the fiduciary responsibility that you have as a CEO of a company. That does not get mixed up within our society. The hand on the tiller of those ships is heading towards the highest price.

Who benefits? The oil companies will benefit. There are estimates that by 2025, they will be making an extra $30 billion a year in profits—per year. It makes sense for the oil companies.

Who are the losers? Our consumers are going to be big losers. Our national security is a big loser. We are exporting our strength, our oil, even as we need 5 million extra barrels a day. Our domestic refiners are big losers. Our U.S. shipbuilding industry is a big loser, and our environment is a big loser.

Can you imagine it? The Pope is arriving next week, and he is going to talk about the role that human beings are playing in the dangerous warming of our planet. What the oil industry wants us to do is to continue to engage in expanded fracking of oil on our own soil, even though we haven't fully figured out how to contain the methane that comes out of that fracking, and then put it on ships and send it around the world. Where are the benefits for the American people? Our environment takes all of the risks, and the oil goes out to the open seas with the benefit to the oil companies. It makes no sense at all.

Within 10 years, they are making an extra $30 billion every single year from that additional profit that they get by selling it overseas, rather than keeping it here and keeping the pressure on lowering the price for consumers here in our country.

Many times you hear them saying: We really should be able to drill off the coastline of the United States, all the way up to Maine, down to Florida, from San Diego up to the top of Alaska—right off the coastline. What about the fishing industry? It could endanger it. What about tourism on those beaches if this is spilled? It could endanger it. But they say: We must do it in order to ensure that we have the oil that we need here in the United States.

You can't have it both ways. You can't say that we have enough oil that we can export it out of our country, and simultaneously say that we must drill off of our coastlines in dangerous conditions because we don't need the oil because we can export it. You can't have it both ways. No one is allowed to do that.

There is a pretty high contradiction coefficient in the argument made by

the oil industry. We need to have this debate. The American people must know that they are going to run the risk of being tipped upside down at gasoline stations all across the country and having money shaken out of their pockets as they fill up their tanks because the oil industry just wants more.

So national security—let us know when we have produced the extra 5 million barrels a day here. Let us know when they have the evidence that proves that the Department of Energy is wrong and our production doesn't start to go down after 2020. Let us know when they have invested in the safeguards that ensure that methane does not come up from the fracking wells. Let us know when we put as a priority those American young men and women that we are sending over there into the Middle East. It makes no sense. It is a bad policy. They had it right in 1975. We are still importing about the same amount of oil as we were back then. We don't want to invoke the first law of holes, which is, when you end one, stop digging. We want to make sure that we abide by that rule, that we guarantee that we start to come out of that hole, that we use American oil here first before we sell it overseas and hurt consumers, the environment, and our national security.

This is the beginning of a very important debate in our country. I am looking forward to it. I think the American people are going to rise up and realize that this is very dangerous for them on so many different levels that it will be rejected on the floor of the Senate before this entire process has ended.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

Mr. CORNYN. Mr. President, yesterday evening our Democratic friends across the aisle, led by the minority leader, again refused to allow the Senate to cast an up-or-down vote on a resolution that would make clear that the Senate disapproves of President Obama's nuclear deal with Iran. It is clear that there is, in fact, a bipartisan majority of both Houses that disapproves, but, using a procedural tool—the filibuster—our Democratic friends are trying to deny the American people an opportunity to cast a vote on this bad deal through their elected representatives and indeed I would suggest to also avoid the accountability that goes along with this because this movie will not end well.

They are the No. 1 state sponsor of international terrorism. This deal gives them $100 billion to continue to finance terrorist attacks and proxy war against the United States and our allies. This has a phony inspection regime because it requires the United States to ask 24 days ahead of time to be able to inspect various sites. Indeed, we found out that on some of their military sites, the International Atomic Energy Agency—the IAEA—will not even be allowed to access those military sites but, rather, the Iranians will do their own inspection and then turn over their samples to the IAEA waiting dutifully at the gate of these military compounds where we know there is nuclear activity taking place.

So this is really a lousy deal. I mean, assuming that we could somehow deny Iran a nuclear weapon, which used to be American policy, I think we would find a huge consensus. But, in fact, this also changes American policy. Rather than denying them a nuclear weapon, it would literally pave the way, essentially giving them a free hand in 10 to 12 years from now.

We just observed the 14th anniversary of 9/11, September 11, 2001. It was only 14 years ago that we had a terrorist attack on our own soil. One of those airplanes was heading toward the U.S. Capitol, one hit the Pentagon, and of course two hit the World Trade Center in New York City. So the idea of paving the way for Iran to get a nuclear weapon in 10 or 12 years—when put in that context, that is certainly not very long. That means the nations in the Middle East are going to begin to arm themselves because they are not stupid. They realize a nuclear Iran is a threat to the region. Sunni countries, such as Saudi Arabia and others, will begin a nuclear arms race. Instead of suicide vests and improvised explosive devices, the prospect of a nuclear confrontation in the Middle East ought to send chills up and down anybody's spine. Yet that is exactly what our Democratic friends have embraced, along with the President.

The irony is that in trying to shield President Obama from having to veto the resolution of disapproval, our Democratic friends have also thrown away a chance to improve the legitimacy of this deal by allowing an up-or-down vote. Why in the world would they feel the pressure to protect the President from something he is proud of, which is this Iranian nuclear deal? It doesn't make much sense. This deal on its own merits is indefensible.

Thankfully, there is a small silver lining because this is not legally binding beyond the Presidency of Barack Obama. This is not a legal document or a treaty; it is a political agreement. I hope the next President understands that he or she will have complete freedom to tear this deal up and negotiate a better deal and keep the pressure on Iran and deny them a nuclear weapon.

We have seen this happen before with issues such as ObamaCare and Dodd-Frank. If the shoe were on the other foot, were Republicans to try to jam through legislation such as this on a controversial topic on a purely partisan basis, it wouldn't have much staying power because you would not have built the sort of political consensus that would give it staying power. So the controversy continues.

We have already spent a lot of time on this debate discussing and highlighting the weaknesses of this deal and the danger it poses for U.S. and world security. Those weaknesses, as I pointed out yesterday, have been highlighted by the deal's supporters. I mean, the statements that were made by some of the Senators who voted for this deal seemed to be completely at odds with their vote to filibuster the resolution of disapproval. So they are clearly nervous about this deal, as they should be.

The fact is that, rather than making this a bipartisan consensus and making it purely a partisan matter—they will own the negative consequences of this deal because Iran's leaders, at the same time they have been negotiating this deal, have been shouting ''Death to America'' and saying that Israel will not even be on the map in 25 years. So the chances, I would think, of this deal turning out very badly—all of that responsibility will be in the laps of those who filibustered this deal.

I pointed out that Iran is not giving up or disavowing its role as a foremost state sponsor of terrorism. In fact, all one has to do is go to the State Department's Web site, which is John Kerry's department. Secretary Kerry negotiated this deal. Right there on their Web site is pointed out Iran's role as a major sponsor of international terrorism, its ties to and funding of Hezbollah and Hezbollah's efforts to attack American interests in the Middle East, as well as Syria, Lebanon, Libya, and Iraq. All of this is very well documented. Almost all of the mischief, violence, killing, and threats to the security of that entire Middle East region have Iran's fingerprints all over it.

As a result of some of the documents that were uncovered when Osama bin Laden was killed, we found out even more information. There was a story—I believe it was in the Wall Street Journal yesterday—about records of open cooperation between Al Qaeda and the Iranian regime and their attacks and pursuit on American interests. These are more facts about Iran's nefarious activities recorded in the administration's own public records.

Of course, the regime continues to not deny or suppress but, rather, proudly announce its support of violence in the region and propping up proxy groups, as I said, that are fighting from Syria, to Iraq, to Yemen, and further destabilizing an already volatile region. To add to that mix, this deal dumps nuclear weapons. That is like pouring gasoline on a fire, except it is much more dangerous.

Of course, this deal won't change any of those facts. In fact, President Obama and his national security advisers admitted that terrorist groups supported by the Iranian Government will likely be the real benefactors of sanctions relief under this deal. How will the Obama administration work to keep the billions of dollars that will pour into Iran as a result of this deal from being used to arm and otherwise finance the work of terrorists who seek to kill us and our friends and allies in the region? Well, they simply don't

have an answer for that because they know that is a byproduct or I should say a direct result of this bad deal.

As I pointed out a moment ago, even after the deal was announced, the Supreme Leader in Iran and others continued their attacks on our closest ally in the Middle East, Israel. The so-called Supreme Leader of Iran went so are far as to say that Israel won't exist in 25 years. If they had their way, they would wipe Israel off the map.

How does the administration plan to counter this theocratic regime that continues to call for the complete destruction of our Nation's closest ally in the Middle East, Israel? As far as I can tell, they don't have a plan, but that describes so much of their foreign policy.

We have witnessed the refugee crisis in Europe and the heartrending pictures on the news of a young boy's body being washed up on shore because he was trying to get away from a war-torn region of the Middle East—Syria—to somewhere where it is safe so he could grow up and have a productive and normal life. I mean, they are heartrending pictures, but they are a result of this administration having no policy and no real strategy in Syria.

So, really, this is more of the same—no strategy and no clue about how to deal with the dangers that confront the region and the people in the Middle East and its ripple effect on the rest of the world, including the United States.

Tomorrow we will vote on a piece of legislation that addresses some major omissions from the President's executive agreement with Iran. Our friends across the aisle have made their bed and decided to lie down in it, and they have blocked now two times an up-or-down vote on this resolution of disapproval. They made that decision, so now it is time to have another vote and to fill in some of the gaps left by this bad deal.

The bill we will vote on tomorrow is pretty straightforward. It will bar President Obama from lifting sanctions on Iran until two specific benchmarks are met. This doesn't solve all of the problems I mentioned a moment ago, but it will fill in a couple of important gaps. First, we will vote on whether Iran must formally recognize Israel's right to exist as a state, and if they don't, then the President will not be authorized to lift sanctions on Iran. Second, Iran must release American citizens whom it continues to hold hostage. This is the part I just really can't believe. We had this negotiated deal for months and months at the very highest level of the U.S. Government. Yet, under this deal, the leadership of the U.S. Government decides to leave American citizens in prison in Iran and doesn't use this as an opportunity to negotiate their release.

This Chamber should wholeheartedly approve of these commonsense measures—one that calls for the safe return of our own citizens and one that affirms the right of our ally to exist. This is not a big ask. This does not fix all of the problems with this bad deal, but it does address two glaring deficiencies, and so I think that vote is entirely appropriate.

In conclusion, I will just say that this deal is dangerous, misguided, and, you know what, it is pretty darn unpopular. As I said earlier, bipartisan majorities in both Houses of Congress oppose it, and for good reason. When we look at the public opinion polls, only 21 percent of the public supports this executive agreement.

Tomorrow we will have an opportunity to let the voices of our constituents be heard loud and clear, and I hope our Democratic colleagues will come to their senses, quit playing defense for the White House, and join us in seeking the release of our U.S. citizens held captive abroad and the future security of our unwavering ally, the State of Israel.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

THE MIDDLE EAST

Mr. SESSIONS. Mr. President, the Iranian deal—this executive agreement dealing with nuclear weapons and their policy in Iran that has been executed between the President of the United States and Iran's leaders—not the Congress, not in a formal treaty that is binding over time but a personal executive agreement—I don't believe is a good one, and I think it is the predictable end, frankly, of a poorly initiated negotiation. I will vote against it based on many of the arguments our colleagues have heard over the last several days and will continue to hear. I do believe it is not the right policy for the United States. I am not going to attempt to restate all of the reasons.

I remember distinctly being in the Middle East, meeting with a top official in one of the countries whose name is well known. President Obama decided to intensify these negotiations toward this kind of end. This Middle Eastern official warned that talking could be a trap. He warned that the Iranians are sophisticated negotiators. They have been recognized as such throughout the world and the Middle East for decades. He warned that one could be trapped into these negotiations, and once you get into them, you have to be able to extract yourself as soon as you realize a good result isn't in the offing. I think that warning was not heeded. We have gone on for 6 years now, and we have reached a point where the President had to either agree to what they wanted or walk away and admit defeat, and he decided to reach an agreement. I think that put us in this bad position. He wanted to achieve this before he left office, apparently, and we can only hope that somehow, some way, this turns out to be better than it appears at this time.

The Iranian acquisition of and their drive to achieve nuclear weapons is just one aspect of the complex situation that results from the extremism that is arising in the Middle East. It is a part of the extremism that has been arising in the Middle East. I wish to take this opportunity to go further than just discuss Iran today. I think we need to discuss the need for a long-term strategy, bipartisan—Republicans and Democrats—and our Western World allies, the free world allies, for how we are going to deal with the problems of extremism in the Middle East over a long period of time.

It is clear that we are seeing a resurgence of militant Islam. This strain of Islam seeks to advance a theological and political approach to the world. It seeks to unify faith and politics, and believers, as such, seek to advance policies they think will honor Allah's religious command. So this strain that has been in Islam for years that advocates conversion by the sword in fact finds much support in the Koran. I wish it wasn't so, but it does. Many—even most—Muslims are certainly truly people of peace, faithful in their daily activities, but there is a sizable minority that oftentimes seeks dominance and achieves dominance that finds a basis in the Koran for their violent jihad against those they describe as infidels. They see the hedonism of the West and other actions that occur in the Western World, for example, as totally destructive and contrary to what they believe is right, and they don't accommodate to it.

So we are seeing a spasm and an eruption of aggression that has occurred before over the centuries, but it is certainly reaching a high pitch today, exacerbated by the technology of weapons of mass destruction, nuclear weapons, and other dangerous weapons. The nature of this eruption is complex. It is different in every region, in every country, and area, and is different among sects, tribes, and traditions, and is shaped by economic conditions, security conditions, and tribal and human conditions in the various regions of the Middle East, spanning from Afghanistan, Pakistan, to Syria, to Yemen, to Egypt, to Morocco, and into Africa today.

This crisis, occasioned by Iran's religious determination to obtain a nuclear weapon, is just one aspect, though a huge one, that has arisen as a result of this extremism. The world is surely presented with a deep and complex problem that requires the most wise and consistent response over years. The surge of terrorism will not end quickly. We are most likely talking about decades. Our response to such violent actions cannot be based on short-term, political, partisan factors.

President Bush had in his mind a vision for a good future for the Middle East. I supported him. He believed all people wanted peace, freedom, education, and prosperity. He reached too far, perhaps, and made some tactical errors as he sought to advance his vision, but, by 2011, after much bloodshed and cost, Iraq had achieved stability of a kind and some real political progress.

A democratically elected government had been formed and stability and even prosperity seemed possible. Our new President, however, was not impressed. He did not share the depth of this vision. President Obama did not consider the Bush vision as part of an established, bipartisan, long-term strategy of the United States. He thus felt little loyalty to that vision, and he started to execute his different vision in the Middle East.

I was with some British parliamentarians recently and noted that someone had said that President Obama's complete withdrawal from Iraq in 2011 was the greatest error of the 21st century to date. One of the experienced Brits responded: Well, some say it was the disbanding of the Iraqi Army after the victory in Iraq. So even when great nations act, things don't usually go smoothly, and failure of great nations to act often has its own consequences. Enemies do not desire to be defeated. They do not desire to be killed. Enemies adjust to whatever tactics are used against them.

So the point, colleagues and friends, is that military actions are fraught with danger. Inaction is fraught with danger. The world is very complex. The very best minds who know very well the specific countries that are at risk and in turmoil must be involved when plans are made and evaluated. Long-term—even very long-term consequences of action and inaction must be considered at the beginning. The world is a dicey place indeed.

On my heart and mind is the concern that this spasm of Islamic extremism and terrorism will be with us for at least 40 years, perhaps more. Experts have told us this. Dr. Kenneth Pollack, at the Brookings Institute, testified before our Armed Services Committee recently. It came my time to ask a question, and I said: Dr. Pollack, you said that problems that are long in the making will be long in solving. Just briefly, would you say with the spasm of extremism, violence, and sectarianism in the Middle East that we have to have a long-term policy—I mean 30, 50, 60 years—to try to be a positive force in bringing some stability to that region? History tells us those states of violence tend to cool off but often take decades to cool off. And I remember it very distinctly. I got an answer that we do not often get. He looked up at me, and he said: Yes, that is what I am saying.

This terrorism, unfortunately, is often focused on the United States that the extremists see as the Great Satan. This represents a direct threat to the security and prosperity of our people. Thus, we should seek to act in a statesmanlike manner, considering the threats and interests of the people we serve in the near and the long term. That means making wise decisions that may not be popular in the 60-second sound bite world.

In the late 1940s, the famous George Kennan, a State Department official, penned the ''long telegram'' they called it. It formed the basis for a long-term Cold War policy that became known as the containment doctrine. It was the basis for resisting the expansionism of communism, totalitarianism, and atheism, and it was part of that movement that was clearly contrary to Western values. So his paper became a bipartisan policy of the United States as we confronted the enormous threat of totalitarian communism, that had a goal, as does radical Islam, of world domination.

While there were vigorous and usually healthy debates over the years over tactics and techniques and procedures, there was consistent and bipartisan support for the overarching strategy that communism could not be allowed to dominate ever-growing portions of the world, that it must be contained. Our Nation—indeed the entire free world—became united in that goal. This strategy held until the blessed collapse of the Soviet Union.

So, once again, we face a totalitarian threat to the free world. This time it is from ideological and apocalyptic Islam. Like communism, its goals are incompatible with the laws, institutions, and freedoms that we see as central to our liberty and prosperity. There can be no compromise with this form of radical Islam. It just will not merge with or accommodate the freedom that we believe is essential in the Western World.

Theologically based sharia law fundamentally conflicts with our constitutional order, which separates church and State and considers free debate and dissent in the Senate as a way to a better world. We believe in debate and dissent and disagreement and the right of freedom of religion. Thus, this threat has to be resisted. It just has to be. To do so obviously means that we and our allies have to agree on an effective strategy—not just the tactics for Iran today, ISIS tomorrow, Egypt the next day, Yemen the next day.

Seven years into his Presidency, President Obama has failed in this regard. We must accept that fact. The result of that failure is instability, violence, and displaced persons. Would we have had none with a good effective strategy? No, I can't say that, but I believe with confidence that we would have had much less difficulty. Indeed, one wise, very sophisticated, European leader told me recently that the immigration crisis, as a result of refugees from the Middle East, is the greatest challenge to the European Union since World War II. What a dramatic statement.

I know many of my Democratic friends are concerned about where we are and are willing to discuss the kind of strategy we need.

The question of Iran and its sponsorship of terrorism and its acquisition of nuclear weapons is a dramatic and extremely important development. That is why it has engaged all of our attention lately.

I chair an Armed Services subcommittee—and I have been on it for 18 years—that deals with strategic forces—nuclear forces. It has been the unified position of the entire world that there not be a proliferation of nuclear weapons, and particularly not in the Middle East. So the acquisition of nuclear weapons by Iran is a dangerous event because they have ideological, apocalyptic, theological views that are scary. In addition, we have been told by the best experts accepted worldwide that if Iran has nuclear weapons, Egypt, Saudi Arabia, Turkey—who knows what others—maybe Jordan in the future would want those too—and the idea that we will have multiple nations in that volatile region of the world with nuclear weapons has been a fear that has unified the U.N. and unified the nuclear anti-proliferation groups worldwide for decades.

But the Middle East presents even broader and more complex issues, in addition to that. Were the people of Syria and the world better off with Assad in power? Was Libya doing better under Qadhafi than it is now? One European official said a million people, mostly Libyans, are on the North African shore seeking to enter Europe or the United States. Is Egypt, under their new military regime, a more secure and positive force for good for the Egyptian people and the whole world and the Middle East than it was under the ousted Muslim Brotherhood and other extreme parties that were a part of that coalition? How would our discussions and actions have been different if our Nation had established a sound, long-term policy to guide our overall approach to this entire region?

Our involvement in each of those situations and others was, it seems to me, far too ad hoc, far too reactive to certain events. Our actions have not been consistent; they have not been predictable; they have not advanced a unified strategy; they have not been a part of a coherent strategy designed to reduce tensions and strife, to reduce our direct involvement in the region. Our policies have not resulted in a containment or a reduction of terrorism and extremism.

I asked a historian a few weeks ago before the Armed Services Committee about this and how we should be approaching the Middle East—Professor Walter Russell Mead. I mentioned George Kennan and the containment strategy and asked: Do you think what we need as a nation is people like some of the experts on the last two panels that we have had, seriously analyzing the future of the Middle East, the nature of the extremist ideology that is there, and developing a long-term, sophisticated policy to rebut it and try to diminish it over time?

He replied and said a number of things. He said:

But what we're also hearing in the background is a kind of a universal confession of failure of strategy.

What is our strategy for ISIS? Are we fighting Assad first, then ISIS? ISIS first, then Assad? Neither? Both? Something entirely different?

I think—I've rarely in my lifetime—although I certainly have heard moments of strategic incoherence—I've rarely seen American policy on such a wide scale on so many issues in such a vital region seem to be so incoherent. I'm still waiting to see what our strategy is in Libya or why we intervened. . . .

He goes on to say:

So we—we do, I think, need, as a country, to have the kind of discussion about the Middle East that we had about Soviet expansionism in the 1940s, and to try to work our way toward some kind of general bipartisan agreement or confidence in an analytical approach to really a very vital part of the world.

We are not close to that. We have a Presidential election going on, and people are making policies and statements based on the latest developments. It makes me uneasy.

Our policies have not resulted in containment and a reduction of extremism. Our policies have not resulted in improvement of conditions for the people in those countries or the security of the American people.

Statesmanship, as Henry Kissinger says, requires wisdom, insight, and a willingness of officials to understand the complexity and history and choices the nation faces, and then to provide leadership to the American people first that produces support for policies that may not seem clear or understandable or even positive at the time they are announced because the world is a complex place.

So, in conclusion, I am certain that the foreign policy of our Nation is too reactive. I am certain we have not adopted on a bipartisan basis a policy to confront Islamic extremism that provides direction for actions and can build confidence in our people and in our allies. I am certain this is a failure that must be remedied.

So let's get together, colleagues, and commit to developing a wise and sound strategy outside of the rush of daily politics, using the great insights and talents of people that are available to us. This Nation is fortunate to have persons of loyalty, experience in the Middle East, judgment, knowledge, and history, who can help us.

In its basic form, a good strategy must be simple and understandable to high officials and everyday Americans. This is not an impossible task. A good strategy will provide guidance and produce consistency in our policies over the long run. Importantly it will reduce the adverse impact of politics on our foreign powers. The American people will respond positively. I pledge to do my part in this effort. We have developed such strategies before. Most dramatic was the Kennan containment strategy, but there have been others—the Monroe Doctrine, other policies—and we can do it again.

I just think it is important to raise some additional concerns about where we are today. I think the President took unacceptable risks in going deeply into these negotiations. He went beyond the framework that President Bush was using to talk with Iranians. The Iranians were in clear violation of a number of U.N. resolutions that restricted what we would do in our negotiations with them. We refused to participate with them. Both Secretary of Defense Ashton Carter and Secretary of State John Kerry have recently testified before Congress that Iran remains the No. 1 state sponsor of terrorism in the world, and they do not contend that releasing this money to them, hundreds of billions of dollars, which is being released on some sort of promise that they will cease to do that—they basically have said they are going to continue the same policies they have been advocating.

This is a terror-sponsoring State. Our own experts tell us that. Our own officials tell us that. It is very difficult to enter into any kind of negotiation with a person who sees you as a Great Satan, who says that Israel will not exist 25 years from now and must be eradicated from the Earth.

So these P5+1 negotiations did reverse cautious activities before, based on the fact that Iran was an outlaw State.

I will not continue to discuss this, other than to say that we entered into this, we have gotten down here to the end, and I think it is a mistake. I am going to vote no.

It looks as though it may somehow be processed anyway. If that occurs, it will create instability, even more so in the Middle East, and alarmingly will lead to the proliferation of nuclear weapons in multiple countries in the Middle East, each one of which, if their unstable governments fall, could allow nuclear weapons to fall into the hands of terrorists who can use them at any time or place around the world, creating all kinds of ramifications that are too grim to think about.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Mr. TOOMEY). The Senator from Maine.

Mr. KING. Mr. President, what is the status of the session at this point? Are we in a quorum call?

The PRESIDING OFFICER. We are not in a quorum call.

Mr. KING. I ask unanimous consent to address the Senate as in morning business for approximately 10 minutes.

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

GOVERNING IN THE SENATE

Mr. KING. Mr. President, one of the peculiar aspects of my service in this body is that I was sworn in as a U.S. Senator 40 years to the day from the day I entered Senate service as a staff member in January of 1973. Consequently, it has given me an interesting perspective about the operation of the Senate compared then and now.

I am sure that some part of my memory of working here in the early 1970s and mid-1970s is colored by the rosy view of nostalgia, looking back at one's youth and one's past; but, even correcting for that bit of nostalgia, it is my observation that in those days we spent about 80 percent of our time governing and about 20 percent of our time on politics.

And there were plenty of politics. This was during the Watergate period. There was a Democratic Senate and Republican President. President Nixon resigned during the period I was here. It wasn't as if politics were not a part of our life, but the work of the government continued, and the governing, which was done by this body and the House of Representatives, continued even in an era of very intense politics in our Nation's history.

A friend asked me the other day: What is the difference between then and now?

I said: Well, in those days my recollection is that it was about 80 percent governing and 20 percent politics. Today it is reversed. It is 80 percent politics and 20 percent governing.

I want to talk a bit about governing. Probably our most fundamental responsibility after national security is a little matter of the Federal budget. It is something that we have to do every year. It is something that is in the Constitution. It is one of our most basic responsibilities. Yet here we are, 10 legislative days away from the end of the fiscal year with no budget, no appropriations bills that have been passed in both Houses, no conference committees, and as far as I can tell, no negotiations at the highest level in order to resolve what could be an impending shutdown of the U.S. Government.

In addition, we have the sequester facing us, which was designed to be stupid. It was designed to be so unacceptable to both sides of the political aisle that a solution would surely be found.

I remember being asked about it when I was running for this office in 2012. People said: Well, what do you think of this sequester that might happen next year? I said it will never happen because it is so unacceptable, both on the defense side and on the domestic side. Surely, Members of Congress will come together and find a compromise solution. That happened with the Murray-Ryan arrangement 2 years ago.

But here we are again, facing a potential shutdown. I don't have to enumerate the problems that creates: problems of national security, problems of the effect on the overall economy, problems of confidence and trust in the government itself. So here we are, and we are not governing when it comes to a budget.

The highway fund is an even worse embarrassment. We have patched the highway fund temporarily 34 times, most recently this summer. That expires in October. I have not heard a great deal of discussion about what the resolution of the highway fund is going to be, and I will make a bold prediction. Come October, there is going to be somebody who comes to this floor and says: We are close to a solution.

All we need is 2 more months. So let's extend it to January, and then we will solve the highway problem once and for all.

That doesn't pass the straight-face test. Here we are. We have the budget in 10 days, the highway fund in October, and we have the tax extenders, which last year we passed and they only affected 2 weeks of the year. Yet we expect American businesses to make plans, investments, and look ahead. They don't know what the Tax Code situation is going to be until the last 2 weeks of the year, and they have gotten to the point where they expect this: Well, OK, it looks like they are going to take care of it.

But that is not governing, and there is a cost to that and a cost to our economy. I have been in business, and I know that one of the most important things to a business is certainty, knowing what the rules are, knowing what the Tax Code is, knowing what the regulations are going to be. Business people can deal with regulations or tax policy.

The very difficult thing, however, is uncertainty. When you have uncertainty, you have a lack of confidence; and when you have a lack of confidence, you have a lack of investment; and when you have a lack of investment, you have a lack of jobs. I don't have the econometric analysis, but in my view the uncertainty, the instability, and the unpredictability of this body and of this institution has significantly put a damper on economic growth in this country.

I don't know whether it is half a point of GDP, a full point or a quarter point, but it is a lot because people don't feel they can have confidence in what the rules of the game are going to be.

To pass tax extenders for 2015 in the last 2 weeks of 2015 is just embarrassing. Oh, I think I said the highway fund was embarrassing. They are both embarrassing.

Then we have the Export-Import Bank, whose charter expired at the end of June. This is one I really don't understand. This is a government agency that is 70 years old or 80 years old, provides support to businesses across the country, including in my State of Maine with some very small businesses, and it fills a market niche that the private sector is not filling. It returns money to the Treasury, and it helps to create jobs in the United States. What is there not to like? For reasons that I can't discern, it tends to be something about ideology, because you don't want to have—heaven forbid there should be a government agency that works. So we better put it out of business. It is not making any more loans.

Yesterday General Electric, one of our most important national companies, announced the elimination of 500 jobs, including 84 jobs in Bangor, ME, because of the lack of the support provided by the Export-Import Bank. By the way, every other industrialized nation in the world provides some level of support and encouragement for exports—except us as of June 30.

For a staff member for the financial services committee in the other body, which handles this, their comment about the 500 layoffs was this: Well, 500 jobs is a drop in the bucket for GE.

Eighty-four jobs is not a drop in the bucket for Bangor, ME. Those are families; those are real people. It makes a difference in our community, and it is ridiculous. If there were some policy reason for it, if there were some controversy, I could understand it. But to do it just because we don't like the idea of this agency, even though it is effective in its mission and returns money to the Treasury, just doesn't make any sense.

So the budget we are not doing; the highway fund we are not doing; the tax extenders we are not doing; the Export-Import Bank we are not doing.

What are we doing? We are spending another week on the issue of Iran, which we thoroughly debated and voted on last week. And I understand we may spend another 2 or 3 days on it next week for a series of amendments that can appear, to me, to be strictly designed to embarrass some Members of this body and to create fodder for 30-second ads a year from now. That is not governing. That is pure, unadulterated politics, and it is not dealing with the problems of this Nation.

We debated the Iran issue thoroughly. I have never worked so hard on a single issue in my life. We all had the entire recess to work on it, to think about it, to talk to people, and to read the agreement. Before the recess, there were innumerable hearings, briefings, and classified briefings. We have now had two identical votes.

Yesterday, one of my colleagues said: I feel like I am in ''Groundhog Day.'' We are voting again on exactly the same issue. Now I understand we are going to have more votes.

I have never known an issue where every single Member of this body has expressed themselves on one side or the other. There is no question where anybody stands. Everybody has expressed themselves. Everybody has announced their position. One hundred Senators have announced their position.

I have to say a bit about 60 votes. To argue that this issue of such momentous import should not require 60 votes, when virtually everything else we have done around here since I have been in the Senate for the past 2½ years has required 60 votes, is just preposterous.

I remember standing on the floor a year ago hearing one of my colleagues on the other side of the aisle talking about some obscure amendment to some bill and saying: This amendment should be subjected to the normal 60-vote requirement.

And I said: Normal? When is it normal? Well, it has become normal. It was the rule for the last 2 years. Now, suddenly, it was a bulwark of democracy. I remember talking about how should we modify the filibuster rule? No, we can't do that. The 60 votes is a bulwark of democracy. That protects the minority. That is built into the essence. That is what it is all about. Now, all of a sudden, it is not so important. People say: Well, this was a procedural vote, and you had a filibuster. How dare you filibuster?

Let me say, unequivocally, that the proponents of the Iran agreement are prepared to have an up-or-down vote on that agreement this afternoon as long as a 60-vote majority is part of the agreement about the vote. The only reason there was a 60-vote threshold on a filibuster motion, on a cloture motion, was so that the majority would not put that issue on the table—an up-or-down vote with a 60-vote margin. Yet everybody knew when this bill passed—when the Corker bill passed—that it was going to require 60 votes. Senator CORKER is on the record on the floor talking about this: Of course, it is going to require 60 votes. And even the famous letter to the Ayatollah in the second paragraph said: Of course, agreements like this are going to be subject to a three-fifths majority.

Everybody knew this was going to be 60 votes, and to express shock now reminds me of the end of ''Casablanca,'' where the inspector says: I am shocked, shocked to see gambling here. I am shocked that there should be a 60-vote requirement.

But, of course, there is going to be a 60-vote requirement as there has been for every other substantive issue—and a lot of not so substantive issues—for the last 2½ years. Now we are going to start to vote, apparently, on other issues not in the Iran agreement: Bring home the hostages; recognize Israel. Those are desirable ends. I support them entirely, but that was not what this negotiation was all about.

This negotiation was to keep Iran from getting a nuclear weapon now. It was to roll back their nuclear program. That is what the negotiation was. It wasn't about the hostages. It wasn't about Israel. It wasn't about Iran's malign activities in the region.

One of my colleagues on the floor a few minutes ago said: Iran is a malign state, a rogue state. They are going to get money from the sanctions relief.

Yes, they are. But the only thing worse than a rogue State with money from the sanctions relief is a rogue State with money—as the sanctions erode—with nuclear weapons, and that is what this is all about.

When President Kennedy was negotiating with the Soviet Union to get the missiles out of Cuba, at the end of the negotiation he didn't say: By the way, Castro has to go—or you, Soviet Union, have to foreswear your enmity to the West.

And, by the way, we have heard Iran say ''Death to America,'' and the Soviet leadership said: ''We will bury you.'' It is the same deal, the same

level of threat. But President Kennedy was focused on getting those missiles out. That was the threat, just as today the threat is to keep nuclear arms out of the hands of Iran, which we all agree is what we need to do.

We have debated Iran. We have taken two identical votes. The outcomes are the same. I predict the outcome will continue to be the same, and yet every minute we now spend on an issue that has been resolved is a minute that we don't spend on issues that need resolution: the budget, the highway fund, the debt limit, the Export-Import Bank, the tax extenders. That is governing, and that is what this body should be doing.

I hope my colleagues at some point in the very near future will decide that it is time to attend to those issues. And if we disagree with a policy decision that has been made, so be it. But we need to move forward and not continue to politicize an issue that, in my view, should not have been politicized in the first place. These are weighty and important issues. The Iran decision was the hardest that I have ever had to make, but I have made it. We voted. It is done. We need to move forward, and we need to move forward to meet the urgent needs of the people of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. SULLIVAN. Mr. President, I rise to express my deep disappointment that what has transpired at the end of everything we debated with regard to the Iran deal is that we have chosen, as a body—a minority of this body—to filibuster the Iran agreement.

For weeks—weeks—we have been talking about how important this agreement is and how we have been debating it. As to my colleague from Maine, I agree with him. All of us put so much time and effort into studying it and how it is one of the most important foreign policy and national security issues that many of us—even Senators who have been here for 10, 20, 30 years—will ever debate, study, and vote on. That is all agreed to.

And what happened? Now we are filibustering that.

American foreign policy and our national security are strongest when the executive branch and the congressional-legislative branch work together. That is when America is its strongest. That is why our Constitution gives powers to both branches of government in terms of foreign policy and national security. Yet every step of the way on this Iran deal of the President, the President and his team have been dismissive of the role of the American people through their representatives in Congress.

You have to remember where we began, because the only reason the Iranians actually came to the table was because of the sanctions that this body—Democrats and Republicans—put on the Iranian regime—American-led sanctions throughout the world. Two different administrations did this. Senator CORKER talked a lot about the role of the Congress today and how important that was. So we start these negotiations with Congress playing the critical role—drove Iran to the negotiating table—and then when we start negotiating, the President says: Nope, we are going to do this alone. We are going to go it alone. We do not need the Congress of the United States. We are going to do an executive agreement.

There was no involvement of the American people through their representatives in Congress to weigh in on one of the most important foreign policy issues in a generation. So this body acted. This body acted. Through the leadership of many Members on both sides of the aisle—Senator CORKER, Senator CARDIN—we passed legislation—98 Senators—that said: No, the Congress has a role. Congress should have a role.

Initially, the President said: I am going to veto that. We don't want you involved. I am going to veto that.

But this body came together and said: We want to be able to vote on this agreement. Our constituents want to be heard.

There were more affronts. The U.N. Security Council voted on this deal before Congress even started the debate on this deal. Again, Members of both parties, Democrats and Republicans, went to the administration—wrote the President, wrote Secretary Kerry—and said: Please do not do this. This would be an affront to the American people.

They did it anyway.

So now we have come to this moment. The U.N. Security Council and its member states have voted on the deal. The Iranian Parliament will need a majority vote to pass the deal, but the world's greatest deliberative body won't. On one of the biggest foreign policy and national security issues facing the United States, a partisan minority of the Senate has decided to take a pass on even voting up or down on the substance of this agreement.

Many of my colleagues have come to the floor over the last several weeks—both sides of the aisle—to explain why they are for or against the agreement. It has been a very good debate. People focused on this issue very intently. People of good will have a serious difference of opinion. I disagree profoundly with my colleagues on the other side of the aisle, but I respect them for explaining to the public why they are supporting a deal that so many Americans oppose and oppose intensely.

That has been one debate, but I am not sure I have seen any of my colleagues come to the floor to explain why they voted to filibuster a vote on the President's agreement with Iran; why they voted to deprive the American people of a right to be heard through their representatives in the Senate on the substance of the deal—not a procedural move but the substance of the deal; why they are letting the White House continually press to usurp their constitutional authority to weigh in and make foreign policy for our country; why they have done a 180-degree turn after voting for Corker-Cardin, saying that we need to vote on this, that the American people and their voices need to be heard on the substance of this deal, and then voting to stifle these same voices by supporting a filibuster.

I have been trying to see what the rationale of this is. Certainly there seems to be one where the White House says they should be doing this in order to spare the President the embarrassment of having to veto a bipartisan majority resolution of disapproval of the Iran deal. There are other press reports saying the filibuster happened to protect President Obama's legacy.

With due respect to the President, he will be gone—he will be moving on in a little over a year and a half—but the security implications of this dangerous deal will be something the American people—our kids and maybe even our grandkids—will be living with for years. This issue is much bigger than any so-called Obama legacy.

Today I have heard many of my colleagues come to the floor and say the agreement has already been voted on. I am a new Member of this body, but I am not sure that is exactly the case. The agreement has not been voted on. My colleagues have not held an up-or-down vote on this agreement. They are actually avoiding voting up or down on this agreement with their filibuster. They know it, and they should be clear on this point with the American people.

I think this body is making history during this debate. It appears that for the first time in U.S. history, an immensely important U.S. foreign policy agreement will move forward with a partisan minority of support in both Houses of Congress. For the first time in U.S. history on an agreement that is critical to our national security, the agreement will advance not on the basis of a vote on substance—a majority vote on substance—but on the basis of a filibuster, a procedural vote. And for the first time in U.S. history, the President of the United States sought the vote of foreign nations, including the world's largest state sponsor of terrorism, in approving and implementing a major foreign policy agreement and then fought the vote of the American people to weigh in on that same agreement.

Yes, the Senate is making history on the President's Iran deal, but it is not a history we should be proud of. It is history, I fear, that will be remembered for undermining our national security and the U.S. Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I want to supplement my remarks from last week with some insights from Alan

Dershowitz's book ''The Case Against the Iran Deal.'' All of us received a copy of this last week. I read it last week.

Incidentally, Mr. Dershowitz has been a consultant to several Presidential commissions and has advised Presidents, U.N. officials, Prime Ministers, Governors, Senators, and Members of Congress. He has sold more than 1 million copies of his books worldwide in a dozen different languages, and he is a law professor emeritus at Harvard. He is an accomplished attorney and has been active in politics. I make that point because Mr. Dershowitz endorsed President Obama in 2008. So I think his comments might be particularly telling.

I want to start by discussing the point Mr. Dershowitz makes that I find the most intriguing. ''The President is not the Commander in Chief of Foreign Policy.'' Mr. Dershowitz notes that the Constitution does not make the President Commander in Chief, period; rather, article II, section 2, clause 1 of the Constitution makes the President ''Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States.''

Mr. Dershowitz points out that this language does not make the President Commander in Chief for purposes of diplomatic negotiations, and his involvement in international diplomacy is as chief negotiator whose deliberations are subject to the checks and balances of the legislative and judicial branches. Specifically, Mr. Dershowitz writes that the President ''cannot make a treaty without the approval of two-thirds of the Senate. He cannot appoint ambassadors without the consent of the Senate.'' And this is probably the most important one: ''And he cannot terminate sanctions that were imposed by Congress without Congress changing the law. . . . Our Constitution separates the powers of government—the power to command—into three coequal branches.'' Mr. Dershowitz goes on to describe the President's actual constitutional role as the ''head of the executive branch of our tripod government that stands on three equal legs.''

I would remind my colleagues that this argument is being made by a prominent scholar on U.S. constitutional law.

This point reminds me of what a former colleague who carried a copy of the Constitution in his pocket said in June of 2004. When debating the 2004 Omnibus appropriations conference report, Senator Byrd said:

> Why so deferential to presidents? Under the Constitution, we have three separate but equal branches of government. . . . How many of us know that the executive branch is but the equal of the legislative branch—not above it, not below it, but equal.

I wonder what the former Senator from West Virginia would think of the ways the President has sought to diminish the role of Congress with regard to the Iran deal.

According to Mr. Dershowitz, those actions include declaring the Iran agreement to be an ''executive agreement'' instead of a treaty or joint agreement, promising to veto any congressional rejection of the deal, agreeing to submit the deal to the U.N. Security Council before Congress considered it, trying to marginalize opponents of the deal as politically motivated, and describing the only alternatives to the deal as Iran quickly developing nuclear weapons or war with Iran.

Another discussion I found interesting in ''The Case Against the Iran Deal'' relates to the President's assertion that if we don't accept this deal with Iran, the only other option is war. Mr. Dershowitz argues that this ''sort of thinking out loud empowers the Iranian negotiators to demand more and compromise less, because they believe—and have been told by American supporters of the deal—that the United States has no alternative but to agree to a deal that is acceptable to the Iranians.''

He also writes that while numerous administration officials have said ''no deal is better than a bad deal'' with Iran, he views the United States as negotiating on the belief that the worst possible outcome would be no deal.

In addition, Mr. Dershowitz notes that ''diplomacy is better than war, but bad diplomacy can cause bad wars'' and points out that Israeli, French, Saudi, and other leaders have expressed concern ''that the Iranian leadership is playing for time—that they want to make insignificant concessions in exchange for significant reductions in the sanctions that are crippling their economy.''

That leads me to Israeli Prime Minister Benjamin Netanyahu's 2013 United Nations speech, which Mr. Dershowitz argues was distorted by the New York Times.

The Prime Minister said:

> Last Friday, [Iranian President Hassan] Rohani assured us that in pursuit of its nuclear program, Iran—this is a quote—Iran has never chosen deceit and secrecy, never chosen deceit and secrecy. Well, in 2002 Iran was caught red-handed secretly building an underground centrifuge facility in Natanz. And then in 2009 Iran was again caught red-handed secretly building a huge underground nuclear facility for uranium enrichment in a mountain near Qom.

What strikes me about the Prime Minister's words is that they give us a clear picture of whom we are dealing with in Iran. And if we need more evidence, just last week Iran's Supreme Leader, Ayatollah Khamenei, predicted that Israel will not exist in 25 years and referred to the United States as the Great Satan. What level of trust can we have for this regime? Even if this agreement were a good deal for the United States, what makes us think Iran will abide by the terms of the deal? In other words, do you trust Iran? And to be clear, this is not a good deal.

As Mr. Dershowitz writes, ''All reasonable, thinking people should understand that weakening the sanctions against Iran without demanding that they dismantle their nuclear weapons program is a prescription for disaster.''

Mr. Dershowitz goes on to ask if we have learned nothing from North Korea and from Neville Chamberlain. For those in the Chamber who are not history buffs, let me explain how I interpret Mr. Dershowitz's question.

In 1994, the United States and North Korea agreed to a roadmap for the denuclearization of the Korean Peninsula. Several rounds of six-party talks were held between 2003 and 2009, but North Korea continues nuclear tests and ballistic missile launches. The President seems to be heading down a similar path with Iran.

As for Neville Chamberlain, he was the British Prime Minister when England entered World War II. He is best known for his policy of appeasing Germany in advance of World War II, signing the Munich Pact that gave part of then-Czechoslovakia to Germany. Hitler violated that pact and invaded Czechoslovakia, then Poland. Should we expect a stronger commitment to this deal from a country whose Supreme Leader refers to the United States as Satan?

How can Mr. Dershowitz label this deal as a prescription for disaster? He does so by pointing out the ''enormous difference between a deal that merely delays Iran's development of a nuclear arsenal for a period of years and a deal that prevents Iran from ever developing a nuclear arsenal.'' Mr. Dershowitz says that if this deal is meant to prevent Iran from ever developing nuclear weapons, the President must clearly say so and the Iranians must agree with that interpretation. That has not happened.

How did we get to such a bad deal? Mr. Dershowitz says the first mistake was taking the military option off the table when the administration declared that they weren't militarily capable of ending Iran's nuclear weapons program. He says the second mistake was taking the current sanction regimen off the table by acknowledging that many of our partners would reduce or eliminate sanctions. Lastly, he says we took rejection of the deal off the table by indicating that rejecting a deal would be worse than accepting a questionable deal. Mr. Dershowitz writes that ''these three concessions left our negotiators with little leverage and provided their Iranian counterparts with every incentive to demand more compromise from us.'' He adds that our negotiators ''caved early and often because the Iranians knew we desperately need a deal to implement President Obama's world vision and enhance his legacy.''

While this deal might implement the President's world vision in the near term, I question whether it will enhance his legacy because I do not think it makes the United States or the world more safe.

I am disappointed that the President didn't submit this deal to us as a treaty for our approval. I am disappointed that the minority has filibustered even allowing us to vote on disapproving the deal. I wish we had paid more attention to the fact that sanctions put in place by Congress have to be terminated by Congress, not by the President.

I urge all of my colleagues to read Mr. Dershowitz's book because I think it provides some invaluable insights and might change their thinking. I think we need a different outcome.

I thank the leader for the amendments he has put up that will make a difference. I think one of those should have been done before any negotiations, and that is that the American hostages be released. That would have been a good starting point. They should have walked away several times to show that the deal was in favor of Iran rather than the United States. It has to be some of the world's worst negotiating.

I hope everyone will read Mr. Dershowitz's book, ''The Case Against the Iran Deal.'' We all got a copy.

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. CRAPO. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GARDNER). Without objection, it is so ordered.

Mr. CRAPO. Mr. President, I come before the Senate to discuss the agreement that is being proposed between the United States, the other members of the P5+1 nations, and Iran with regard to Iran's capacity to build a nuclear weapon.

I strongly oppose this agreement for a number of different reasons. Before I get into the specifics of those reasons, I need to back up a little bit. About 2 years ago, I served on the banking committee. I don't think most people in America realize that the banking committee has jurisdiction over the sanctions legislation which deals with Iran and other sanctions legislation throughout the world.

Over the years, we have developed a very powerful and effective sanctions regime with regard to Iran. This regime involved not only the United States but the participation and agreement of nations around the globe, including sanctions that were followed by us through the United Nations.

Those sanctions—after having had four or five different versions of them, increasingly tightening them down—had worked very effectively to cause Iran to need to come to the negotiating table. I think most Americans realize that the reason Iran came to the negotiating table was the fact that our sanctions were working.

In fact, a couple of years ago, we had another version of new sanctions legislation to tighten down our sanctions even further and increase the leverage that the United States had on Iran in order to try to cause Iran to not only come to the negotiating table but also to agree to stop development of a nuclear weapon.

At that time, the President asked the banking committee—I was the ranking member at the time—to pull back our proposed new sanctions legislation. He gave us his explanation, which is the fact that he wanted to open up new negotiations with Iran and did not want to cause an offense that would cause Iran to back away from the negotiating table. I disagreed at the time. In fact, my position was that if the United States wanted to go into negotiations, we should have Congress pushing for a new round of sanctions legislation so the President could say honestly and effectively to Iran that we needed to get a workable deal put together or we had a Congress that was ready to move forward with ever-increasing and more effective sanctions. Instead, the President said no. I understand that his party controlled the Senate at that point in time and we could not get the chairman at that point to agree to move the legislation forward, even though the chairman and I had worked together with the other sponsors of the legislation to develop it. At that time, it was my position that if the United States was going to withdraw its leverage through increasing sanctions legislation, that we should at least ask for some kind of a good-faith effort on the part of the Iranians as we were exercising the right to withdraw our sanctions legislation.

So it was my position that we at least should have asked for the release of our prisoners. Most Americans are aware that we have four political prisoners—at least four—in Iran today who are being wrongfully held. One of them, Pastor Saeed Abedini, is from Idaho. He has been held illegally in Iran now since 2012. In addition, we have Robert Levinson, who is a retired FBI agent, missing since 2007; Jason Rezaian from the Washington Post, a reporter, held since 2014; and Amir Hekmati, a former marine, who has been held since 2011. Yet the administration would not ask for the release of these prisoners as a token of good faith in return for starting the negotiations, even though we were willing to withdraw our efforts to impose new sanctions in an effort to start these negotiations. I felt that was a mistake from the outset. The United States gave up its leverage and refused to ask for a concession as we moved forward in these negotiations. Yet it has set a pattern for what has happened since.

Well, I think everyone knows the history from that time forward. We did engage in negotiations. It is important to note that at that time, the President assured—he assured us—that he would not enter into an agreement that would allow Iran to ever have a nuclear weapon and that we would have ironclad inspection and verification regimes in place to assure that.

So where are we today? We are now faced with an agreement that cements in place Iran's nuclear stockpiles, that effectively allows Iran to develop a nuclear weapon over time, even if it complies with the agreement, and does not have any kind of an effective sanctions regime. I strongly oppose this agreement.

During the remainder of my remarks, I wish to go through four or five critical reasons Congress should reject this agreement. First, it does not prohibit Iran from obtaining a nuclear bomb. Second, it does not provide ironclad inspections and verification procedures. Third, it provides sanctions relief that is almost certain to result in increased terrorism around the globe. Fourth, it dangerously and needlessly lifts unrelated, nonnuclear embargoes. Fifth, it contains inexcusable and dangerous omissions. Finally, it will create instability in the Middle East and effectively a new regional arms race, dangerous to the entire world.

Let me go back through these. First, it does not prohibit Iran from obtaining a nuclear bomb. Even if Iran complies with the agreement, which it does not have a very good record of doing with regard to its agreements, it will still be able to develop a nuclear weapon. The agreement fails to roll back Iran's nuclear development program beyond a 1-year breakout period.

For 10 years, the agreement will only include IR–4, IR–5, IR–6, and IR–8 centrifuges. Now, this is getting into the weeds, but this is a level of centrifuge development that Iran has already been working on and engaging in. And the agreement says—and this is exactly from the agreement—''For 10 years will only include the IR–4, IR–5, IR–6, and IR–8 centrifuges as laid out in Annex 1.'' In other words, the only application of the agreement is to these centrifuges during a 10-year period.

During the 10 years, ''Iran will continue testing IR–6 and IR–8 centrifuges, and will commence testing of up to 30 IR–6 and IR–8 centrifuges, as detailed in Annex I.''

It does not dismantle any of its nuclear sites of concern, which are the sites at Arak, Natanz, and Fordow. None of them is dismantled. It recognizes Iran as a de facto nuclear state. And with all of the centrifuges that Iran now has, is it required to destroy them? No. It simply has to disconnect them and store them in another room. Iran is allowed to keep 6,000 centrifuges and 300 kilograms of uranium. Iran is allowed to conduct nuclear research and development during the terms of the agreement, and, in fact, amazingly the United States commits to assist Iran with its nuclear research and development in developing its own nuclear technology and infrastructure.

That is not even the end. One of the provisions of the agreement which I find most outrageous is that it requires the United States Government to oppose State and local sanctions against

Iran and amazingly to help ''strengthen Iran's ability to protect against, and respond to nuclear security threats, including sabotage, as well as to enable effective and sustainable nuclear security and physical protection systems.'' In other words, if Iran develops nuclear weapons capacity, this seems to imply that the United States will need to help Iran protect its capacity.

I am sure the argument will be made that this is only to help Iran develop its peaceful nuclear weapons capacity, but the agreement isn't clear. At a minimum, these kinds of things should have been made clear in the agreement.

So let's look at the inspections. Assuming that Iran will comply with its one-sentence agreement that it will not build a nuclear bomb for 10 years, does the verification system that we have adopted prohibit that? Well, the agreement does not provide ironclad inspections and verification. I think Americans are increasingly becoming aware that not only do we not know what the inspection regime is, the United States does not participate in the inspection regime. The inspection is turned over to the United Nations. The IAEA, the committee under the United Nations that does these kinds of inspections, is in charge, and the IAEA has entered into side agreements with Iran that it will not disclose to the United States or any other country. Some of the information we are starting to see about it, if it is accurate—and we don't know if it is accurate—but it seems to imply that Iran will not even allow the IAEA inspectors onsite. It is going to provide its own samples. These are concerns that are serious. Yet we cannot even confirm them, and Congress is being asked to deal with this issue without even having all of the agreement in front of us.

Moreover, as we move forward in this process, we have identified that the sites are identified as two different kinds. There are declared sites. Those are the ones that Iran admits exists. As to declared sites, Iran must first draw up a list and tell us what they are. We don't have onsite inspection to determine that. As to undeclared sites, Iran is permitted to negotiate for at least 14 days for the IAEA to say we have a site that we think there is, but we are not sure, and Iran is allowed to negotiate whether there is such a site. If the IAEA and Iran cannot agree to a joint inspection of a suspected new site, then there can be further delays, taking up to 54 days before anybody would be able to take a look at these sites.

Again, we don't know whether those persons then required to look at these sites will be Iranians showing the United Nations inspectors what they want them to see or whether they will be United Nations inspectors, but we are pretty sure we know they aren't going to be U.S. inspectors.

The bottom line is that we have a very weak inspection regime that is almost certain to result in the same outcomes we have seen for the last 10 years, as we have tried to inspect and monitor Iran's development activities on its nuclear weapons.

That brings me to the third issue, which is sanctions relief. Iran does get major sanctions relief under this agreement. Iran is regarded as one of the top, if not the top, sponsors in the world of terrorism—the top state sponsor of international terrorism. Many have said Iran has been connected to hundreds of U.S. service personnel deaths in Iraq. Some say more Americans have died in Iraq because of Iranian state-sponsored terrorism and other activities than any other source.

We lift economic sanctions that we have been putting onto Iran. There is some debate about what the value of those sanctions are, but the estimate that I think is fair is approximately $100 billion will be released to Iran very quickly under this agreement. Just by comparison, $100 billion to Iran, in terms of the size of its economy, is approximately the same as $4.25 trillion to the United States respecting our economy. It is about one-quarter of Iran's economy. Those who say Iran will simply use these sanctions relief dollars in order to strengthen their economy ignore the reality that Iran today has a weak economy because of our sanctions and it is plowing money into sponsoring terrorism. There is no question that these dollars are going to result in an increased support of terrorism across the globe.

Next, the agreement dangerously and needlessly lifts unrelated, nonnuclear embargoes. As we were dealing with all of these issues I have just discussed as the negotiations were moving forward, at the very end we find out that in order to complete the deal, Iran and Russia introduced new unrelated issues that the administration willingly conceded to. We lifted the existing conventional weapons embargoes on Iran and we lifted the ballistic missile embargoes on Iran. Russia is already today going forward with selling advanced S–300 surface-to-air missiles to Iran, making future military action increasingly more difficult.

The next issue is that the agreement contains inexcusable and dangerous omissions. First, as I said at the outset, it does not free Pastor Abedini and the other Americans who are detained in Iran. Secondly, it does not recognize Israel's right to exist. Third, it limits nuclear research for 10 years and frankly does not assure, as I have indicated earlier, that we don't have violations of the agreement before 10 years.

It does not require an accounting of past nuclear weapons cheating by Iran, meaning it does not require them to disclose where their facilities are. It does not require disclosure of the military component of Iran's nuclear program. What this means is that Iran has given us no information about its military facilities and has said that its military sites are off-limits. Now, where would we expect Iran to build a nuclear bomb?

It does not address Iran's existing ballistic missile capacity, and it does not ban ballistic missile development. We don't know what its capacity is and we no longer ban them from developing their capacity further. In fact, we have lifted the ballistic missile embargoes. The agreement does not require Iran to stop sponsoring international terrorism. The agreement is deficient in so many different ways.

Finally, the agreement creates instability in the Middle East and a new regional arms race. One hundred billion dollars is an immediate windfall to Iran, a portion of which the administration acknowledges will wind up in the hands of international terrorist groups targeting Americans and our allies. That money will be made available to Iran shortly.

Neighboring States have already said they are going to have to accelerate their own nuclear enrichment programs to counter Iran. Recognizing the new threats to Iran's regional neighbors, the President himself wrote to Congress on September 2 to announce stepped-up security enhancement for our Middle East allies, further evidence that the agreement is destabilizing and requires increased military commitments in the region.

Having abandoned the ''no notice'' inspections requirement, the administration has agreed to permit a process for contested sites that could stretch for weeks or months before inspectors step a foot into the facility, if they are even able to do so at all. Some experts acknowledge that window is sufficient to hide or remove any kind of incriminating evidence of smaller illicit activities crucial to weapons development.

Other states in the region—Egypt and Saudi Arabia—have already signaled that they are going to embark on a nuclear weapons program, sparking a new arms race. The possibility of further instability in the Middle East does not serve our national security interests or give the American people comfort.

We cannot forget that Iran is a regime with a history of sponsoring terrorism against Americans and our allies and which continues to threaten the existence of Israel. This agreement changes the U.S. policy toward Iran but does very little, if anything, to change Iran's aggressive nature.

The Iranian leaders have already renewed their threats to Israel, and continue to call the United States the Great Satan and have publicly rejected the administration's hope that the agreement will lead to better cooperation with Iran.

So where are we?

The United States Senate passed legislation 98 to 1 saying that Congress should have a right to vote on this agreement. Twice already in these Senate Chambers within the last week we have tried to bring that legislation up only to face a filibuster that has stopped us from even being able to vote

on the agreement. Ninety-eight Senators voted to let Congress have a right to vote on this agreement, and 42 of them voted twice now in the last week to refuse to let us bring the agreement before the Senate to vote on it.

So today we are facing yet another effort. Today the issue before the Senate is a provision that would say the agreement cannot go into effect until Iran recognizes Israel's right to exist and until Iran frees the four political prisoners whom I identified. Once again we are facing a threat of a filibuster.

As I indicated, this agreement is dangerous. It is dangerous to the security interests of the United States. It is dangerous to the security interests of the world. It is destabilizing in the Middle East, and it contains very, very serious potential consequences for the future security of all Americans, and, frankly, of people throughout the world.

This is a critical time. This is a monumentally important decision, and I encourage all of my colleagues to let us simply bring the agreement forward for a vote. A critical issue such as this should not be stopped from even being brought forward for a vote in the Senate.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mrs. CAPITO. Thank you, Mr. President. I want to thank my colleague for his speech. I will be echoing a lot of the same points that he has made.

I think that it is a critical time. This is important. It is important for the young people around this country to know what kind of a future they are going to have, and I think he has lined it out very well, and this week, I think, will be critically important in terms of the decisions that we make as a country.

In May, the Senate passed the Iran Nuclear Agreement Review Act by a vote of 98 to 1. You don't see too many 98-to-1 votes in this Chamber. Sixty-six Senators cosponsored this legislation. The principal reason for this overwhelming bipartisan support was the desire to give Congress, the voice of the people, the opportunity to weigh in on the President's agreement with Iran.

We have been working together now for 4 months across the aisle to ensure that the opportunity for Congress to review this agreement comes forward. Yet I am severely disappointed, as my colleague expressed, that 42 of our colleagues have now voted twice to deny the Senate the ability to take a simple up-or-down vote on this very important resolution—a simple vote to say exactly how they feel, to make sure everybody in the country and in your State knows your opinion, and yet 42 of them are blocking that simple vote.

Iran's supreme leader said earlier this month that he expects Iran's parliament to vote on whether their country will approve the nuclear agreement. At the very least we should have that up-or-down vote. Certainly this agreement is also worthy of this vote. Our constituents expect us to vote on this matter. Multiple national surveys have shown that the Iran nuclear agreement is opposed by either a plurality or a majority of the American people, and any support this agreement had, as you look at the national polling, is disintegrating.

A recent poll in my State shows that opponents of this deal outnumber supporters by a margin of 3 to 1. Yet I am not going to have the opportunity to vote my vote of disapproval of this agreement because of the obstructionism on the other side. In fact, when President Obama said that there was strong support for this deal among lawmakers and citizens, the Washington Post fact-checker awarded him three Pinocchios. We all know what Pinocchio was famous for, and that was the growing of his nose when he wasn't telling the truth. Three Pinocchios—that's a lot of skepticism about the President's statement.

There is bipartisan opposition to the Iran nuclear agreement in Congress, but only partisan and tepid support. Our colleagues in the House of Representatives voted last week on a resolution approving this agreement. That resolution received only 162 votes, all from the Democratic Party. There was opposition by 260 House Members, including 25 Democrats. Here in the Senate, more Democrats joined with Republicans to support moving forward on an up-or-down vote on this resolution of disapproval.

It is important to recognize the depth of bipartisan opposition to the President's agreement with Iran. Many of the Democrats who have been opposing this deal have tremendous experience in foreign policy matters. In the House of Representatives, the ranking member of the Foreign Affairs Committee, the ranking Democratic member of the Appropriations Committee and the ranking member on the Subcommittee on the Middle East and North Africa all voted against approving this agreement.

In the Senate, the former chairman of the Foreign Relations Committee and the committee's current ranking member are among the Democrats who oppose this agreement. They have joined Republicans on the floor in seeking an up-or-down vote on this agreement. The senior Democratic foreign policy leaders and every Republican in both chambers of Congress oppose this deal, and they have made their reasons clear.

The President's agreement fails to make America safer, quite frankly. It is not likely to eliminate Iran's path to a nuclear weapon, and the agreement will hurt the security situation that is rapidly deteriorating in the Middle East, especially in Israel.

We have not seen the two side agreements between the IAEA and Iran. We have not seen those. We don't know what is in them. We are supposed to have seen everything, and these side agreements, we think, include important provisions about suspected Iranian nuclear sites. We already know that Iran will have the ability to delay inspectors' access to other sites for more than 3 weeks. We were supposed to get anytime, anywhere inspections. This benchmark falls severely short of that.

The combination of the cash from sanctions relief—anywhere from $50 billion to $150 billion, so I will go right in the middle and say $100 billion—the end of the arms embargo in 5 years, the end of the international restrictions on Iran's ballistic missile program in 8 years will strengthen Iran's ability to cause trouble in the Middle East and around the world.

Think about this. I think about this—the country of Iran with another $100 billion. Under the sanctions that have been imposed, Iran has expressed concern about the health and welfare of their people. Yet even under that sanctions domain they are still fomenting terror around the Middle East. What will they do with $100 billion? I think it is pretty clear what their intentions will be.

International sanctions that have helped bring Iran to the negotiating table will be difficult to snap back into place in the event of violation of the agreement. Nothing snaps anywhere here in Washington, DC, and sanctions can't snap back, so that defies reason. This will lessen our leverage to ensure Iran's compliance.

Despite these serious flaws, it appears, based on the two failed cloture votes the Senate has taken thus far, that a partisan minority is prepared to thwart the bipartisan majority and move forward with the agreement.

Leader MCCONNELL has filed an amendment that would block sanctions relief until Iran both recognizes Israel's right to exist and releases American political prisoners. While that amendment will not cure the flaws of Iran's agreement, it does represent commonsense policy that should receive overwhelming support.

Regardless of their views on the substance of a nuclear Iran, I think most Americans would agree that before we provide tens of billions of dollars in sanctions relief to Iran, the Iranian government should have to recognize Israel's right to exist and should release our four American political prisoners.

Just last week, as the Senate was debating the Iranian nuclear agreement, the Iranian leader posted on Twitter his view that Israel would not exist in 25 years. That underscores, again, what a serious problem Iran is to our most important ally, and that is Israel.

Even proponents of the nuclear agreement have recognized that Iran is likely to use at least some of the funds they received from sanctions relief to strengthen their military and continue to finance terrorism. If this windfall is going to be provided to Iran, then ensuring Iran recognizes Israel's right to exist is the least we would ask.

Equally important is securing the release of our four American political prisoners held by Iran. I get this question at home all the time. Why was this not part of the bargaining? Why were we not asking for the release of our Americans before we moved forward? Frankly, I don't think the administration answered that question, and I don't have the answer to that question. Tomorrow we will have the opportunity to express our wishes. We should not provide sanctions relief to Iran without the release of the hostages.

The Senate will have the opportunity to decide whether to move forward with the McConnell amendment tomorrow. Those who have prevented a vote on the merits of the nuclear agreement have it in their power to block a vote on the McConnell amendment as well, but let's be clear on what that would mean. If a minority of the Senate blocks a vote on the McConnell amendment, then they will allow the President to provide sanctions relief to Iran without securing Israel's right to exist and without the release of our Americans.

I believe the President's agreement with Iran should be rejected by the Senate, and we are going to have another opportunity to vote on cloture to allow the Senate to take a true up-or-down vote on that agreement. But even my colleagues who support the nuclear agreement should vote to protect Israel and bring our Americans home before providing that sanctions relief.

I hope our colleagues will reexamine their positions on cloture and allow the Senate to do what we have come here to do, to take the tough votes, to let people know how we feel, to show our commitment and our passion, and to have our voices and their voices heard.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

REFUGEE CRISIS

Mr. BLUMENTHAL. Mr. President, I am always a little more than awed and inspired to be here on the floor of the United States Senate, a place that my father never could have predicted that I would be when he came here in 1935, an immigrant, fleeing persecution in Germany at 17 years old with not much more than the shirt on his back, speaking no English, and knowing virtually no one. This country gave him a chance to succeed. This great country opened its arms to him, much as the Statue of Liberty did, when he entered this country through Ellis Island.

We are a nation of immigrants and of refugees. It has given us strength. Our diversity is what makes America the greatest, strongest country in the history of the world.

Sadly, the kind of displacement that caused him to come to this country is far from unprecedented. This country has opened its arms again and again and again, generation after generation, to provide for refugees displaced by war and oppression. Inhumane dictators, territorial disputes, environmental degradation, all are contributing now more than ever to the largest refugee crisis since World War II.

We are going through a humanitarian crisis in this country. Part of it is due to the brutality and inhumanity of the Assad regime in Syria, the horrors unleashed by ISIL in Syria and Iraq. Neighboring countries have been overwhelmed by fleeing refugees.

During my Middle East trip in July 2013 with Senator MCCAIN and others, I visited a refugee camp in Jordan that houses many of these refugees and, since my visit, the situation has only worsened significantly.

Syria alone has produced an estimated 4 million registered refugees—those are the individual ones counted—in addition to the 7.6 million internally displaced people.

Turkey bears the brunt of this refugee crisis, housing nearly 2 million of them. Lebanon shelters over 1.1 million refugees, while Jordan has taken 600,000 or more, and Egypt recently exceeded the 130,000 mark.

These numbers are abstract. For every one of them, there is a human voice and a face. Many are children barely able to comprehend the fate that has befallen them. This year alone, Germany is expecting 800,000 asylum seekers, a marked increase from 626,000 in 2014 and 431,000 in 2013. Again, these numbers have impact on those countries, on their populations.

We met this morning with the Ambassadors of the European countries to hear about that impact on them and about their plans to do even more.

The Atlantic Ocean separates us from this crisis physically, but morally we have no separation at all. The destabilizing effect of that massive displacement ultimately affects us as well, our national security, and the stability of regions where we have a vital economic stake and a moral obligation.

I strongly support a policy of American generosity and humanitarian relief toward those refugees seeking to escape the untenable and unlivable conditions in Syria and Iraq. Exactly what steps this Nation should take will be a matter of contention and continuing debate, but clearly, we have obligations—moral obligations, self-interested obligations, economic obligations—to the men, women, and children who have walked hundreds of miles in search of safety and security and to the countries currently searching for ways to accommodate them.

Our obligation is multifaceted. First, we have provided $4 billion in aid—which is real money—to countries where those refugees now live temporarily in camps. But humanitarian aid is desperately needed in greater amounts and rising magnitude in countries where refugees are flowing fast. Regional countries, including Turkey and Jordan, as well as the European Union, must be able to provide refugee camps that provide basic necessities for people to live, with adequate food, water, shelter, clothing, education, and other elements of a safe and stable life for adults but also for children who can be seen running, laughing, playing in these camps in the most rudimentary of conditions.

The United States must show international leadership as well in ensuring the availability of resources from other nations that, frankly, have failed to meet the test of moral and political obligation. Saudi Arabia is one. The Gulf States are others. Our allies in this region must fulfill their obligation to do more and to do their part in assisting those fleeing war and bringing about a diplomatic resolution to the crisis. The absence of these nations from this challenge is reprehensible and regrettable. Ultimately, Syria must seek and achieve a resolution internally but, in the meantime, its neighbors have an obligation to do more.

I applaud the President's announcement that the United States will resettle approximately 10,000 Syrian refugees within our borders next year. As my colleague from Illinois, Senator DURBIN, has said this step is certainly in the right direction. But increasing the number of refugees coming here is an insufficient response alone if we fail to provide the expanded capacity and services that are necessary to effectively resettle and bring to this country refugees fleeing their homeland. Our focus should be on devising an effective program so that candidates for resettlement can have that hope without waiting years for assistance. Now, under the present system, they are waiting here.

In particular, I wish to cite a group of refugees that merits the special conscience and conviction of this Nation. They are the refugees—mostly women and young girls—who are victims of what the New York Times, in an extraordinary report, has called enshrining the theology of rape.

These girls and women have been enslaved. They are members of the Yazidi community. This New York Times report shows the systematic enslavement and rape of women and children held in the territory that ISIL controls. Approximately 5,000 Yazidis have been abducted by ISIL and 2,700 remain in captivity.

These reports, which are shocking and horrifying, challenge our conscience to do more. Nobody reading them can think of our daughters, the women in our family, without revulsion and shock. At the end of this week, several of my colleagues and I will be sending a letter to Secretary of State John Kerry urging him to take further action to help the Yazidis, the Christians, and other religious minorities who have been systematically kidnapped, enslaved, tortured, raped, and brutalized by ISIL simply because of their faith.

We talk a great deal on the floor in this body, in this building, and in this country about faith. The horror of this persecution calls to our conscience.

I am calling on the State Department to declare religious minorities as protected, priority groups, able to seek refugee assistance within Iraq's borders. As of now, the only Iraqis allowed to leave the country with assistance in this way are the people who have been affiliated with the U.S. Government during the war. That category should be expanded to include these refugees.

Second, I am calling on Secretary Kerry to improve the in-country processing for refugee claims in Iraq, specifically, the time required for that processing. The estimated time for Iraqis who served alongside U.S. military personnel is at the unacceptably high rate of 5 years to 8 years. This issue has been brought to me by numerous veterans—Iraq and Afghanistan veterans—who owe their lives, in some cases, to the service of these Iraqi and Afghan colleagues. Yet they wait there 5 to 10 years simply to be processed to come here. We must assure timely access to refugee assistance for both Iraqis affiliated with the U.S. Government and Iraqis within persecuted religious minorities such as the Yazidis and Christians. There is mounting, irrefutable evidence of that persecution on a scale that sometimes defies imagination and comprehension.

There are many ways the State Department can accelerate processing times: Double the number from 10 to 20 of in-country State Department personnel processing Iraqi refugees; consult with the Department of Homeland Security on the use of video interviews, consistent with security requirements, to be conducted in addition to the in-person interviews currently required; identify a nongovernmental organization to work with the U.S. Embassy to identify and screen religious minorities seeking refugee assistance in Erbil; and establish a facility in Erbil where the U.S. Government can conduct refugee processing. These steps are not particularly complicated or ingenuous; they are common sense.

The United States has a proud, moral tradition and heritage of aiding refugees. That tradition and heritage are epitomized by the Statue of Liberty and by Ellis Island. The Nation has not always lived up to the high standards that have been set for it by us. We are still very much a work in progress, and there are times in our history when we have failed the high test of morality.

But the Statue of Liberty stands tall at our harbor and embodies what is best about our Nation. We are a nation of immigrants truly because we welcome the tired and hungry, yearning to be free. We need to demonstrate the international leadership that has made us proud in the past to establish a new, inconclusive vision for Syria; to abate this refugee crisis; to provide a path for them to come here; and to provide them, consistent with our security, the opportunities that fathers, mothers, grandfathers and grandmothers had—going back in history, all of us have come here from somewhere else, or almost all of us—and humane and effective policies that help us to keep alive that great tradition and heritage, serving millions of people who are tired, weary, yearning to be free and seek that lamp beside the golden door.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 2043 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRASSLEY. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COTTON). Without objection, it is so ordered.

The Senator from Rhode Island.

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, I am here today for the 111th time in my ''Time to Wake Up'' series urging this body to wake up to climate change. It is happening all around us, and it is happening right now, not in some distant future. The warnings of what is to come if we fail to act are sobering.

Congress has the ability and responsibility to change the course we are on, but we can't do it until Senate Republicans step up and start debating real solutions. Smart climate policy can align with conservative values—conservative values, such as prudence in the face of risks, protection of property rights and individual liberty, and market-based solutions for solving problems.

Senator SCHATZ and I have proposed a fee on carbon emissions, correcting a market failure that currently allows major emitters to pollute for free while forcing regular citizens to bear the physical and financial burden. Even if you are a tea-partier, why would you want a big special interest to be able to distort the energy market and make regular people pay the price for the harm they cause? Other than special interest politics, it makes no sense.

This market incentive would work. It would reduce emissions. A recent report on our bill shows it will reduce carbon emissions 45 percent by 2030, more than the President's Clean Power Plan does. It will also generate significant revenue—over $2 trillion over 10 years—to return to taxpayers. With $2 trillion, you can lower a lot of tax rates.

I hope our Republican colleagues will give this bill a serious look. Former Congressman Bob Inglis, a dyed-in-the-wool conservative, described our bill not as an olive branch, but as an olive limb we have offered to Republicans. Yet still in this Chamber, all we hear from Republicans is equivocation and denial when it comes to climate change. We hear Republican Senators trumpet industry-backed reports that point to the costs of action, but ignore the terrible costs of inaction. They look at only one side of the ledger. If accountants did business that way, they would go to jail, but that is evidently good enough for Republicans in the climate debate.

We hear Senators using cherry-picked data. They will take a graph that goes up and down, up and down on an upward trend and pick a high spot and a later low spot, and from those two selected points, they will say: Aha. See, there is no increase.

An expert witness would be thrown out of court for that nonsense, but it is evidently good enough for Republicans for the climate debate.

We hear Senators ducking and dodging on this issue, exclaiming they are not scientists, but then they will not listen to what they are being told by the people who are scientists. We hear deniers denigrate scientists, ignore basic established science, and venture into loopy conspiracy theories about a great hoax, one that the United States military and every American national laboratory and NASA are all evidently in on. Seriously? And they say this with no shame for the smear it implies of some of our most reputable scientists. Again, that is good enough for Republicans in the climate debate, I guess.

We even had a Senator throw a snowball on the Senate floor because he thought the continued existence of snow here somehow disproved climate change. Truly. I did not make that up.

Meanwhile, what we see all around us shows us that this is happening. Simple, straightforward measurements show that the climate is changing around us.

One summary is the annual ''State of the Climate'' report by the National Oceanographic and Atmospheric Administration and the American Meteorological Society. The report reviews dozens of climate indicators—from ocean and air temperatures to extreme weather events. It doesn't get into forecasts or projections. It discusses what we are observing and measuring now. The ''State of the Climate'' report shows that 2014 was a benchmark year for the climate, and not in a good way. The article in Bloomberg News summarizing the report's findings was titled ''The Freakish Year in Broken Climate Records.''

Mr. President, I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

Its author, Tom Randall, sums up the state of the climate with two words: ''it's ugly.'' I have to agree. From record temperatures to record sea levels to changing weather to retreating glaciers, climate change is evident across an array of measurements and observations. We are watching our planet change before our very eyes.

Let's see what these measurements say.

Well, 2014 was another record year for global temperatures. NOAA and NASA both concluded that 2014 was the hottest year since recordkeeping began in 1880.

This chart shows where temperatures in 2014 were warmer than the 1981-to-2010 average, which is shown in red, and blue shows where the temperatures were cooler than average.

The eastern part of the United States and Canada was one of only a handful of places around the world that saw cooler-than-average temperatures. But while it was cool here in 2014, almost everywhere else in the world was feeling the heat. All you have to do is look at the data to see it. It is a massive sea of red.

And 2014 does not stand alone; 17 of the 18 hottest years in the historical record have occurred in the last 18 years. The past decade was warmer than the one before that, which was warmer than the one before that, and so far 2015 is on track to be even hotter than 2014. All of this is measurement and straightforward fact.

Of course, as humans, we don't experience annual average changes in temperature, we experience the weather, and we are beginning to see climate change affect weather patterns all over the world.

This chart shows the number of extreme warm days and the number of extreme cold nights since 1960. The number of hot days, as we can see, is climbing, and the number of cold nights is decreasing. Both are symptoms of a warming planet. This matters because those very warm days pose human health risks and can be downright dangerous for people who don't have air conditioning, especially for the young, old, and infirm. Extreme heat can stunt crops and drive down yields, and it can stress livestock and other animals.

Cool nights are important too. It is the cold nights of winter that help control the mountain pine beetle, ticks, and other pests. With fewer cold nights, the mountain pine beetle has wreaked havoc over the west in the past few years.

Last week, my colleagues on the Senate Climate Action Task Force and I heard from Dave Chadwick of the Montana Wildlife Federation about climate change effects on the Montana's hunting industry, with hunters going to their favorite spots and no longer seeing the game they used to see.

Jill Ryan, the commissioner in Eagle County, CO, told us they are already seeing fewer ski days in her Rocky Mountain community—not good for Colorado's iconic ski industry.

In Maine and New Hampshire, out-of-control tick populations are attacking the region's iconic moose. A single moose might now carry tens of thousands of ticks. It is sickening to see, and it is no good for the New Hampshire moose-watching industry. Yes, people actually do that. Between mud and snowmobile trails and fewer, sicker, tick-encrusted moose, it ain't looking good.

This chart shows how much water various glaciers around the world have lost each year since 1980. Last year the melting was equivalent to each glacier losing 33 inches right off the top. Look at these losses—31 consecutive years in a row of loss.

Last year's melt continues a sobering trend of heavier and heavier losses. The red line here shows the total amount of ice loss since 1980. It shows that glacial ice loss has been accelerated. Average losses were about 9 inches in the 1980s, 15 inches in the 1990s, and 29 inches in the 2000s. Again, this is measurement, folks, not conjecture.

The oceans are warming. Why? Well, it is simple. As greenhouse gases trap heat in the atmosphere, the heat is absorbed by the oceans. Over 90 percent of the excess heat from greenhouse gases that has been trapped has actually gone into the oceans, and 4 out of 5 analyses say that the heat in the upper ocean set a record high in 2014.

These data show the decades-long warming of the surface oceans. Colleagues who still insist that the climate has not warmed in the past couple of decades—look at the oceans, that's where the heat went. This warming is changing the oceans and changing our fisheries and, because of the law of thermal expansion, contributing to sea-level rise.

In 2014, global sea level was at its highest point since we began measuring it with satellites in 1993, which is shown on the chart.

In 2014, we saw the sea level continuing to rise at a rate of about ⅛ of an inch per year. We measure this in Rhode Island. Sea level at the Newport Naval Station has increased almost 10 inches since the 1930s. This matters when you have storms riding in on higher seas and tearing away our Rhode Island coastline. Sea level rise matters a lot to my constituents.

Measurements are confirming what the scientists have predicted: The seas are rising because the oceans are warming and ice on land is melting. The climate is warming because greenhouse gases are trapping heat from the Sun in the atmosphere.

Again, these are irrefutable facts, confirmed by experts and scientific organizations and big corporations such as Walmart. Here is the reason. The main culprit behind the changes we are observing is carbon dioxide building up in the atmosphere, which in 2014 reached record levels. The global average exceeded 400 parts per million in 2014. In context, for as long as human beings have been on the planet, it has been between about 170 and 300. For our whole duration as a species, that has been the range. Now we are out of it by over 400 and climbing. The global carbon dioxide levels haven't been this high in human experience.

Where are we headed in 2015? Well, these trends are likely continuing. Scientists are already predicting that 2015 will eclipse 2014 in the record books for global temperature change. In 2015 we can expect that the temperatures will continue to go up, the seas will continue to rise, and glaciers will continue to melt. It won't stop unless we choose to stop what is causing it.

We know our binge of carbon pollution is driving these changes. May I say that today a news report has come out that shows one of the biggest carbon polluters of all, ExxonMobil, knows that our binge of carbon pollution is driving these changes and spent decades covering up what they knew with a fusillade of lies that they launched to try to continue to sell their product. This is what folks who are engaged in climate denial are buying into—a campaign of lies from a fossil fuel company, ExxonMobil, that itself knows better. I will have more on that story later.

We can't just keep our heads buried in the sand. We have to wake up. We have to wake up to the facts, and we have to wake up to our duty.

I appreciate the patience of my friend the Senator from Utah.

With that, I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE FREAKISH YEAR IN BROKEN CLIMATE RECORDS

(By Tom Randall, July 17, 2015)

STATE OF THE CLIMATE: BROKEN

The annual State of the Climate report is out, and it's ugly. Record heat, record sea levels, more hot days and fewer cool nights, surging cyclones, unprecedented pollution, and rapidly diminishing glaciers.

The U.S. National Oceanic and Atmospheric Administration (NOAA) issues a report each year compiling the latest data gathered by 413 scientists from around the world. It's 288 pages, but we'll save you some time. Here's a review, in six charts, of some of the climate highlights from 2014.

TEMPERATURES SET A NEW RECORD

It's getting hot out there. Four independent data sets show that last year was the hottest in 135 years of modern record keeping. The map above shows temperature departure from the norm. The eastern half of North America was one of the few cool spots on the planet.

SEA LEVELS ALSO SURGE TO A RECORD

The global mean sea level continued to rise, keeping pace with a trend of 3.2 millimeters per year over the last two decades. The global satellite record goes back only to 1993, but the trend is clear and consistent. Rising tides are one of the most physically destructive aspects of climate change. Eight of the world's 10 largest cities are near a coast, and 40 percent of the U.S. population lives in coastal areas, where the risk of flooding and erosion continues to rise.

GLACIERS RETREAT FOR THE 31ST CONSECUTIVE YEAR

Data from more than three dozen mountain glaciers show that 2014 was the 31st straight year of glacier ice loss worldwide. The consistent retreat of glaciers is considered one of the clearest signals of global warming. Most alarming: The rate of loss is accelerating over time.

THERE ARE MORE HOT DAYS AND FEWER COOL NIGHTS

Climate change doesn't just increase the average temperature—it also increases the

extremes. The chart above shows when daily high temperatures max out above the 90th percentile and nightly lows fall below the lowest 10th percentile. The measures were near their global records last year, and the trend is consistently miserable.

RECORD GREENHOUSE GASES FILL THE ATMOSPHERE

By burning fossil fuels, humans have cranked up concentrations of carbon dioxide in the atmosphere by more than 40 percent since the Industrial Revolution. Carbon dioxide, the most important greenhouse gas, reached a concentration of 400 parts per million for the first time in May 2013. Soon we'll stop seeing concentrations that low ever again.

The data shown are from the Mauna Loa Observatory in Hawaii. Data collection was started there by C. David Keeling of the Scripps Institution of Oceanography in March 1958. This chart is commonly referred to as the Keeling curve.

THE OCEANS ABSORB CRAZY AMOUNTS OF HEAT

The oceans store and release heat on a massive scale. Over shorter spans of years to decades, ocean temperatures naturally fluctuate from climate patterns like El Niño and what's known as the Pacific Decadal Oscillation. Longer term, oceans are absorbing even more global warming than the surface of the planet, contributing to rising seas, melting glaciers, and dying coral reefs and fish populations.

In 2015 the world has moved into an El Niño warming pattern in the Pacific Ocean. El Niño phases release some of the ocean's stored heat into the atmosphere, causing weather shifts around the world. This El Niño hasn't peaked yet, but by some measures it's already the most extreme ever recorded for this time of year and could lead 2015 to break even more records than last year.

The PRESIDING OFFICER. The Senator from Utah.

PLANNED PARENTHOOD

Mr. LEE. Mr. President, last week I began a thorough examination of the facts in the case of Planned Parenthood and the scandal that is now engulfing our Nation's largest provider of abortions. Today I wish to review briefly the evidence against Planned Parenthood—evidence brought to light thanks to whistleblowers and the conscientious journalists working with an organization called the Center for Medical Progress.

After hearing that Planned Parenthood, in addition to performing almost 1,000 abortions every single day, was also selling the organs and body parts of its victims, CMP began investigating. CMP's investigation, which it calls the Human Capital Project, lasted for more than 2 years. Its findings have finally been published over the last few months in the form of a series of video documentaries posted on the Internet consisting mostly of interviews and undercover reporting of Planned Parenthood officials and facilities.

The videos have sparked debate and controversy and have thrown the abortion industry and its political clients back on their heels. But thanks to an indefensible coverage blackout in the pro-abortion mainstream media, most Americans have never even heard of, much less seen, these videos. Based on the vote the Senate took last month, and in particular based on the lack of substance coming from the other side of the aisle during that debate, it is a good bet that most of our colleagues defending Planned Parenthood haven't seen those videos, either. So I thought it might do some good to at least get the facts into the CONGRESSIONAL RECORD before we move forward.

To date, 10 of the expected 12 videos have been posted on the home page for the Center for Medical Progress. The first video was posted on July 14 and showed a luncheon meeting between CMP investigators posing as corporate buyers of fetal organs and Planned Parenthood's senior director of medical services. In the course of this business lunch, we learn from the senior Planned Parenthood official's own words that Planned Parenthood clinics traffic in the body parts of aborted children as a matter of routine; that Planned Parenthood keeps these transactions at the local franchise level for legal reasons that appear to be designed to sidestep corporate liability; that Planned Parenthood's abortionists may alter their surgical procedures—allegedly after consent forms have been signed—so as to maximize the organ harvest from unborn children. This was the infamous moment when we learned that Planned Parenthood doctors can ''crush below'' and ''crush above'' a baby's most lucrative parts. Finally, we learned that such alterations may involve performing dangerous and illegal partial-birth abortions.

These revelations by themselves—in and of themselves, all by themselves—shock the conscience, but they were only the beginning. In the Center for Medical Progress's second video released on July 21, we witness another undercover business lunch with investigators again posing as corporate organ buyers, this time with the president of Planned Parenthood's Medical Director's Council. What we see in this video, contrary to Planned Parenthood's protestations, is without question a financial negotiation about the price of baby organs. They are not talking about compensating Planned Parenthood for procurement and delivery costs; no, they are haggling. As the official herself, a medical doctor, jokes at one point, ''I want a Lamborghini.''

In another video released August 4, the vice president and medical director of Planned Parenthood of the Rocky Mountains is seen not only discussing exactly this kind of market pricing but the need to conceal such transactions through message discipline. Here we learn that Planned Parenthood physicians do indeed alter their surgical procedures ''in a way that they get the best specimens''—that is, not to serve their patients but to maximize their sales numbers—because, as this vice president boasts, ''My department contributes so much to the bottom line of our organization.''

Subsequent videos have only corroborated these allegations. From the CEO of StemExpress, a major corporate buyer of fetal body parts, we learned that, yes, the price of fetal tissue is driven by supply and demand, not just cost reimbursements. And sometimes this market goes beyond organs and tissue and actually traffics in whole unborn children.

From a fetal tissue producer, we learned that sometimes babies are born alive and are killed outside the womb because, she says, it just fell out. Just this week, a new video showed a Planned Parenthood official admitting that some abortion clinics ''generate a fair amount of income selling baby organs.'' And these are just the undercover videos.

Other videos feature the heart-wrenching testimony of a former StemExpress employee who tells the harrowing stories of her work inside Planned Parenthood clinics. She tells not only of the screaming and crying of the patients but also witnessing unethical behavior by the medical staff. And, yes, the videos also contain horrifying, behind-the-scenes images at Planned Parenthood centers where the exploitation, butchering, and violence are worse than anything one can imagine. The images and stories will pierce the heart of anyone who has a child or has ever been one. But that is exactly why we must watch these videos. For those who don't already know what abortion clinics are like and what they do, these videos must be seen to be believed.

For anyone who has ever wondered why so many Members of Congress, so many citizens want to transfer taxpayer funding of abortion clinics to safe community health centers that actually practice life-preserving medicine as proposed in the bill recently introduced by Senator ERNST, watch these videos and you will know. Watch these videos and you will understand.

Every new video brings further corroboration not simply of particular instances of blood-chilling behavior but of what appears to be a pattern and practice of endangering vulnerable women by manipulating surgical procedures after consent forms have already been signed to perform abortions in a ''less crunchy'' way, for purposes not of women's health but greed; to harvest organs from aborted children and sell them to corporate purchasers; and to conduct this grisly business in secret to avoid public detection and outrage and, quite possibly, criminal indictment—yes, indictment.

That—the potential crimes of the abortion industry evidenced in these videos—will be the topic of my next speech on this scandal, for the behavior documented by the Center for Medical Progress is not just stomach-turning—it is that, to be sure, but it may well also be illegal, violating not only the moral laws of nature and of nature's God, which we already knew, but also the criminal laws of the United States of America.

I would encourage my colleagues and all Americans to view these videos for themselves so that they, too, can judge

for themselves. We should all be warned: The videos are as difficult to watch as they are easy to find, but the price of self-government is self-awareness.

The American people need to know the truth about what actually goes on in America's abortion clinics, what lies are being told, and what crimes are being committed in their name and with their own money. The truth about human life and dignity has the power to set us all free, but first, we have to tell it.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, last week, I spoke about Senate Republicans' virtual shutdown of the judicial nominations process since they took over the majority. Their refusal to respond to the urgent needs of our independent third branch is threatening to harm our justice system and rob the judiciary of outstanding public servants.

One glaring example of this harm is the unnecessary delay of Judge Luis Felipe Restrepo, who was nominated last year to fill an emergency vacancy on the U.S. Court of Appeals for the Third Circuit in Pennsylvania. Judge Restrepo was unanimously confirmed 2 years ago by the Senate to serve as a district court judge. During his tenure as both a Federal district court judge and as a Federal magistrate judge, he has presided over 56 trials that have gone to verdict or judgment. He is superbly qualified, and I have heard no objection to his nomination. Despite his outstanding credentials and experience, it took the Republican majority 7 months just to schedule a hearing in the Judiciary Committee for this qualified nominee.

Judge Restrepo has bipartisan support from both Pennsylvania Senators and was voted out of the Judiciary Committee unanimously by voice vote. Once confirmed, Judge Restrepo will be the first Hispanic judge from Pennsylvania to ever serve on this court and only the second Hispanic judge to serve on the Third Circuit. He has the strong endorsement of the nonpartisan Hispanic National Bar Association. At his confirmation hearing in June, Senator TOOMEY stated that ''there is no question [Judge Restrepo] is a very well qualified candidate to serve on the Third Circuit.'' Senator TOOMEY described Judge Restrepo's life story as ''an American Dream'' and recounted how Judge Restrepo came to the United States from Colombia and rose to the top of his profession by ''virtue of his hard work, his intellect, his integrity.'' I could not agree more.

Given his remarkable credentials, wealth of experience, and strong bipartisan support, you would think the Senate would have confirmed Judge Restrepo months ago. Instead, he was nominated for a judicial emergency vacancy back in November 2014, and for 10 months since his nomination, he has been denied a vote on his confirmation. No Senate Democrat opposes a vote on his nomination. The only ones who are holding up his nomination are the Senate Republicans. I have heard Senator TOOMEY indicate his strong support, and that he would like to see Judge Restrepo receive a vote. I know Senator TOOMEY can be a fierce advocate for issues he cares passionately about, and I hope he will get a firm commitment from the majority leader to schedule a confirmation vote this week.

In addition to Judge Restrepo's nomination, there are 12 other noncontroversial judicial nominees pending on the Executive Calendar waiting for a vote. All of them were approved by voice vote by the Judiciary Committee. There is no reason for Republicans to block these nominees. More than 8 months into this new year, Republican leadership has allowed votes on just six judicial nominees. By this time in 2007, when I was chairman of the Judiciary Committee, we had confirmed 29 judges nominated by President Bush. That is nearly five times more nominees than what this Republican majority has accomplished so far this year. Because of the Republicans' virtual shutdown of the confirmation process, judicial vacancies have increased by more than 50 percent—from 43 to 67. This is demonstrates an astounding neglect of the needs of our independent Third Branch.

Instead of confirming Judge Restrepo and the 12 other noncontroversial judicial nominees on the Executive Calendar, Republicans are talking about another doomed vote on harmful legislation to block women's health care choices. Republicans had already forced a failed ''show vote'' to defund critical health services for women, spending 2 days on that unnecessary political exercise. Although Senate Republicans campaigned last year on the promise that they would govern responsibly if they won the majority, they continue to prioritize divisive issues that play only to their political base and yield no results for the American people.

I am urging Republican leadership to reverse course. Confirm Judge Luis Felipe Restrepo without further delay, and then confirm the other 12 noncontroversial judicial nominees pending on our Executive Calendar.

IMMIGRATION REFORM

Mr. LEAHY. Mr. President, the United States has a proud and unique history as a nation of immigrants. Ever since our founding, we have been a beacon of hope for those seeking opportunity. Generation after generation, our Nation has greatly benefited from the entrepreneurial spirit that these newcomers bring with them. That is as true today as it was 200 years ago.

Our Nation's history with immigration has not always been a story of acceptance. Newcomers have often faced resistance, isolation, discrimination and even racist opposition. Many of us here in this body know those painful stories from our own immigrant families—others here have felt the stinging words of bigotry themselves. My grandparents faced signs telling them to not bother applying for work because of their ancestry but those old stories are hard to imagine today.

That is why it is so shocking to hear the steady rise in racist, xenophobic rhetoric coming from the Republican field of Presidential candidates. These statements are offensive and have no place in our national dialogue. Those who use such rhetoric are fear mongering for political gain. Even in today's hyped up political theater, this kind of language is unacceptable. It is hurtful, harmful, and just plain wrong.

It is incumbent on all of us to speak out against this dehumanizing discourse. A topic as important as immigration is worthy of debate, but in an informed and thoughtful manner. This weekend, Steve Case, a co-founder of America Online, took a powerful stand in an opinion piece in the Washington Post titled ''Business Leaders Must Speak Out Against Trump's Anti-Immigrant Rhetoric.'' Two years ago, as chairman of the Senate Judiciary Committee, I invited Mr. Case to testify before the committee when we were considering comprehensive immigration reform, and he has continued to be a leader on the issue. He is right to stand up, speak out, and call on all Americans to reject the ugly words we are hearing from too many political actors on one of the most pressing matters facing our country.

The growing partisan rhetoric that attempts to equate immigrants with criminals and suggests we deport them en mass is both irrational and dangerous. It is time that they stop. The characterization of immigrants as criminals here to harm us and our communities is not just beneath the dignity of anyone who seeks to lead this Nation as President, it simply is not supported by the evidence. Anyone who listened to the extensive testimony that the Senate Judiciary Committee collected 2 years ago will know that immigrants commit crimes at lower rates than those born in the United States. Many become job producers and the vast majority are hard-working members of our communities who support our economy and strengthen our neighborhoods. No less than Grover

Norquist testified that ''Increased legal immigration will add millions of consumers, workers, renters, and others who will make our economy larger by working with Americans to produce more of the goods and services we demand.''

We must put an end to this destructive anti-immigrant rhetoric and find a way back to the constructive, bipartisan approach to reforming our immigration system. The Senate Judiciary Committee played a critical role in that effort and I am proud of the productive, respectful debates that marked our consideration of comprehensive immigration reform in 2013. Both Democrats and Republicans praised the process as fair and thorough. Bipartisanship was a priority, and of the 136 amendments we adopted in committee, all but 3 passed on a bipartisan basis. As a result of that remarkable effort, the Senate passed comprehensive immigration reform with overwhelming support. If House Republican leaders had simply brought that bill up for a vote, it would have passed and been the law of the land. We would have taken an enormous step forward as a country to fix our broken immigration system.

That bill is an example of all we can accomplish when we put aside hateful slogans and focus on our primary job of actually legislating. I hope that we will return to a bipartisan approach this Congress so that we can again pass legislation that strengthens our communities and our economy, improves our border security, and keeps families together.

There is still strong support for meaningful immigration reform in the Senate, and that is what we should work on here in Congress. There is no excuse for continued inaction and scapegoating. The time for immigration reform is now.

RECOGNIZING DR. YUICHI SHODA, DR. WALTER MISCHEL, AND DR. PHILIP PEAKE

Ms. CANTWELL. Mr. President, basic research is a building block of American innovation. Without it, profound breakthroughs in science, medicine, technology and other fields would simply not happen.

In Washington State, we know investments in basic scientific research are a key ingredient to the future of our information economy—from aerospace and agriculture to technology and health care, and across all sectors of our economy.

It is in that spirit that, today, I recognize my constituent Dr. Yuichi Shoda of the University of Washington and his colleagues, Dr. Walter Mischel and Dr. Philip Peake, for their receipt of a Golden Goose Award for federally funded research.

The Golden Goose Award recognizes the immense benefits of federally funded research to human knowledge and our economy by shining a spotlight on obscure studies that resulted in significant impacts to our society and major breakthroughs.

Dr. Shoda and his colleagues are being honored for their seminal longitudinal research project that has become known as ''the marshmallow study.'' This study, funded by the National Institutes of Health, began in the 1960s. The study presented children aged 4-to-5-years-old with a choice between a single marshmallow they could eat immediately or the promise of two marshmallows for which they would have to wait.

Dr. Shoda and his team discovered a significant correlation between how long children were able to wait for the treat and social and academic traits as they became adults. Their discoveries have led to significant advances in the way we understand the human behaviors and the neuroscience behind self-control and delayed gratification. Already, educators are using Dr. Shoda's research to teach children positive habits at an early age. The implications of this research, from education to retirement and health, are vast.

As Dr. Shoda's project demonstrates, federally funded scientific research builds the foundation upon which new ideas are developed. Dr. Shoda's research also provides an example for why Congress must make robust and strategic investments in basic research across a variety of fields.

I congratulate Dr. Yuichi Shoda and his team for the marshmallow study and wish them a bright future as they continue unlocking new knowledge.

ADDITIONAL STATEMENTS

REMEMBERING PAULA EKONOMOS KOZLEN

● Mrs. BOXER. Mr. President, it is with a heavy heart that I ask my colleagues to join me in honoring the life of my dear friend, Paula Kozlen, a former marketing executive, avid tennis player, world traveler, community leader, beloved wife, sister, stepmother, aunt, and friend, who passed away on August 29, 2015, after a courageous battle with cancer.

Paula was truly one of a kind. Her energy and determination, her sense of humor and adventure, her incredibly kind heart and love of life will always be remembered by everyone lucky enough to have crossed her path during her amazing life.

Paula was born in Illinois on July 26, 1952. After graduating from Western Illinois University with a degree in education, she embarked on a long and successful career in marketing and sales for several major corporations around the country. Paula's career provided her with the opportunity to travel, which became a lifelong passion. She loved visiting new places and developed deep and lasting friendships with people all over the world who were drawn to her extraordinarily compassionate and generous personality. Of all the places she traveled, she found her home in the Coachella Valley of Southern California.

Paula cared so deeply about helping others and improving her community, and she gave her time and energy without reservation. She dedicated herself to supporting music, theatre, and education in the Coachella Valley, served on boards for organizations that provide services to those in need, and dropped everything to help the people of New Orleans after Hurricane Katrina hit in 2005. Paula was the type of person who wouldn't hesitate when she saw people in need and knew that she could make a difference.

My entire family joins me in mourning her loss and sending our heartfelt condolences to Paula's husband, Vern Kozlen; sisters Katherine Wolcott, and husband Keene, and Vicki Griffin, and husband Michael; step-son Mark Kozlen; and niece Katherine Griffin.

Those of us who were lucky enough to have known Paula will be forever grateful for the extraordinary time we had with her, the example she set, and the wonderful memories that we will forever cherish. We truly walked in her light. She will be deeply missed.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 messages received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 4:30 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House agreed to the amendment of the Senate to the bill (H.R. 720) to improve intergovernmental planning for and communication during security incidents at domestic airports, and for other purposes.

ENROLLED BILL SIGNED

At 6:40 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker had signed the following enrolled bill:

H.R. 720. An act to improve intergovernmental planning for and communication during security incidents at domestic airports, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2035. A bill to provide for the compensation of Federal employees affected by a lapse in appropriations.

H.R. 36. An act to amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

MEASURES READ THE FIRST TIME ON SEPTEMBER 15, 2015

The following bills were read the first time:

H.R. 36. An act to amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

S. 2035. A bill to provide for the compensation of Federal employees affected by a lapse in appropriations.

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–2816. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Small Rural Hospital Improvement Grant Program for Fiscal Year 2013''; to the Committee on Finance.

EC–2817. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business'' ((RIN1545–BJ49) (TD 9733)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Finance.

EC–2818. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Integrated Hedging Transactions of Qualifying Debt'' ((RIN1545–BK98) (TD 9736)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Finance.

EC–2819. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Application of the Cooperative and Small Employer Charity Pension Flexibility Act'' (Notice 2015–58) received during adjournment of the Senate in the Office of the President of the Senate on September 1, 2015; to the Committee on Finance.

EC–2820. A communication from the Acting Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's 2015 Annual Report of the Supplemental Security Income Program; to the Committee on Finance.

EC–2821. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Allocation of W–2 Wages in a Short Taxable Year and in Acquisition or Disposition'' ((RIN1545–BM11) (TD 9731)) received during adjournment of the Senate in the Office of the President of the Senate on September 1, 2015; to the Committee on Finance.

EC–2822. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Procedure: Examination of Returns and Claims for Refund, Credit, or Abatement; Determination of Tax Liability'' (Rev. Proc. 2015–42) received during adjournment of the Senate in the Office of the President of the Senate on September 1, 2015; to the Committee on Finance.

EC–2823. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to sections 36(c) and 36(d) of the Arms Export Control Act (DDTC 15–023); to the Committee on Foreign Relations.

EC–2824. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 15–059); to the Committee on Foreign Relations.

EC–2825. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) and 36(d) of the Arms Export Control Act (DDTC 15–006); to the Committee on Foreign Relations.

EC–2826. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 15–083); to the Committee on Foreign Relations.

EC–2827. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 15–040); to the Committee on Foreign Relations.

EC–2828. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 15–081); to the Committee on Foreign Relations.

EC–2829. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to section 36(c) of the Arms Export Control Act (DDTC 15–057); to the Committee on Foreign Relations.

EC–2830. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, six (6) reports relative to vacancies in the Department of State, received during adjournment of the Senate in the Office of the President of the Senate on September 4, 2015; to the Committee on Foreign Relations.

EC–2831. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Premarket Approval of Pediatric Uses of Devices—FY 2013''; to the Committee on Health, Education, Labor, and Pensions.

EC–2832. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''United States Tobacco Product Exports That Do Not Conform to Tobacco Product Standards''; to the Committee on Health, Education, Labor, and Pensions.

EC–2833. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Patient Navigator Outreach and Chronic Disease Prevention Program''; to the Committee on Health, Education, Labor, and Pensions.

EC–2834. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Administration of Multiemployer Plan Participant Vote on an Approved Suspension of Benefits Under MPRA'' ((RIN1545–BM89) (TD 9735)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Health, Education, Labor, and Pensions.

EC–2835. A communication from the Deputy Director, National Institutes of Health, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''National Institute on Minority Health Disparities Research Endowments'' (RIN0925–AA61) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Health, Education, Labor, and Pensions.

EC–2836. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–140, ''Ruby Whitfield Way Designation Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2837. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–141, ''Title IX Athletic Equity Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2838. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–142, ''Naval Lodge Building, Inc. Real Property Tax Relief Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2839. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–143, ''Margaret Peters and Roumania Peters Walker Tennis Courts Designation Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2840. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–144, ''Closing of Public Street adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in U.S. Reservations 243 and 244, S.O. 13–14605, Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2841. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–145, ''Medical Marijuana Cultivation Center Expansion Temporary Amendment Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2842. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–146, ''Sale of Synthetic Drugs Temporary Amendment Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2843. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 21–147, ''Ward 5 Paint Spray Booth Moratorium Temporary Act of 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2844. A communication from the District of Columbia Auditor, transmitting, pursuant to law, reports entitled ''District of Columbia Agencies' Compliance with Fiscal Year 2015 Small Business Enterprise Expenditure Goals through the 3rd Quarter of Fiscal Year 2015''; to the Committee on Homeland Security and Governmental Affairs.

EC–2845. A communication from the President of the United States, transmitting, pursuant to law, a report relative to an alternative plan for pay increases for civilian Federal employees covered by the General

Schedule and certain other pay systems in January 2016; to the Committee on Homeland Security and Governmental Affairs.

EC–2846. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–84, Technical Amendments'' (FAC 2005–84) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Homeland Security and Governmental Affairs.

EC–2847. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–84, Small Entity Compliance Guide'' (FAC 2005–84) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Homeland Security and Governmental Affairs.

EC–2848. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; EPEAT Items'' ((RIN9000–AM71) (FAC 2005–84)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Homeland Security and Governmental Affairs.

EC–2849. A communication from the Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–84, Introduction'' (FAC 2005–84) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Homeland Security and Governmental Affairs.

EC–2850. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Visas: Interview Waiver Authority'' (RIN1400–AD80) received during adjournment of the Senate in the Office of the President of the Senate on September 4, 2015; to the Committee on the Judiciary.

EC–2851. A communication from the Chief Impact Analyst, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Animals on VA Property'' (RIN2900–AO39) received during adjournment of the Senate in the Office of the President of the Senate on August 27, 2015; to the Committee on Veterans' Affairs.

EC–2852. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Federal Acquisition Regulation Supplement: Denied Access to NASA Facilities (2015-N002)'' (RIN2700–AE14) received during adjournment of the Senate in the Office of the President of the Senate on September 3, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2853. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc. Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2015–0492)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2854. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2014–0282)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2855. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2014–0282)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2856. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Helicopters'' ((RIN2120–AA64) (Docket No. FAA–2014–0643)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2857. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) (Airbus Helicopters) Helicopters'' ((RIN2120–AA64) (Docket No. FAA–2014–0364)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2858. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; REIMS AVIATION S.A. Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2015–3398)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2859. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; British Aerospace Regional Aircraft Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2015–2048)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2860. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; British Aerospace Regional Aircraft Airplanes'' ((RIN2120–AA64) (Docket No. FAA–2015–1744)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2861. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments (26); Amdt. No. 3655'' (RIN2120–AA65) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2862. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments (28); Amdt. No. 3656'' (RIN2120–AA65) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2863. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Areas R–3804A, R–3804B, and R–3804C; Fort Polk, LA'' ((RIN2120–AA66) (Docket No. FAA–2014–0639)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2864. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Kelso, WA'' ((RIN2120–AA66) (Docket No. FAA–2015–1133)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2865. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and E Airspace; Santa Rosa, CA'' ((RIN2120–AA66) (Docket No. FAA–2015–3325)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2866. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Toledo, WA'' ((RIN2120–AA66) (Docket No. FAA–2015–1135)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2867. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Santa Rosa, CA'' ((RIN2120–AA66) (Docket No. FAA–2015–1481)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2868. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of VOR Federal Airways; Northeastern United States'' ((RIN2120–AA66) (Docket No. FAA–2015–1650)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2869. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace, and Amendment of Class D and E Airspace; Ogden-Hinckley Airport, UT'' ((RIN2120–AA66) (Docket No. FAA–2015–0671)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2870. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace, and Amendment of Class D Airspace; Ogden, Hill AFB, UT'' ((RIN2120–AA66) (Docket No. FAA–2015–0691)) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2871. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulation; Perth Amboy, New Jersey'' ((RIN1625–AA09) (Docket No. USCG–2015–0374)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2872. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC'' ((RIN1625–AA08) (Docket No. USCG–2015–0663)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2873. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone; San Diego Bay, San Diego, CA'' ((RIN1625–AA08) (Docket No. USCG–2015–0738)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2874. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone; San Diego Bay, San Diego, CA'' ((RIN1625–AA08) (Docket No. USCG–2015–0568)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2875. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone'' ((RIN1625–AA08) (Docket No. USCG–2015–0427)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2876. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation, Tennessee River 647.0 to 648.0; Knoxville, TN'' ((RIN1625–AA08) (Docket No. USCG–2015–0337)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2877. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone—Correction'' ((RIN1625–AA08) (Docket No. USCG–2015–0705)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2878. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation; Suncoast Super Boat Grand Prix; Gulf of Mexico, Sarasota, FL'' ((RIN1625–AA08) (Docket No. USCG–2015–0216)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2879. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Upper Mississippi River MM 180.0 to 180.5; St. Louis, MO'' ((RIN1625–AA00) (Docket No. USCG–2015–0704)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2880. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone—Oil Exploration Staging Area in Dutch Harbor, AK'' ((RIN1625–AA00) (Docket No. USCG–2015–0246)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2881. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone; Martha's Vineyard, Massachusetts'' ((RIN1625–AA00) (Docket No. USCG–2015–0731)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2882. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Cleveland National Air Show; Lake Erie and Cleveland Harbor, Cleveland, OH'' ((RIN1625–AA00) (Docket No. USCG–2015–0718)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2883. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone, Swim Around Charleston; Charleston, SC'' ((RIN1625–AA00) (Docket No. USCG–2015–0276)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2884. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Whiskey Island Paddleboard Festival and Race; Lake Erie, Cleveland, OH'' ((RIN1625–AA00) (Docket No. USCG–2015–0716)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2885. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Eighth Coast Guard District Annual and Recurring Safety Zones Update'' ((RIN1625–AA00) (Docket No. USCG–2013–1060)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2886. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Indian River Bay; Millsboro, Delaware'' ((RIN1625–AA00) (Docket No. USCG–2015–0563)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2887. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; U.S. Army Exercise, Des Plaines River, Channahon, IL'' ((RIN1625–AA00) (Docket No. USCG–2015–0760)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2888. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone, James River; Newport News, VA'' ((RIN1625–AA00) (Docket No. USCG–2015–0701)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2889. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones; Marine Events held in the Sector Long Island Sound Captain of the Port Zone'' ((RIN1625–AA00) (Docket No. USCG–2015–0646)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2890. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Carly's Crossing; Outer Harbor, Gallagher Beach, Buffalo, NY'' ((RIN1625–AA00) (Docket No. USCG–2015–0717)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2891. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; TriMet Tilikum Crossing Bridge Fireworks Display, Willamette River, Portland, OR'' ((RIN1625–AA00) (Docket No. USCG–2015–0510)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2892. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Waddington Homecoming Fireworks, St. Lawrence River, Ogden Island, NY'' ((RIN1625–AA00) (Docket No.

USCG–2015–0715)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2893. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi Sea, AK'' ((RIN1625–AA00) (Docket No. USCG–2015–0248)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2894. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone, Seward, AK'' ((RIN1625–AA00) (Docket No. USCG–2015–0800)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2895. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Schuylkill River; Philadelphia, PA'' ((RIN1625–AA00) (Docket No. USCG–2015–0094)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2896. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Unexploded Ordnance Removal, Vero Beach, FL'' ((RIN1625–AA00) (Docket No. USCG–2015–0737)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2897. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Incredoubleman Triathlon; Henderson Bay, Lake Ontario, Sackets Harbor, NY'' ((RIN1625–AA00) (Docket No. USCG–2015–0509)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2898. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones and Regulated Navigation Area; Shell Arctic Drilling/Exploration Vessel and Associated Voluntary First Amendment Area, Portland, OR'' ((RIN1625–AA00) (Docket No. USCG–2015–0543)) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2899. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Federal Acquisition Regulation Supplement: NASA Capitalization Threshold (NFS Case 2015–N004)'' (RIN2700–AE23) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2900. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.'' (RIN2700–AE18) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2901. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 9'' (RIN0648–BF00) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science , and Transportation.

EC–2902. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer'' (RIN0648–XE077) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2903. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Snapper-Grouper Fishery of the South Atlantic; 2015 Recreational Accountability Measure and Closure for South Atlantic Golden Tilefish'' (RIN0648–XE087) received during adjournment of the Senate in the Office of the President of the Senate on September 2 , 2015; to the Committee on Commerce, Science, and Transportation.

EC–2904. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Snapper-Grouper Fishery of the South Atlantic; 2015 Recreational Accountability Measure and Closure for South Atlantic Hogfish'' (RIN0648–XE088) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2905. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015–2016 Biennial Specifications and Management Measures; Inseason Adjustments'' (RIN0648–BF27) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2906. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XD974) received during adjournment of the Senate in the Office of the President of the Senate on September 3, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2907. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XE023) received during adjournment of the Senate in the Office of the President of the Senate on September 3, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2908. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XD996) received during adjournment of the Senate in the Office of the President of the Senate on September 3, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2909. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Catch; Emergency Rule'' (RIN0648–BF24) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2910. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XE139) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2911. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; Highly Migratory Species Fishery Management Plan; Revision to Prohibited Species Regulations'' (RIN0648–BE80) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2912. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; West Coast Salmon Fisheries; 2015 Management Measures; Correction'' (RIN0648–XD843) received during adjournment of the Senate in the Office of the President of the Senate on September 2, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2913. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; Highly Migratory Species Fisheries; California Swordfish Drift Gillnet Fishery; Vessel Monitoring System Requirements'' (RIN0648–BE25) received during adjournment of the Senate in the Office of the President of the Senate on September 3, 2015; to the Committee on Commerce, Science, and Transportation.

EC–2914. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; Modifications of the West Coast Commercial, Recreational, and Treaty Indian Salmon Fisheries;

Inseason Actions Number 16 Through Number 21'' (RIN0648–XE111) received in the Office of the President of the Senate on September 8, 2015; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–76. A communication from a citizen of the State of Illinois memorializing the State of Illinois's petition to the United States Congress calling for a constitutional convention for the purpose of proposing amendments; to the Committee on the Judiciary.

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 Mrs. BOXER (for herself, Mr. DURBIN, Ms. WARREN, Ms. HIRONO, and Mr. MURPHY):

S. 2037. A bill to amend the Higher Education Act of 1965 to clarify the Federal Pell Grant duration limits of borrowers who attend an institution of higher education that closes or commits fraud or other misconduct, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORKER (for himself, Mr. WARNER, Mr. VITTER, and Ms. WARREN):

S. 2038. A bill to provide certainty that Congress and the Administration will undertake substantive and structural housing finance reform, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ENZI (for himself and Mr. BARRASSO):

S. 2039. A bill to designate the mountain at the Devils Tower National Monument, Wyoming, as Devils Tower, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CORNYN (for himself, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. HATCH, Mr. MENENDEZ, Mr. GRAHAM, Mr. WHITEHOUSE, Mr. LEE, Ms. KLOBUCHAR, Mr. FLAKE, Mr. FRANKEN, Mr. CRUZ, Mr. COONS, Mr. TILLIS, Mr. BLUMENTHAL, Mr. PERDUE, and Mr. MARKEY):

S. 2040. A bill to deter terrorism, provide justice for victims, and for other purposes; to the Committee on the Judiciary.

By Mr. CASEY (for himself, Mr. CASSIDY, and Mr. MENENDEZ):

S. 2041. A bill to promote the development of safe drugs for neonates; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MURRAY (for herself, Ms. MIKULSKI, Mr. FRANKEN, Mr. WHITEHOUSE, Ms. WARREN, Mr. BLUMENTHAL, and Mr. REED):

S. 2042. A bill to amend the National Labor Relations Act to strengthen protections for employees wishing to advocate for improved wages, hours, or other terms or conditions of employment and to provide for stronger remedies for interference with these rights, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GRASSLEY:

S. 2043. A bill to revise counseling requirements for certain borrowers of student loans and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THUNE (for himself, Mr. SCHATZ, and Mr. MORAN):

S. 2044. A bill to prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services offered in interstate commerce that were the subject of the contract, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 163

At the request of Mr. SCHUMER, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 163, a bill to establish a grant program to help State and local law enforcement agencies reduce the risk of injury and death relating to the wandering characteristics of some children with autism and other disabilities.

S. 235

At the request of Mr. WYDEN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 235, a bill to provide for wildfire suppression operations, and for other purposes.

S. 298

At the request of Mr. GRASSLEY, the names of the Senator from Connecticut (Mr. MURPHY) and the Senator from South Carolina (Mr. SCOTT) were added as cosponsors of S. 298, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option of providing services to children with medically complex conditions under the Medicaid program and Children's Health Insurance Program through a care coordination program focused on improving health outcomes for children with medically complex conditions and lowering costs, and for other purposes.

S. 613

At the request of Mrs. GILLIBRAND, the name of the Senator from New Jersey (Mr. BOOKER) was added as a cosponsor of S. 613, a bill to amend the Richard B. Russell National School Lunch Act to improve the efficiency of summer meals.

S. 804

At the request of Ms. COLLINS, the name of the Senator from Hawaii (Mr. SCHATZ) was added as a cosponsor of S. 804, a bill to amend title XVIII of the Social Security Act to specify coverage of continuous glucose monitoring devices, and for other purposes.

S. 928

At the request of Mrs. GILLIBRAND, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Virginia (Mr. WARNER), the Senator from Indiana (Mr. DONNELLY), the Senator from North Dakota (Ms. HEITKAMP), the Senator from West Virginia (Mr. MANCHIN), the Senator from Rhode Island (Mr. REED) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 928, a bill to reauthorize the World Trade Center Health Program and the September 11th Victim Compensation Fund of 2001, and for other purposes.

S. 1020

At the request of Mr. VITTER, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 1020, a bill to amend title XVIII of the Social Security Act to ensure the continued access of Medicare beneficiaries to diagnostic imaging services, and for other purposes.

S. 1106

At the request of Mr. PORTMAN, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. 1106, a bill to amend the Higher Education Act of 1965 to allow the Secretary of Education to award Early College Federal Pell Grants.

S. 1127

At the request of Mr. REED, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1127, a bill to amend the Internal Revenue Code of 1986 to expand the denial of deduction for certain excessive employee remuneration, and for other purposes.

S. 1214

At the request of Mr. MENENDEZ, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1214, a bill to prevent human health threats posed by the consumption of equines raised in the United States.

S. 1390

At the request of Mr. GARDNER, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1390, a bill to help provide relief to State education budgets during a recovering economy, to help fulfill the Federal mandate to provide higher educational opportunities for Native American Indians, and for other purposes.

S. 1659

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. MURPHY) was added as a cosponsor of S. 1659, a bill to amend the Voting Rights Act of 1965 to revise the criteria for determining which States and political subdivisions are subject to section 4 of the Act, and for other purposes.

S. 1719

At the request of Ms. COLLINS, the name of the Senator from West Virginia (Mrs. CAPITO) was added as a cosponsor of S. 1719, a bill to provide for the establishment and maintenance of a National Family Caregiving Strategy, and for other purposes.

At the request of Ms. BALDWIN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 1719, supra.

S. 1831

At the request of Mr. TOOMEY, the names of the Senator from North Carolina (Mr. BURR), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Connecticut (Mr. MURPHY) were added as cosponsors of S. 1831, a bill to revise section 48 of title 18, United States Code, and for other purposes.

S. 1833

At the request of Mr. CASEY, the name of the Senator from Connecticut (Mr. MURPHY) was added as a cosponsor of S. 1833, a bill to amend the Richard B. Russell National School Lunch Act to improve the child and adult care food program.

S. 1916

At the request of Mr. THUNE, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1916, a bill to include skilled nursing facilities as a type of health care provider under section 254(h) of the Communications Act of 1934.

S. 1919

At the request of Mr. LANKFORD, the names of the Senator from South Dakota (Mr. THUNE) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of S. 1919, a bill to amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes.

S. 1938

At the request of Mr. BLUMENTHAL, the name of the Senator from Massachusetts (Ms. WARREN) was added as a cosponsor of S. 1938, a bill to amend title 38, United States Code, to improve the approval of certain programs of education for purposes of educational assistance provided by the Department of Veterans Affairs, and for other purposes.

S. 1968

At the request of Mr. BLUMENTHAL, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1968, a bill to amend the Securities Exchange Act of 1934 to require certain companies to disclose information describing any measures the company has taken to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the company's supply chains.

S. 1982

At the request of Mr. CARDIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1982, a bill to authorize a Wall of Remembrance as part of the Korean War Veterans Memorial and to allow certain private contributions to fund the Wall of Remembrance.

S. 2026

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 2026, a bill to foster bilateral engagement and scientific analysis of storing nuclear waste in permanent repositories in the Great Lakes Basin.

S. 2028

At the request of Mr. WHITEHOUSE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2028, a bill to amend the Federal Credit Union Act, to advance the ability of credit unions to promote small business growth and economic development opportunities, and for other purposes.

S. 2034

At the request of Mr. TOOMEY, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2034, a bill to amend title 18, United States Code, to provide additional aggravating factors for the imposition of the death penalty based on the status of the victim.

S. CON. RES. 4

At the request of Mr. BARRASSO, the name of the Senator from Colorado (Mr. GARDNER) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution supporting the Local Radio Freedom Act.

S. RES. 199

At the request of Mr. NELSON, the name of the Senator from New Hampshire (Ms. AYOTTE) was added as a cosponsor of S. Res. 199, a resolution expressing the sense of the Senate regarding establishing a National Strategic Agenda.

S. RES. 214

At the request of Mrs. FEINSTEIN, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. Res. 214, a resolution commemorating the 85th anniversary of the Daughters of Penelope, a preeminent international women's association and an affiliate organization of the American Hellenic Educational Progressive Association.

AMENDMENT NO. 2656

At the request of Mr. CASSIDY, his name was added as a cosponsor of amendment No. 2656 proposed to H.J. Res. 61, a joint resolution amending the Internal Revenue Code of 1986 to exempt employees with health coverage under TRICARE or the Veterans Administration from being taken into account for purposes of determining the employers to which the employer mandate applies under the Patient Protection and Affordable Care Act.

At the request of Mr. CORNYN, his name was added as a cosponsor of amendment No. 2656 proposed to H.J. Res. 61, supra.

At the request of Mr. HOEVEN, his name was added as a cosponsor of amendment No. 2656 proposed to H.J. Res. 61, supra.

At the request of Mr. HELLER, his name was added as a cosponsor of amendment No. 2656 proposed to H.J. Res. 61, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself and Mr. BARRASSO):

S. 2039. A bill to designate the mountain at the Devils Tower National Monument, Wyoming, as Devils Tower, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. ENZI. Mr. President, I wish to speak on the introduction of legislation which designates the mountain and populated place at Devils Tower National Monument as Devils Tower. This is legislation I am introducing today with the support of Senator JOHN BARRASSO of Wyoming and in conjunction with Representative CYNTHIA LUMMIS who is introducing this same measure in the House.

Devils Tower National Monument is not an ordinary national treasure. There are approximately 117 national monuments, but Devils Tower has the distinction as being America's first national monument. Established by President Theodore Roosevelt on September 24, 1906, Devils Tower National Monument preserves the unique geologic, cultural, and aesthetic values of this breathtaking feature.

Devils Tower has a rich cultural history, and has many meanings to different cultures, including the many peoples and Native American tribes that have historical and geographic ties to Northeastern Wyoming. The Geographic Names Information System, GNIS, prepared by the U.S. Geological Survey, USGS, acknowledges there are sixteen documented variant names to Devils Tower. Documents submitted to the U.S. Board on Geographic Names cite approximately 94 different published names for Devils Tower. Meanwhile, official Federal records indicate the name Devils Tower has existed for over 130 years.

This is why I am glad there was an opportunity for public comment and debate on the most recent petition to rename Devils Tower. The results of that 5 month public comment period demonstrated there is strong support from the community and local officials to retain the Devils Tower name for the geologic feature, the populated place, and the National Monument.

Now that there has been an opportunity to hear comments about the most recent petition to rename Devils Tower, the Wyoming congressional delegation is introducing this legislation to preserve the Devils Tower name for the feature, populated place, and for America's first national monument. We also encourage the U.S. Board on Geographic Names, U.S. Department of Interior, and the President to suspend any additional consideration on the petition to rename the features at Devils Tower National Monument.

Mr. President, I ask unanimous consent that a letter of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CROOK COUNTY
BOARD OF COMMISSIONERS,
Sundance, WY, September 11, 2015.

In 1868, the Wyoming Territory was created. In 1885, Crook County was created. In 1890, the Territory of Wyoming obtained statehood. In 1906, the first national monument, Devils Tower, was established. The United States was the first country in the world to set aside its most significant places

as national park units so they could be enjoyed by all.

Over the centuries, many people have passed through or have inhabited the region now known as Crook County. The many Native American tribes who were in the area called the summit different names over time. By establishing the summit and the surrounding grounds as Devils Tower National Monument, the decision was made as to its official name.

The Crook County Commission would like to submit comments from the public it began to solicit since March 2015. A survey was developed and was inserted in the local newspapers, put on Crook County's website and each Commissioner hand delivered comment sheets throughout the county to the area businesses and town halls. We received comments from within the County and from around the world. As of August 3, 2015, we have received 954 comments about the summit: 34 approve the name change and 886 oppose the name change. For changing the name of the settlement called Devils Tower, we received 953 comments: 37 for the name change and 855 against it.

Crook County citizens believe the Tower is special. There is evidence that organized gatherings have taken place at the Tower since the first recorded climb of the Tower July 4, 1893. Citizens urged State and Federal officials to recognize the importance of this landmark and pressed for improved roads to the Tower in the early 1900's. Since then, the Tower has been the site of numerous weddings, reunions, picnics, school outings and other important life events. Always, the Tower has been referred to with reverence. It is always called ''Devils Tower'' or ''the Tower''. We are not aware of any pet name or slang references used by local citizens. One definition of the word, ''sacred'', in Webster's Dictionary means ''worthy of respect''. By that definition, Devils Tower is sacred.

If the name is changed to ''Bear Lodge'', it will diminish the uniqueness of the site. This special place deserves more than a generic name. There is already the Bear Lodge Mountains east of the Monument. There is a rare earths mine being built in the Bear Lodge Mountains called the Bear Lodge Project. There is Bear Butte in Meade County, SD which is reportedly a sacred site to some Native Americans. By having so many places with ''Bear'' already in its name, it creates confusion for the over 400,000 annual visitors who come specifically to northeast Wyoming to see Devils Tower.

Records show the name Devils Tower has existed officially for over 130 years. In the Bureau of Land Management Cadastral Survey Land Plats dated August 24, 1883, it is indicated that the summit was named Devils Tower. This is based upon field notes from 1881 and 1882. Those field notes dated July 23, 1883 state ''A prominent land mark is a high peak in Section 7 called Devils Tower''.

Today is not the time to debate whether the site is sacred to some tribes or not. Anecdotal evidence exists that some tribes did avoid the area due to the ''bad gods''. Please see some of the comments submitted. For example, the Campstool Ranch was established by Lady Grace Esme MacKenzie in 1881. ''The location of the ranch near the base of Devils Tower was chosen not due to its scenery but because the Native Americans were scared of it and would not go near it''. This was in 1881. The Battle of the Little Bighorn was June 1876 and the Indian Wars continued until 1918.

We do not believe that all elders, leaders and individual tribal members find the name of the summit highly offensive, insulting, etc., as stated in the petition. There is an organization called Devils Tower Sacred to Many People whose mailing address is Devils Tower, Wyoming which owns land near the Tower. This federally recognized non-profit exists to benefit the Native Americans who live on reservations. The international monetary supports this organization receives show many people recognize the name Devils Tower. The Native artists who sell their wares to the organization recognize the name also and support their efforts.

We do not believe the summit was given its name purposely due to white people finding cultural and faith traditions practiced by Native Americans ''evil''. It was the name commonly used by the people who lived in the area. That is why one name was chosen for the summit and for the National Monument. Many tribes have their own historic name for the Tower. The United States Board on Geographic Names Case Brief cites approximately 94 different published names for Devils Tower. We do not believe that over twenty tribes who have potential cultural affiliation with the Tower have reached a consensus to support the proposal of one name for the summit. We believe each tribe will continue to use their traditional name for the Tower and Wyoming natives will do the same. Devils Tower has always been open to anyone to use as a respectful place to carry on their own traditions and we expect it to remain that way. The Tower can be shared by all.

The Crook County Commission questions what significant or historic benefit will be advanced by changing the name of the summit located at Devils Tower National Monument? Will the name change proposed by the petitioners benefit many, just a few, or will it cause more dissention? Therefore: We request the Wyoming Board on Geographic Names and the United States Board on Geographic Names retain the name of the summit as Devils Tower.

We question why the settlement of Devils Tower is being petitioned for change. There is a United States Post Office there and we have not received a recommendation from the USPS for a name change. Records show that particular Post Office has been in existence since 1925. Reading some of the comments we received from our Wyoming natives, we ask ''How can people who do not even live in the area propose a name change to a populated place?'' Numerous comments from the people who have Devils Tower as their mailing address mention the unnecessary distress of changing the name of their business and changing their address on passports, official documents and just receiving mail and packages.

Crook County received 855 comments to retain the name of the settlement of Devils Tower. Again we ask: what significant or historic benefit will be advanced by changing the name of the settlement? A name change should be proposed by the citizens it would most affect. Therefore, we request the name of the settlement be retained as Devils Tower, Wyoming.

Sincerely,

KELLY B. DENNIS,
Chairman.
JEANNE A. WHALEN,
Vice-Chairwoman.
STEVE J. STAHLA,
Member.

By Mr. CORNYN (for himself, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. HATCH, Mr. MENENDEZ, Mr. GRAHAM, Mr. WHITEHOUSE, Mr. LEE, Ms. KLOBUCHAR, Mr. FLAKE, Mr. FRANKEN, Mr. CRUZ, Mr. COONS, Mr. TILLIS, Mr. BLUMENTHAL, Mr. PERDUE, and Mr. MARKEY):

S. 2040. A bill to deter terrorism, provide justice for victims, and for other purposes; to the Committee on the Judiciary.

Mr. CORNYN. 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. 2040

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 ''Justice Against Sponsors of Terrorism Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) International terrorism is a serious and deadly problem that threatens the vital interests of the United States.

(2) The Constitution confers upon Congress the power to punish crimes against the law of nations and therefore Congress may by law impose penalties on those who provide material support to foreign organizations engaged in terrorist activity, and allow for victims of international terrorism to recover damages from those who have harmed them.

(3) International terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States.

(4) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States.

(5) It is necessary to recognize the substantive causes of action for aiding and abetting and conspiracy liability under the Anti-Terrorism Act of 1987 (22 U.S.C. 5201 et seq.).

(6) The decision of the United States Court of Appeals for the District of Columbia in Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has been widely recognized as the leading case regarding Federal civil aiding and abetting and conspiracy liability, including by the Supreme Court of the United States, provides the proper legal framework for how such liability should function in the context of the Anti-Terrorism Act of 1987 (22 U.S.C. 5201 et seq.).

(7) The United Nations Security Council declared in Resolution 1373, adopted on September 28, 2001, that all countries have an affirmative obligation to ''[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts,'' and to ''[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice''.

(8) Consistent with these declarations, no country has the discretion to engage knowingly in the financing or sponsorship of terrorism, whether directly or indirectly.

(9) Persons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities.

(10) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within

the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) PURPOSE.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

SEC. 3. FOREIGN SOVEREIGN IMMUNITY.

Section 1605(a) of title 28, United States Code, is amended—

(1) by amending paragraph (5) to read as follows:

''(5) not otherwise encompassed in paragraph (2), in which money damages are sought against a foreign state arising out of physical injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of the office or employment of the official or employee (regardless of where the underlying tortious act or omission occurs), including any statutory or common law tort claim arising out of an act of extrajudicial killing, aircraft sabotage, hostage taking, terrorism, or the provision of material support or resources for such an act, or any claim for contribution or indemnity relating to a claim arising out of such an act, except this paragraph shall not apply to—

''(A) any claim based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function, regardless of whether the discretion is abused; or

''(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, interference with contract rights, or any claim for emotional distress or derivative injury suffered as a result of an event or injury to another person that occurs outside of the United States; or''; and

(2) by inserting after subsection (d) the following:

''(e) DEFINITIONS.—For purposes of subsection (a)(5)—

''(1) the terms 'aircraft sabotage', 'extrajudicial killing', 'hostage taking', and 'material support or resources' have the meanings given those terms in section 1605A(h); and

''(2) the term 'terrorism' means international terrorism and domestic terrorism, as those terms are defined in section 2331 of title 18.''.

SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

(a) IN GENERAL.—Section 2333 of title 18, United States Code, is amended by adding at the end the following:

''(d) LIABILITY.—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, or that was so designated as a result of such act of international terrorism, liability may be asserted as to any person who aided, abetted, or conspired with the person who committed such an act of international terrorism.''.

(b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES ACT.—Nothing in the amendments made by this section affects immunity of a foreign state, as that term is defined in section 1603 of title 28, United States Code, from jurisdiction under other law.

SEC. 5. PERSONAL JURISDICTION FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

Section 2334 of title 18, United States Code, is amended by inserting at the end the following:

''(e) PERSONAL JURISDICTION.—The district courts shall have personal jurisdiction, to the maximum extent permissible under the 5th Amendment to the Constitution of the United States, over any person who commits or aids and abets an act of international terrorism or otherwise sponsors such act or the person who committed such act, for acts of international terrorism in which any national of the United States suffers injury in his or her person, property, or business by reason of such an act in violation of section 2333.''.

SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL ACTIONS REGARDING TERRORIST ACTS.

Section 2337 of title 18, United States Code, is amended to read as follows:

''§ 2337. Suits against Government officials

''No action may be maintained under section 2333 against—

''(1) the United States;

''(2) an agency of the United States; or

''(3) an officer or employee of the United States or any agency of the United States acting within the official capacity of the officer or employee or under color of legal authority.''.

SEC. 7. SEVERABILITY.

If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any other person not similarly situated or to other circumstances, shall not be affected by the holding.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action—

(1) pending on, or commenced on or after, the date of enactment of this Act; and

(2) arising out of an injury to a person, property, or business on or after September 11, 2001.

By Mr. GRASSLEY:

S. 2043. A bill to revise counseling requirements for certain borrowers of student loans and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GRASSLEY. Mr. President, student debt is a big and growing concern for millions of American graduates.

As we look at ways of addressing this problem, it is important to keep in mind that about 90 percent of that debt is owed to the Federal Government. The Federal Government currently holds more than $1 trillion of student loan debt. That makes the U.S. Department of Education one of the country's largest lenders.

As such, any solution to the debt problem needs to examine the Federal Government's lending practices. Federal banking regulations require commercial lenders to confirm a borrower's ability to repay the loan. Federal student loans are given without a credit check or any analysis of the student's ability to repay the loan in the future. This is intentional, since many prospective college students have no credit and little or no income, but it also puts all the burden on student borrowers to make sure they don't borrow more than they need.

As a Nation, we have accepted that it makes moral and financial sense to assist low-income Americans in accessing higher education opportunities, and we do that to the tune of billions of dollars through Pell grants, subsidized student loans, and other student aid programs. However, while need-based Federal student aid is vital to help students who could not otherwise afford to attend college, students are able to borrow well in excess of their financial need and potentially in excess of what they will be able to repay. So something needs to be done about this.

College financial aid officers are required under law to issue Federal loans up to the full amount for which the student is eligible even if a financial aid administrator knows a student is borrowing more than the student needs and will likely have trouble repaying. Think about that. Even if the financial aid administrator knows the student plans to put the funds toward an engagement ring or sports car, Federal rules say they must issue the loan. If a bank followed the same rules as the Federal Government follows for student aid, it would be accused of predatory lending.

There have been lots of suggestions about how to address the student debt issue, but if you don't tackle the root of the problem, it is like closing the barn door after the horse has gotten out. A good place to start is looking at how our current Federal student lending practices may be helping to fuel the student debt problem. For example, about 60 percent of the students at the University of Iowa graduate with debt, and their average debt is about $25,000. However, the university estimates that of that $25,000 figure, about $13,000—or 60 percent of the debt—is debt that was incurred to pay for tuition, room and board, and books, and the remainder is for what can be called lifestyle expenses. In other words, about 40 percent of the average student debt taken out by the University of Iowa student goes toward lifestyle-enhancing extras.

The Senate Health, Education, Labor and Pensions Committee will be looking at a number of reforms to the student loan program as it drafts legislation to reauthorize and reform the Higher Education Act. I know that our esteemed Chairman ALEXANDER has in the past proposed giving higher education institutions additional tools to reduce unnecessary student borrowing. I have worked with Senator FRANKEN of Minnesota on some measures to provide more information about college costs when students are selecting a college in the very first place, which will hopefully encourage more price competition to combat rising tuition.

There is room for a lot of innovation in higher education. I don't pretend to have all the answers and solutions to the problem of college cost and student debt, but I am proposing some very simple, very commonsense first steps to empower students with the information they need to make sound financial decisions.

The Higher Education Act already contains a requirement for colleges to provide counseling to new borrowers of Federal student loans. However, the current disclosures in the law do not do enough to encourage students to understand the scope and impact of the debt they will face when they graduate.

I am here on the floor to introduce legislation I have entitled the Know Before You Owe Federal Student Loan Act. This bill strengthens the current student loan counseling requirement by making the counseling an annual requirement before new loans are disbursed rather than just for first-time borrowers. My bill then adds several key components to the information institutions of higher education are required to share with students as part of that loan counseling. Under my bill, colleges would have to provide an estimate of the student's projected loan debt-to-income ratio at the time of their graduation. This would be based on the starting wages for that student's program of study and the estimated total student loan debt the student will likely take out to complete the program. That way, students will have a real picture of the student loan payment they will face and whether they will be able to afford those payments with their likely future income from whatever program they majored in.

We often hear that statistics show that on average a college degree results in higher earnings over a lifetime. However, not all college degrees have the same earning potential, and many students will be in for a very rude awakening when they graduate and find that what they are able to earn with their degree does not match the level of their debt. Students deserve to have this information when they are deciding how much to borrow, not after they graduate with unmanageable debt.

This legislation I am proposing will also ensure that students are counseled to borrow only the minimum amount necessary to cover expenses and informed that they do not have to accept the full amount of the loan offered. Students will also be given options for reducing borrowing through scholarships, reduced expenses, work study, or other work opportunities. Also, not graduating on time can significantly increase student loan debt, so students will be counseled on the impact of adding an additional year of study to the total indebtedness and how they can stay on track to graduate on time.

Crucially, the bill also requires that a student manually enter either in writing or through electronic means the exact dollar amount of the Federal direct loan funding the student desires to borrow. The current process almost makes borrowing the maximum the default option. If you want to borrow less than is offered, you have to ask for less.

Because the amount of Federal student loans a student is eligible to borrow is not limited by the calculation of the financial need or ability to repay, it is important that the student make a conscious, informed decision about how much to borrow rather than simply accepting the total amount of the Federal student loan which the law allows them to borrow.

Many schools already make a concerted effort to counsel students against over-borrowing, and such efforts are showing signs of success right in my home State of Iowa.

My alma mater, the University of Northern Iowa, created a program 5 years ago with the theme ''Live Like a Student.'' The program includes workshops and courses designed to educate students on the importance of living within their means while they are in school so they need not live like a student later in life. As a result, the university has lowered average student debt from more than $26,000 to $23,163.

Grand View University, also in my State, has a financial empowerment plan where students and families construct a comprehensive 4-year financing plan. Under this plan, borrowing is based on the student's future earning potential in the student's field of study. The 4-year plan also helps ensure students graduate on time, and tuition increases are kept at 2 percent a year over those 4 years.

Iowa Student Loan, my State-based nonprofit lender, also has a program called the Student Loan Game Plan, which is an online interactive resource that calculates a student's likely debt-to-income ratio. It walks students through how their borrowing will affect their lifestyle in the future and what actions they can take now to reduce their borrowing. As a result, in the past year 18.2 percent of the students who participated decreased the amount they planned to borrow by an average of $3,680, saving students $2.1 million in additional loan debt.

My legislation would also require that students receive regular statements about their loan while they are in school, just as they will when they graduate and start repaying. With just about any other kind of loan you can think of, borrowers start receiving statements right away and are expected to make payments. With Federal student loans, payments are not required until a period of time after graduation and no statements are sent out until that time, so students forget about the amount of debt they are accruing until they graduate and get their first bill.

What is more, many Federal student loans still accrue interest while the student is in school, which will be added to the total loan when they start repaying. That means that not only do students forget how much debt they have while in school, making them less conscientious about living like a student, but their loan may actually be growing while they are in school. Students have the option to pay that interest while they are in school so that it isn't capitalized into their loan. However, few students take advantage of this option. The regular statement my bill calls for would encourage this practice so students get used to paying some amount toward their loans even before they graduate. This will also make students more aware of their borrowing and less likely to overborrow each time they take out a new loan.

A college education generally remains a good investment. However, when students' academic dreams become a nightmare upon graduation because they borrowed more from the Federal Government than they can afford to repay with the degree they earned, they understandably feel something is very wrong. The Federal Government, as the lender making these loans, has a responsibility to at least ensure that students know what they are getting themselves into before they get in over their heads. My legislation is intended to deal with that issue.

I urge my colleagues to support this bill to prevent more students from drowning in Federal student loan debt, and I will introduce that bill at this particular time.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2663. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health.

SA 2664. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, supra.

SA 2665. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, supra.

TEXT OF AMENDMENTS

SA 2663. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health; as follows:

On page 4, line 1, strike ''it is the sense of the Senate that'' and insert ''the Senate''.

On page 4, strike line 2 and all that follows through page 5, line 23, and insert the following:

(1) commends ORWH for its work over the past 25 years to improve and save the lives of women worldwide and expresses that ORWH must remain intact for this and future generations;

(2) recognizes that there remain striking sex and gender differences among many diseases and conditions on which ORWH should continue to focus;

(3) encourages ORWH to continue to focus on ensuring that NIH supports biomedical research that considers sex as a biological variable across the research spectrum; and

(4) encourages the Director of the NIH to continue to consult and involve ORWH on all matters related to the influence of sex and gender on health, especially those matters pertaining to the consideration of sex as a biological variable in research with vertebrate animals and humans.

SA 2664. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health; as follows:

In the eighteenth whereas clause, strike ''CDC'' and insert ''Centers for Disease Control and Prevention''.

SA 2665. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health; as follows:

Amend the title so as to read: ''A resolution celebrating the 25th anniversary of the Office of Research on Women's Health at the National Institutes of Health.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on September 16, 2015, at 10 a.m.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on September 16, 2015, at 10 a.m., in room SD–406 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Oversight of the Cause, Response, and Impacts of EPA's Gold King Mine Spill.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 16, 2015, at 2:30 p.m., to conduct a hearing entitled ''The U.S. Role and Strategy in the Middle East: Syria, Iraq, and the Fight against ISIS.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on September 16, 2015, in room SD–628 of the Dirksen Senate Office Building, at 2:15 p.m., to conduct an oversight hearing entitled ''EPA's Gold King Mine Disaster: Examining the Harmful Impacts to Indian Country.''

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

COMMITTEE ON THE JUDICIARY

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on September 16, 2015, at 10:15 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Reforming the Electronic Communications Privacy Act.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate on September 16, 2015, at 10 a.m., in room SD–430 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Achieving the Promise of Health Information Technology: Improving Care Through Patient Access to Their Records.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 16, 2015, at 10 a.m., to conduct a hearing entitled ''A Review of Regulatory Reform Proposals.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on September 16, 2015, at 2:30 p.m. in room SR–418 of the Russell Senate Office Building.

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

NOTICE OF PROPOSED RULEMAKING (NPRM OR NOTICE), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

Mr. HATCH. Mr. President, I ask unanimous consent that the attached documentation from the Office of Compliance be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, September 16, 2015.

Hon. ORRIN G. HATCH,
President Pro Tempore, U.S. Senate,
The Capitol, Washington, DC.

DEAR MR. PRESIDENT: Section 202(d) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. §1312(d), requires the Board of Directors of the Office of Compliance (''the Board'') to issue regulations implementing Section 202 of the CAA relating to sections 101 through 105 of the Family and Medical Leave Act of 1993 (''FMLA''), 29 U.S.C. §§2611 through 2615, made applicable to the legislative branch by the CAA. 2 U.S.C. §1312(a)(1).

Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting ''such notice to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal.''

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the President Pro Tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 60 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA-200, 110 2nd Street, S.E., Washington, DC 20540; 202-724-9250.

Sincerely,

BARBARA L. CAMENS,
Chair of the Board of Directors,
Office of Compliance.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

NOTICE OF PROPOSED RULEMAKING (NPRM OR NOTICE), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

Modifications to the rights and protections under the Family and Medical Leave Act of 1993 (FMLA), Notice of Proposed Rulemaking, as required by 2 U.S.C. §1331, Congressional Accountability Act of 1995, as amended (CAA).

Background:

The purpose of this Notice is to propose modifications to the existing legislative branch FMLA substantive regulations under section 202 of the CAA (2 U.S.C. §1302 et seq.), which applies the rights and protections of sections 101 through 105 of the FMLA to covered employees. These modifications are necessary in order to bring existing legislative branch FMLA regulations (adopted April 16, 1996) in line with recent statutory changes to the FMLA, 29 U.S.C. §2601 et seq.

What is the authority under the CAA for these proposed substantive regulations?

Section 202(a) of the CAA provides that the rights and protections established by sections 101 through 105 of the FMLA (29 U.S.C. §§2611–2615) shall apply to covered employees.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1384 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in the subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The modifications to the regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued.

Are there currently FMLA regulations in effect?

Yes. On January 22, 1996, the OOC Board adopted and submitted for publication in the Congressional Record the original FMLA final regulations implementing section 202 of the CAA, which applies certain rights and protections of the FMLA. On April 15, 1996, pursuant to section 304(c) of the CAA, the House and the Senate passed resolutions approving the final regulations. Specifically, the Senate passed S. Res. 242, providing for approval of the final regulations applicable to the Senate and the employees of the Senate; the House passed H. Res. 400 providing for approval of the final regulations applicable to the House and the employees of the House; and the House and the Senate passed S. Con. Res. 51, providing for approval of the final regulations applicable to employing offices and employees other than those offices and employees of the House and the Senate. After the Senate and the House passed these resolutions, the OOC Board formally issued the FMLA regulations on April 19, 1996.

What does the FMLA provide?

The FMLA entitles eligible employees of covered employers to take job-protected, unpaid leave, or to substitute appropriate accrued paid leave, for up to a total of 12 workweeks in a 12-month period: for the birth of the employee's son or daughter and to care for the newborn child; for the placement of a son or daughter with the employee for adoption or foster care; to care for the employee's spouse, parent, son, or daughter with a serious health condition; when the employee is unable to work due to the employee's own serious health condition; or for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (''qualifying exigency leave''). An eligible employee may also take up to 26 workweeks of FMLA leave during a ''single 12-month period'' to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

FMLA leave may be taken in a block, or under certain circumstances, intermittently or on a reduced leave schedule basis. In addition to providing job-protected family and medical leave, employers must also maintain any preexisting group health plan coverage for an employee on FMLA-protected leave under the same conditions that would apply if the employee had not taken leave. 2 U.S.C. §1312(a)(1) (incorporating 29 U.S.C. §2614). Once the leave period is concluded, the employer is required to restore the employee to the same or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. *Id*. Under the FMLA statute, but not applicable to the legislative branch, if an employee believes that his or her FMLA rights have been violated, the employee may file a complaint with the Department of Labor (DOL) or file a private lawsuit in federal or state court. Under the CAA, a covered employee of the legislative branch may be awarded damages if the employing office has violated the employee's FMLA rights. The employee is entitled to reimbursement for any monetary loss incurred, equitable relief as appropriate, interest, attorneys' fees, expert witness fees, and court costs. Liquidated damages also may be awarded. *See* 29 U.S.C. §2617.

What changes do the proposed amendments make?

First, these proposed amendments add the military leave provisions of the FMLA enacted under the National Defense Authorization Acts (NDAA) for Fiscal Years 2008 and 2010 (Pub.L. 110–181, Div. A, Title V §§585(a)(2), (3)(A)–(D) and Pub.L. 111–84, Div. A, Title V §565(a)(1)(B) & (4)), which: extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a servicemember's deployment; define those deployments covered under these provisions; extend FMLA military caregiver leave for family members of current servicemembers to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty; and extend FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses. This NPRM also sets forth a proposed revision to the regulation defining ''spouse'' under the FMLA in light of the DOL's February 25, 2015 Final Rule on the definition of spouse and the United States Supreme Court's decision in *Obergefell, et al., v. Hodges*, No. 14–556, 2015 WL 2473451 (U.S. June 26, 2015), which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Why are these changes to the FMLA regulations necessary?

The CAA requires that the FMLA regulations applicable to the legislative branch and promulgated by the OOC, be the same as substantive regulations issued by the Secretary of Labor, unless good cause is shown for deviation therefrom. On March 8, 2013, the DOL issued its Final Rule implementing its amended FMLA regulations (77 FR 8962), which provide for military caregiver leave for a veteran, qualifying exigency leave for parental care, and special leave calculations for flight crew employees. The OOC Board is required pursuant to the CAA to amend its regulations to achieve parity unless there is good cause shown to deviate from the DOL's regulations.

In addition, the FMLA amendments providing additional rights and protections for servicemembers and their families were enacted into law by the NDAA for Fiscal Years 2008 and 2010. The Congressional committee reports accompanying the bills containing these provisions do not comply with Section 102(b)(3) of the CAA in that, while the bills do contain sections relating ''to terms and conditions of employment,'' the accompanying reports do not ''describe the manner in which the provision of the bill [relating to terms and conditions of employment] . . . apply to the legislative branch'' or ''include a statement of the reasons the provision does not apply [to the legislative branch]'' (in the case of a provision not applicable to the legislative branch). 2 U.S.C. §1302(3); House Committee on Armed Services, H.Rpt. 110–146 (May 11, 2007), H.Rpt. 111–166 (June 18, 2009). Consequently, when the FMLA was amended to add these additional rights and protections, Congress failed to make clear its intent as to whether these additional rights and protections apply to the legislative branch.[1] Therefore, as there is no provision in the CAA that states that the CAA will be considered amended whenever the FMLA is amended, these proposed amendments to the regulations are necessary to resolve any ambiguity regarding the applicability of the 2008 and 2010 FMLA amendments to the legislative branch by ensuring that protections under the CAA are in line with existing public and private sector protections under the FMLA.[2] Accordingly, while these regulations may technically require employing offices to do more than what section 202 of the CAA currently requires, the Board recommends that Congress use its rulemaking authority to clarify that the rights and protections for legislative branch servicemembers and their families have been expanded in a manner consistent with the 2008 and 2010 amendments to the FMLA.

What do the military family leave provisions provide?

Section 585(a) of the NDAA for Fiscal Year 2008 amends the FMLA to provide leave to eligible employees of covered employers to care for injured servicemembers and for any qualifying exigency arising out of the fact that a covered family member is on active duty or has been notified of an impending call to active duty status in support of a contingency operation (collectively referred to herein as ''military family leave''). The provisions of this amendment providing FMLA leave to care for a covered servicemember became effective on January 28, 2008, when the law was enacted. The provisions of this amendment providing for FMLA leave due to a qualifying exigency arising out of a covered family member's active duty (or call to active duty) status were effective on January 16, 2009.

Section 565(a) of the NDAA for Fiscal Year 2010, enacted on October 28, 2009, amends the military family leave provisions of the FMLA. Pub. Law 111–84. The Fiscal Year 2010 NDAA expands the availability of qualifying exigency leave and military caregiver leave. Qualifying exigency leave, which was made available to family members of the National Guard and Reserve components under the Fiscal Year 2008 NDAA, is expanded to include family members of the Regular Armed Forces. The entitlement to qualifying exigency leave is expanded by substituting the term ''covered active duty'' for ''active duty'' and defining covered active duty for a member of the Regular Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country'' and for a member of the Reserve components of the Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.'' 29 U.S.C. §2611(14). Prior to the Fiscal Year 2010 NDAA amendments, there was no requirement that members of the National Guard and Reserves be deployed to a foreign country.

The Fiscal Year 2010 NDAA amendments expand the definition of a serious injury or illness for military caregiver leave for current members of the Armed Forces to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty. 29 U.S.C. §2611(18)(A). These amendments also expand the military caregiver leave provisions of the FMLA to allow family members to take military caregiver leave to care for certain veterans. The definition of a ''covered servicemember,'' which is the term the Act uses to indicate the group of military members for whom military caregiver leave may be taken, is broadened to include a veteran with a serious injury or illness who is receiving medical treatment, recuperation, or therapy, if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date of the medical treatment, recuperation, or therapy. 29 U.S.C. §2611(15)(B). The amendments define a serious injury or illness for a veteran as a ''qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.'' 29 U.S.C. §2611(18)(B).

What is the effect of amending the definition of "spouse"?

Amending the definition of ''spouse'' brings the regulations in line with the DOL's February 25, 2015 Final Rule and the United States Supreme Court's decision in *Obergefell et al.* v. *Hodges*.

On February 25, 2015, the DOL published its Final Rule for 29 CFR 825 in the Federal Register, Vol. 80, No. 37, 9989. This Final Rule changed the definition of ''spouse'' under the FMLA in light of the United States Supreme Court's decision in *United States* v. *Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The DOL's Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.

Also, on June 26, 2015, the United States Supreme Court issued *Obergefell et al.* v. *Hodges*, which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

To date, the DOL has not indicated whether it plans to further amend the definition of spouse in light of the United States Supreme Court's decision in *Obergefell et al.* v. *Hodges*. Therefore, the Board invites comment regarding whether the Board should adopt the DOL's current definition of spouse or revise the definition of spouse as the Board has proposed in sections 825.102 and 825.122.

Minor editorial changes are proposed to sections 825.120, 825.121, 825.122, 825.127, 825.201 and 825.202 to make gender neutral references to husbands and wives, and mothers and fathers where appropriate so that they apply equally to opposite-sex and same-sex spouses. The OOC proposes using the terms ''spouses'' and ''parents,'' as appropriate, in these regulations. These editorial changes do not change the availability of FMLA leave but simply clarify its availability for all eligible employees who are legally married.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

Pursuant to section 304 of the CAA, 2 U.S.C. §1384, the procedure for proposing and approving substantive regulations provides that:

(1) the Board of Directors proposes substantive regulations and publishes a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopts regulations and transmits notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President Pro Tempore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) there be final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. §1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedures as enumerated above and as required by statute. The Board will review and respond to any comments received under step (2) of the outline above, and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the practices and policies particular to the legislative branch.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate and other employing offices?

No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees. *See* 2 U.S.C. §1331(e)(2).

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the Senate and the Deputy Executive Director for the House of Representatives.

Are these proposed substantive regulations available to persons with disabilities in an alternate format?

This Notice of Proposed Regulations is available on the OOC's web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794(d). This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Annie Leftwood, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9250; TDD: 202–426–1912; FAX: 202–426–1913.

60-DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the OOC's proposed regulations set forth in this Notice are invited for a period of sixty (60) days following the date of the appearance of this Notice in the *Congressional Record*.

How do I submit comments?

Comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. It is requested, but not required, that an electronic version of any comments be provided either on an accompanying computer disk or e-mailed to the OOC via its web site. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number).

Am I allowed to view copies of comments submitted by others?

Yes. Copies of submitted comments will be available for review on the OOC's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Summary:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 202 of the CAA applies to employees covered by the CAA, the rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§2611–2615. The above provisions of section 202 became effective on January 1, 1997. 2 U.S.C. §1312.

The Board of Directors of the Office of Compliance (OOC) is now publishing proposed amended regulations to implement section 202 of the CAA, 2 U.S.C. §§1301–1438, as applied to covered employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The purpose of these amended regulations is to implement section 202 of the CAA. In this Notice of Proposed Rulemaking (NPRM or Notice) the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the six Congressional instrumentalities. Accordingly:

(1) *Senate*. It is proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the OOC's Deputy Executive Director for the Senate.

(2) *House of Representatives*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the OOC's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the OOC's Executive Director.

Dates: Comments are due within 60 days after the date of publication of this Notice in the *Congressional Record*.

Section-by-Section Discussion of Proposed Changes to the FMLA Regulations

The following is a section-by-section discussion of the proposed revisions. Where a change is proposed to a regulatory section, that section is discussed below. However, as the DOL has significantly reorganized its FMLA regulations, which the OOC's proposed regulations mirror, many of the sections are moved into other areas of the subpart. The OOC as a result will use the proposed section and numbers to provide explanation and analysis of changes. In addition, even if a section is not discussed, there may be minor editorial changes or corrections that do not warrant discussion. The titles to each section of the existing regulations are in the form of a question. The proposal would reword each question into the more common format of a descriptive title, and the OOC invites comments on whether this change is helpful. In addition, several sections have been restructured and reorganized to improve the accessibility of the information (*e.g.*, guidance on leave for pregnancy and birth of a child is addressed in one consolidated section; an employing office's notice obligations are combined in one section).

Section by Section Discussion

Subpart A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

Section 825.102 Definitions.

For the reasons stated below, the Board finds good cause to depart from the DOL regulations with respect to some of the definitions. For example, the term ''Act'' as defined in the DOL regulations and referring to the FMLA can be confused with the Congressional Accountability Act (CAA). Accordingly, the definition of ''Act'' is excluded from the Board's proposed regulations. In addition, to avoid any confusion, the definition for ''Administrator'' in the DOL regulations has been deleted. Similarly, as there is no airline flight crew covered under the CAA, the definition of ''airline flight crew employee'' has been deleted in the Board's proposed regulations as have all references to ''airline flight crew employee.''

Because the DOL definitions of ''commerce and industry or activity affecting commerce'' and ''applicable monthly guarantee'' involve concepts that do not apply to employing offices covered by the CAA, the Board finds good cause to exclude these definitions from the proposed regulations.

Because the DOL's definition of ''eligible employee'' (paragraphs ii(3)(4)(5)(6)(7) in section 825.102) is not consistent with the definition of ''eligible employee'' in CAA section 202(a)(2)(B), the Board finds good cause to keep the definition of ''employee'' that is used in the current version of the OOC FMLA regulations and to exclude the definition in the DOL regulation.

Likewise, because the definition of ''employer'' in CAA section 202(a)(2)(A) is inconsistent with the definition in the DOL regulations, the Board finds good cause to keep the definition of ''employing office'' found in the current regulations.

In the paragraphs defining ''health care provider,'' to avoid confusion, the Board is substituting ''the Secretary'' with ''the Department of Labor.'' Thus, the OOC FMLA regulations include in the definition of ''health care provider'' as ''any other person determined by the *Department of Labor* to be capable of providing health care services.'' 825.102(1)(ii) (emphasis added).

Because these terms are not applicable to employing offices covered by the CAA, the Board has also found good cause to exclude from the proposed OOC regulations the DOL definitions of ''person'' and ''public agency.''

Under the paragraph defining ''physical or mental disability,'' the Board has replaced the language from the DOL regulations indicating that 29 CFR part 1630 *defines* these terms with language that states that regulations at 29 CFR part 1630 issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 *et seq*., as amended, *provide guidance* to these terms. (Italics added).

The Board is proposing to adopt the following definition of ''spouse'':

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either: (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Section 825.105 Counting employees for determining coverage.

This section does not apply to the CAA and will remain reserved in the OOC's regulations.

Section 825.106 Joint Employer Coverage.

As joint employment relationships are treated differently under the CAA than by the DOL, the Board finds good cause to keep the language in the current OOC regulations in paragraphs (b) through (e) of this section. Also, as it is not applicable under the CAA, the Board finds good cause to exclude from its definitions language relating to Professional Employer Organizations (PEOs) as joint employers. As the DOL has noted, PEOs contract with private small businesses to provide services that large businesses can afford, but small businesses cannot, such as compliance with government standards, employer liability management, retirement benefits, and other employment benefits. Congress already provides these services for its employees.

Sections 825.107–825.109 Successor in interest coverage; Public agency coverage; Federal agency coverage.

These sections do not apply to the CAA and will remain reserved in the OOC's regulations. However, the Board invites comment with respect to whether the DOL section 825.107, Successor in interest coverage, should be adopted for the legislative branch.

Section 825.110 Eligible employee.

The Board sees good cause to exclude from this section the following language from the DOL regulations, which is not applicable to the CAA:

''(3) Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. (*See* §825.105(b) regarding employees who work outside the U.S.)''

Similarly, the Board sees good cause to exclude from the OOC regulations the following paragraph:

''(e) Whether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee gives notice of the need for leave. Whether the leave is to be taken at one time or on an intermittent or reduced leave schedule basis, once an employee is determined eligible in response to that notice of the need for leave, the employee's eligibility is not affected by any subsequent change in the number of employees employed at or within 75 miles of the employee's worksite, for that specific notice of the need for leave. Similarly, an employer may not terminate employee leave that has already started if the employee-count drops below 50. For example, if an employer employs 60 employees in August, but expects that the number of employees will drop to 40 in December, the employer must grant FMLA benefits to an otherwise eligible employee who gives notice of the need for leave in August.''

Section 825.111 Determining whether 50 employees are employed within 75 miles.

This section does not apply to the CAA and will remain reserved in the OOC regulations.

Section 825.120 Leave for pregnancy or birth.

References in the DOL's regulations to state law in this section and other sections throughout the DOL's regulations have not been adopted by the Board because state law does not apply to the legislative branch.

Further, in this section and other sections throughout the DOL regulations, any references to spouses who are employed at two different worksites of an employer located more than 75 miles from each other have not been adopted by the Board because such scenarios are not applicable to the legislative branch.

Subpart B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

Section 825.206 Interaction with the FLSA.

Although the DOL amended its FMLA regulations to add computer employees to the list of exempt employees who do not lose their FLSA exempt status despite being provided unpaid FMLA leave, the Board finds good cause not to include ''computer employees'' to the list of employees who may qualify as exempt from the overtime and minimum wage requirements of the FLSA. In light of the fact that the Board's September 29, 2004 Proposed Regulations implementing exemptions from the overtime pay requirements under the Fair Labor Standards Act of 1938 (FLSA) were never enacted into law and the existing OOC FLSA Regulations do not include exemptions for computer employees, the OOC's FMLA regulations should not include these employees in this section. The Board specifically seeks comments to this departure from the DOL regulations.

Further, any references in this section and other sections throughout the DOL regulations which place limitations on an employee who works for an employing office with fewer than 50 employees have not been adopted by the Board because such limitations do not apply to the legislative branch. *See* 825.111.

Section 825.207 Substitution of paid leave.

The DOL regulations under section 825.207(f) permit an employer to require that an employee's use of paid compensatory time for a FMLA reason can be used against the employee's FMLA leave entitlement.

As the Board does not know whether or under what circumstances, employing offices currently allow or require that paid compensatory time be used for a FMLA reason and be counted against the employee's FMLA leave entitlement, the Board proposes that the comparable OOC FMLA regulation read as follows:

Under the FLSA, an employing office always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

The Board seeks comments from interested parties as to whether such a provision is appropriate for the legislative branch.

Section 825.209 Maintenance of employee benefits.

The Board has changed what it believes to be a typographical error in the DOL regulations and cross references this section with section 825.102 and not section 825.800 when referring to the definition of ''group health plan.''

Section 825.215 Equivalent position.

Any references from the DOL regulations in this section and other sections to the Employee Retirement Income Security Act (ERISA) have not been adopted by the Board because ERISA does not apply to the legislative branch.

Section 825.216 Limitations on employee's right to reinstatement.

The Board questions whether the following language in section 825.216(a)(3) of the DOL regulations applies to the legislative branch: ''On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer. *See* §825.107.''

The Board proposes that the OOC regulations contain the following language and requests comments from interested parties, especially with respect to caucus or committee

employees: ''On the other hand, if an employee was hired to perform work for one employing office for a project for a specific time period, and after that time period has ended, the same employee was assigned to work at another employing office on the same project, the successor employing office may be required to restore the employee if it is a successor employing office.''

Section 825.217 Key employee, general rule.

For the reasons stated above, the Board finds good cause not to follow the DOL changes to section 825.217(b) which exempts computer employees from the minimum wage and overtime requirements of the FLSA. As the language in the FLSA is inconsistent with the OOC FLSA regulations, the Board believes that this exemption should not be included. The Board requests comments from interested parties on this deletion.

Section 825.220 Protection for employees who request leave or otherwise assert FMLA rights.

Except for the paragraph related to settlements, as noted below, the Board proposes to adopt the DOL amendments with respect to this section. Section 825.220 provides protection for employees who request leave or otherwise assert FMLA rights and includes new language discussing remedies when an employing office interferes with an employee's rights under the FMLA. This section further clarifies that the prohibition against interference includes prohibitions against retaliation as well as discrimination. The Board believes that there is good cause to make changes to the DOL's clarification of the settlement provision in paragraph (d) of this section. Sections 1414 and 1415 of the CAA govern awards and settlements made as a result of parties proceeding through an OOC process. While the Board recognizes that parties will now have the right to settle or release FMLA claims without the approval of the OOC or a court, parties seeking to release claims which were raised in an OOC process pursuant to CAA sections 1414 and 1415 must still comply with those provisions. Therefore, the Board proposes to insert the following language: ''Except for settlement agreements covered by 1414 and/or 1415 of the Congressional Accountability Act, this does not prevent the settlement or release of FMLA claims by employees based on past employing office conduct without the approval of the Office of Compliance or a court.''

Subpart C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

Section 825.300 Employing office notice requirements.

The Board proposes to follow the DOL regulations insofar as they consolidate the employing office notice requirements from sections 825.300, 825.301, 825.110 and 825.208 into one comprehensive section addressing an employing office's notice obligations. However, the Board finds good cause not to adopt the DOL regulations in section 825.300(a) General notice, but instead to keep the requirements found in the current OOC regulations under section 825.301(a). The DOL regulations, at section 825.300(a), address the requirement that employing offices post a notice on employee rights and responsibilities under the law and the civil monetary penalty provision in the law for employing offices who willfully violate the posting requirement. In 1995, while developing the current FMLA regulations, the OOC Board determined that ''while the CAA incorporates certain specific sections of the FMLA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of sections 109 and 106(b) of the FMLA. For the reasons discussed with respect to the FLSA, as the CAA has not incorporated the notice posting and recordkeeping requirements of the FMLA, the Board will not do so.'' As a result, we find no authority that would require employing offices covered under the CAA to provide notice postings of employees' FMLA rights in the workplace. *See* November 28, 1995 OOC Notice of Proposed Rulemaking S17628. As to the remainder of the paragraphs in this section, the Board finds no reason to depart from the amendments adopted by the DOL.

The Board proposes to adopt section 825.300 regarding the eligibility notice (825.300(b)); the rights and responsibility notice (825.300(c)); the designation notice (825.300(d)); and the consequences of failing to provide notice (825.300(e)).

(b) *Eligibility notice.*

The Board proposes to adopt the DOL amendments with respect to this section. The Board also proposes to adopt the DOL regulations consolidating existing eligibility notice requirements in current sections 825.110 and 825.301 into one section, section 825.300(b) of the OOC regulations and to strengthen and clarify them. For example, section 825.300(b)(1) of the DOL regulations requires an employer to advise an employee of his or her eligibility status when the employee requests leave under the FMLA. The regulations extend the time frame for an employer to respond to an employee's request for FMLA leave from two business days to five business days. Further, the DOL regulations in section 825.300(b)(2) specify what information an employer must convey to an employee as to eligibility status. The Board also proposes in its regulations that an employing office must provide reasons to an employee if he or she is not eligible for FMLA leave, as do the DOL regulations. The regulations limit that notification to any one of the potential reasons why an employee fails to meet the eligibility requirements.

Further, the proposed OOC regulations require employing offices to include in the eligibility notice an explanation of conditions applicable to the use of paid leave that runs concurrently with unpaid FMLA. While this requirement is in the current regulations, it is expanded to require that employing offices also notify employees of their continuing entitlement to take unpaid FMLA leave if they do not comply with an employing office's required conditions for use of paid leave.

(c) *Rights and responsibilities notice.*

The Board is following the DOL regulations separating the notice of rights and responsibilities from the notice of eligibility. Accordingly, if the employee is eligible for FMLA leave, section 825.300(c) of the OOC regulations require the employing office to provide the employee with specific notice of his or her rights and obligations under the law and the consequences of failing to meet those obligations.

To simplify the timing of the notice of rights and responsibilities and to avoid unnecessary administrative burden on employing offices, section 825.300(c)(1) of the Board's proposed regulations requires employing offices to provide this notice to employees at the same time they provide the eligibility notice. Additionally, if the information in the notice of rights and responsibilities changes, section 825.300(c) requires the employing office to notify the employee of any changes within five business days of the first notice of the need for FMLA leave subsequent to any change. This timing requirement will ensure that employees receive timely notice of the expectations and obligations associated with their FMLA leave each leave year and also receive prompt notice of any change in those rights or responsibilities when leave is needed during the leave year.

In this section, employing offices are required to notify employees of the method used for establishing the 12-month period for FMLA entitlement, or, in the case of military caregiver leave, the start date of the ''single 12-month period.''

Employing offices are not, however, required to provide the certification form with the notice of rights and responsibilities. Notice of any changes in the rights and responsibilities notice must be provided within five business days of the first notice of an employee's need for leave subsequent to any change. Electronic distribution of the notice of rights and responsibilities is allowed, so long as the employing office can demonstrate that the employee (who may already be on leave and who may not have access to employing office-provided computers) has access to the information electronically.

(d) *Designation notice.*

The Board proposes to adopt the DOL amendments with respect to this requirement. Section 825.300(d) outlines the requirements of the designation notice an employing office must provide to an employee. Once the employing office has enough information to determine whether the leave qualifies as FMLA leave, the employing office must notify the employee within five business days of making the determination whether the leave has or has not been designated as FMLA leave. This is an increase from the two-day time frame in the current OOC regulations. Further, only one designation notice is required for each FMLA-qualifying reason per leave year, regardless of whether the leave is taken as a continuous block of leave or on an intermittent or reduced leave schedule basis.

Further, the employing office must inform the employee of the number of hours that would be designated as FMLA leave, only upon employee request and no more often than every 30 days if FMLA leave was taken during that period. To the extent it is not possible to provide such information (such as in the case of unforeseeable intermittent leave), the employing office is required to provide such information to the employee every 30 days if the employee took leave during the 30-day period. The employing office is permitted to notify the employee of the hours counted against the FMLA leave entitlement orally and follow up with written notification on a pay stub at the next payday (unless the next payday is in less than one week, in which case the notice must be no later than the subsequent payday). If the employing office requires that paid leave be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must inform the employee of this designation at the time the leave is designated as FMLA leave.

Although the designation notice has to be in writing, it may be in any form, including a notation on the employee's pay stub, and if the leave is not designated as FMLA leave, the notice to the employee may be in the form of a simple written statement. Employing offices can provide an employee with both the eligibility and designation notice at the same time in cases where the employing office has adequate information to designate leave as FMLA leave when an employee requests the leave.

Employing offices must provide written notice of any requirement for a fitness-for-duty certification, including whether the fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's position and, if so, to provide a list of the essential functions of the employee's position with the designation notice. If the employee handbook or

other written documents clearly provides that a fitness-for-duty certificate will be required, written notice is not required, but oral notice must be provided.

Finally, the employing office is required to notify the employee if the information provided in the designation notice changes. For example, if an employee exhausts his or her FMLA leave entitlement and the leave will no longer be designated as FMLA leave, the employing office must provide the employee with written notice of this change consistent with this section.

(e) *Consequences of failing to provide notice.*

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.300(e) clarifies that failure to comply with the notice requirements set forth in this section could constitute interference with, restraint of, or denial of the use of FMLA leave. The Board proposes that the following language be included in the OOC regulations:

Consequences of failing to provide notice. Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered See 825.400(c).

Section 825.301 Designation of FMLA leave.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.301 addresses an employing office's obligations regarding timely designation of leave as FMLA-qualifying and reiterates the requirement to notify the employee of the designation within five business days. Among other things, this section requires that the employing office's designation decision be based only on information received from the employee or the employee's representative and also provides that, if the employing office does not have sufficient information about the employee's reason for leave, the employing office should inquire further of the employee or of the employee's spokesperson.

Section 825.302 Employee notice requirements for foreseeable FMLA leave.

The Board proposes to adopt the DOL amendments with respect to this section. In general, Section 825.302 addresses an employee's obligation to provide notice of the need for foreseeable FMLA leave. This includes requiring an employee to give at least 30 days notice when the need for FMLA leave is foreseeable at least 30 days in advance or ''as soon as practicable'' if leave is foreseeable but 30 days notice is not practicable. In such cases, employees must respond to requests from employing offices to explain why it was not possible to give 30 days notice. Further, the language in this section defines ''as soon as practicable'' to be ''as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.'' This is a change from defining ''as soon as practicable'' as ''ordinarily within one or two business days.''

Further, when an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA but must provide: sufficient information that indicates that a condition renders the employee unable to perform the functions of the job, or if the leave is for a family member, that the condition renders the family member unable to perform daily activities; the anticipated duration of the absence; and whether the employee or the employee's family member intends to visit a health care provider or has a condition for which the employee or the employee's family member is under the continuing care of a health care provider. The regulations set forth the types of information that an employee may have to provide in order to put an employing office on notice of the employee's need for FMLA-protected leave. Rather than establish a list of information that must be provided in all cases, the regulations provide additional guidance to employees so that they would know what information to provide to their employing offices. The nature of the information necessary to put the employing office on notice of the need for FMLA leave will vary depending on the circumstances.

Employees seeking leave for previously certified FMLA leave must inform the employing office that the leave is for a condition, covered servicemember's serious injury or illness, or qualifying exigency that was previously certified or for which the employee has previously taken FMLA leave.

While an employee must still comply with the employing office's usual notice and procedural requirements for calling in absences and requesting leave, under the new regulations, language stating that an employing office cannot delay or deny FMLA leave if an employee fails to follow such procedures has been deleted. However, employing offices may need to inquire further to determine for which reason the leave is being taken, and employees will be required to respond to such inquiries.

Additionally, the regulations make clear that the requirement that an employee and employing office attempt to work out a schedule without unduly disrupting the employing office's operations applies only to military caregiver leave. It does not apply to qualifying exigency leave.

Section 825.303 Employee notice requirements for unforeseeable FMLA leave

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.303 addresses an employee's obligation to provide notice when the need for FMLA leave is unforeseeable. Section 825.303 retains the current standard that employees must provide notice of their need for unforeseeable leave ''as soon as practicable under the facts and circumstances of the particular case,'' but instead of expecting employees to give notice ''within no more than one or two working days of learning of the need for leave,'' in ''unusual circumstances,'' notice should be provided within the time prescribed by the employing office's usual and customary notice requirements applicable to such leave. Section 825.303 also retains the current standard that employees need not assert their rights under the FMLA or even mention the FMLA to put employing offices on notice of the need for unforeseeable FMLA leave, but adds the same language used in proposed section 825.302 clarifying what information must be provided in order to give sufficient notice to the employing office of the need for FMLA leave. New regulations in section 825.303 add that the employee has an obligation to respond to an employing office's questions designed to determine whether leave is FMLA-qualifying, explaining that calling in ''sick,'' without providing additional information, will not be sufficient notice.

Section 825.304 Employee failure to provide notice.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.304 follows the DOL's reorganization of the rules that are applicable to leave foreseeable at least 30 days in advance, leave foreseeable less than 30 days in advance, and unforeseeable leave. This section retains language that FMLA leave cannot be delayed due to lack of required employee notice if the employing office has not complied with its notice requirements.

Section 825.305 Certification, general rule.

The Board proposes to adopt the DOL amendments with respect to this section. Under the FMLA, as applied under the CAA, employing offices are permitted to require that employees provide a certification from their health care provider (or their family member's health care provider, as appropriate) to support the need for leave due to a serious health condition. Section 825.305 sets forth the general rules governing employing office requests for medical certification to substantiate an employee's need for FMLA leave due to a serious health condition. Military family leave provisions have been added to permit employing offices to require employees to provide a certification in the case of leave taken for a qualifying exigency or to care for a covered servicemember with a serious injury or illness. Section 825.305 applies generally to all types of certification. In most cases, for example, former references to ''medical certification'' have been changed to ''certification.''

In section 825.305, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. This time frame has been increased from two to five business days after notice of the need for FMLA leave is provided. Further, the employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration. This section also adds a 15-day time period for providing a requested certification to all cases.

Definitions of incomplete and insufficient certifications have been added in this section, as well as a procedure for curing an incomplete or insufficient certification. This procedure requires that an employing office notify the employee in writing as to what additional information is necessary for the medical certification and provides seven calendar days in which the employee must provide the additional information. If an employee fails to submit a complete and sufficient certification, despite the opportunity to cure the deficiency, the employing office may deny the request for FMLA leave.

Section 825.305 also deletes an earlier provision that if a less stringent medical certification standard applies under the employing office's sick leave plan, only that lesser standard may be required when the employee substitutes any form of paid leave for FMLA leave and replaces it with a provision allowing employing offices to require a new certification on an annual basis for conditions lasting beyond a single leave year.

Section 825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.306 addresses the information an employing office can require in the medical certification to substantiate the existence of a serious health condition (of the employee or a family member) and the employee's need for leave due to the condition, and adds: the health care provider's specialization; guidance as to what may constitute appropriate medical facts, including that a health

care provider may provide a diagnosis; and whether intermittent or reduced schedule leave is medically necessary. Section 825.306 clarifies that where a serious health condition may also be a disability, employing offices are not prevented from following the procedures under the Americans with Disabilities Act (ADA), as applied under the CAA, for requesting medical information. Section 825.306 also contains new language that employing offices may not require employees to sign a release of their medical information as a condition of taking FMLA leave.

This section does not apply to the military family leave provisions. The Board's proposed regulations have revised the current optional certification form into two separate optional forms, one for the employee's own serious health condition and one for the serious health condition of a covered family member.

Section 825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

The Board proposes to adopt the DOL's amendments covered under this section. Section 825.307 addresses the employing office's ability to clarify or authenticate a complete and sufficient FMLA certification. Section 825.307 defines the terms ''authentication'' and ''clarification.'' ''Authentication'' involves providing the health care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the provider. The regulations add that no additional medical information may be requested and the employee's permission is not required. In contrast, ''clarification'' involves contacting the employee's health care provider in order to understand the handwriting on the medical certification or to understand the meaning of a response. As is the case with authentication, no additional information beyond that included in the certification form may be requested. Any contact with the employee's health care provider must comply with the requirements of the HIPAA Privacy Rule.

It is no longer necessary that the employing office utilize a health care provider to make the contact with the employee's health care provider, but the regulations do clarify who may contact the employee's health care provider and ensure that the employee's direct supervisor is not the point of contact. Employee consent to the contact is no longer required. However, before the employing office contacts the employee's health care provider for clarification or authentication of the FMLA certification, the employee must first be given an opportunity to cure any deficiencies in the certification. Section 825.307 also provides requirements for an employing office's request for a second opinion, and adds language requiring the employee or the employee's family member to authorize his or her health care provider to release relevant medical information pertaining to the serious health condition at issue if such information is requested by the second opinion health care provider. Section 825.307 also increases the number of days the employing office has to provide an employee with a requested copy of a second or third opinion from two to five business days. This section of the regulations does not apply to the military family leave provisions.

Section 825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

The Board proposes to adopt the DOL amendments covered in this section. Section 825.308 of the regulations addresses the employing office's ability to seek recertification of an employee's medical condition. This section has been reorganized to clarify how often employing offices may seek recertification in situations where the minimum duration of the condition, as opposed to the duration of the period of incapacity, exceeds 30 days. Thus, an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless the medical certification indicates that the minimum duration of the condition is more than 30 days, then an employing office must wait until that minimum duration expires before requesting a recertification. In all cases, an employing office may request a recertification of a medical condition every six months in connection with an absence by the employee. An employing office may request recertification in less than 30 days if, among other things, the employee requests an extension of leave or circumstances described by the previous certification change significantly. This section clarifies that an employing office may request the same information on recertification as required for the initial certification and the employee has the same obligation to cooperate in providing recertification as he or she does in providing the initial certification.

Section 825.309 Certification for leave taken because of a qualifying exigency.

The Board proposes to adopt the DOL's regulations under this section. Under the military family leave provisions of the DOL regulations, an employing office may require that leave taken because of a qualifying exigency be supported by a certification and require that the employee provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation, as well as the dates of the covered military member's active duty service. While a form requesting this basic information may be used by the employing office, no information may be required beyond that specified in this section and in all instances the information on the form must relate only to the qualifying exigency for which the current need for leave exists. Section 825.309 also establishes the verification process for certifications.

This section also provides that the information required in a certification need only be provided to the employing office the first time an employee requests leave because of a qualifying exigency arising out of a particular active duty or call to active duty of a covered military member. While additional information may be needed to provide certification for subsequent requests for exigency leave, an employee is only required to give a copy of the active duty orders to the employing office once. A copy of new active duty orders or other documentation issued by the military only needs to be provided to the employing office if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty order of the same or a different covered military member. *See* DOL (Form WH–384) and OOC regulations proposed Form E.

An employing office may contact an appropriate unit of the Department of Defense to request verification that a covered military member has been called to active duty status (or notified of an impending call to active duty status) in support of a contingency operation. Again, no additional information may be requested by the employing office and the employee's permission is not required. This verification process will protect employees from unnecessary intrusion while still providing a useful tool for employing offices to verify the certification information given to them.

Consistent with the amendments to section 825.126(b)(6), with respect to Rest and Recuperation qualifying exigency leave, the employing office is permitted to request a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military indicating that the military member has been granted Rest and Recuperation leave, as well as the dates of the leave, in order to determine the employee's specific qualifying exigency leave period available for Rest and Recuperation. Employing offices may also contact the appropriate unit of the DOD to verify that the military member is on active duty or call to active duty status. The employee's permission is not required to conduct such verifications. The employing office may not, however, request any additional information.

Section 825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

The Board proposes to adopt the amendments covered in the DOL regulations under this section. While the military family leave provisions of the NDAA amended the FMLA's certification requirements to permit an employer to request certification for leave taken to care for a covered servicemember, the FMLA's existing certification requirements focus on providing information related to a serious health condition—a term that is not necessarily relevant to leave taken to care for a covered servicemember. At the same time, the military family leave provisions of the NDAA do not explicitly require that a sufficient certification for purposes of military caregiver leave provide relevant information regarding the covered servicemember's serious injury or illness. Section 825.310 of the DOL's regulations provide that when leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to support his or her request for leave with a sufficient certification. An employer may require that certain necessary information to support the request for leave be supported by a certification from one of the following authorized health care providers: (1) A DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider. Sections 825.310(b)–(c) of the DOL regulations set forth the information an employing office may request from an employee (or the authorized health care provider) in order to support the employee's request for leave. The DOL developed a new optional form, Form WH–385, which the Board adopted for proposed OOC Form F. The Board agrees that OOC Form F may be used to obtain appropriate information to support an employee's request for leave to care for a covered servicemember with a serious injury or illness. However, an employing office may use any form containing the following basic information: (1) whether the servicemember has incurred a serious injury or illness; (2) whether the injury or illness may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; (3) whether the injury or illness was incurred by the member in line of duty on active duty; and (4) whether the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list. However, as is the case for any required certification for leave taken

to care for a family member with a serious health condition, no information may be required beyond that specified above. In all instances, the information on any required certification must relate only to the serious injury or illness for which the current need for leave exists.

Additionally, section 825.310 of the proposed OOC regulations provides that an employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification ''invitational travel orders'' (ITOs) or ''invitational travel authorizations'' (ITAs) issued by the DOD for a family member to join an injured or ill servicemember at his or her bedside. If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or an ITA, the regulations provide that an employing office may request further certification from the employee. Lastly this section provides that in all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

The regulations also permit an eligible employee who is a spouse, parent, son, daughter or next of kin of a covered servicemember to submit an ITO or ITA issued to another family member as sufficient certification for the duration of time specified in the ITO or ITA, even if the employee seeking leave is not the named recipient on the ITO or ITA. The regulations further permit an employing office to authenticate and clarify medical certifications submitted to support a request for leave to care for a covered servicemember using the procedures applicable to FMLA leave taken to care for a family member with a serious health condition. However, unlike the recertification, second and third opinion processes used for other types of FMLA leave, recertification, second and third opinions are not warranted for purposes of military caregiver leave when the certification has been completed by a DOD health care provider, a VA health care provider, a DOD TRICARE network authorized private health care provider, or a DOD nonnetwork TRICARE authorized private health care provider, but are permitted when the certification has been completed by a health care provider who is not affiliated with the DOD, VA, or TRICARE.

An employee seeking to take military caregiver leave must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Section 825.312 Fitness-for-duty certification.

The Board proposes to adopt the amendments covered in the DOL's regulations under this section. Section 825.312 addresses the fitness for-duty certification that an employee may be required to submit upon return to work from FMLA leave. This section clarifies that employees have the same obligation to provide a complete certification or provide sufficient authorization to the health care provider in order for that person to provide the information directly to the employing office in the fitness-for-duty certification process as they do in the initial certification process. The employing office may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's job, as long as the employing office provides the employee with a list of those essential job functions no later than the employing office provides the designation notice. The designation notice must indicate that the certification address the employee's ability to perform those essential functions. An employing office may contact the employee's health care provider directly, consistent with the procedure in proposed section 825.307(a), for purposes of authenticating or clarifying the fitness-for-duty certification. The employing office is required to advise the employee in the eligibility notice required by proposed section 825.300(b) if the employing office will require a fitness-for-duty certification to return to work. Employees are not entitled to the reinstatement protections of the Act if they do not provide the required fitness-for-duty certification or request additional FMLA leave.

Section 825.312 also requires that the employing office uniformly apply its policies permitting fitness-for-duty certifications to intermittent and reduced schedule leave users when reasonable safety concerns are present, but limits the frequency of such certifications to once in a 30-day period in which intermittent or reduced schedule leave was taken. ''Reasonable safety concerns'' means a reasonable belief of a significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employing office should consider the nature and severity of the potential harm and the likelihood that potential harm will occur. This is meant to be a high standard. Thus, the determination that there are reasonable safety concerns must rely on objective factual evidence, not subjective perceptions. Employing offices cannot, under this section, require such certifications in all intermittent or reduced leave schedule situations, but only where reasonable safety concerns are present. There is no fitness-for-duty certification form, nor is there any specific format such a certification must follow as long as it contains the required information. An employing office is allowed to require that the fitness-for-duty certification address the employee's ability to perform the essential functions of his or her position. However, the employing office can choose to accept a simple statement in place of the fitness-for-duty certification (or not require a fitness-for-duty certification at all).

There is no second and third opinion process for a fitness-for-duty certification. A fitness-for-duty certification need only address the condition for which FMLA leave was taken and the employee's ability to perform the essential functions of the job. The employee's health care provider determines whether a separate examination is required in order to determine the employee's fitness to return to duty under the FMLA. A medical examination at the employing office's expense may be required only after the employee has returned from FMLA leave and must be job-related and consistent with business necessity as required by the ADA. The employing office cannot delay the employee's return to work while arranging for and having the employee undergo a medical examination.

Section 825.313 Failure to provide certification.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.313 explains the consequences for an employee who fails to provide medical certification in a timely manner. An employing office may ''deny'' FMLA leave until the required certification is provided. This section also addresses the consequences of failing to provide timely recertification. Section 825.313 also clarifies that recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

Employees must be provided at least 15 calendar days to provide the requested certification, and are entitled to additional time when they are unable to meet that deadline despite their diligent, good-faith efforts. An employee's certification (or recertification) is not untimely until that period has passed. Employing offices may deny FMLA protection when an employee fails to provide a timely certification or recertification, but it does not require employing offices to do so. Employing offices always have the option of accepting an untimely certification and not denying FMLA protection to any absences that occurred during the period in which the certification was delayed.

Subpart D—Enforcement Mechanisms

Section 825.400 Enforcement, general rules.

The Board finds good cause not to adopt DOL section 825.400 because the enforcement of FMLA violations is different in the legislative branch as opposed to the workforces regulated by the DOL. The OOC section 825.400 remains the same.

Sections 825.401–825.404 Filing a complaint with the Federal Government; Violations of the posting requirement; Appealing the assessment of a penalty for willful violation of the posting requirement; Consequences for an employer when not paying the penalty assessment after a final order is issued.

These sections do not apply to the CAA and will remain reserved in the OOC regulations.

Subpart E—Recordkeeping Requirements

Section 825.500 Recordkeeping requirements.

This section does not apply to the CAA and will remain reserved in the OOC regulations.

Subpart F—Special Rules Applicable to Employees of Schools

Sections 825.600–825.604 Special rules for school employees, definitions; Special rules for school employees, limitations on intermittent leave; Special rules for school employees, limitations on leave near the end of an academic term; Special rules for school employees, duration of FMLA leave; Special rules for school employees, restoration to an equivalent position.

The Board proposes to adopt the amendments covered in the DOL regulations under these sections. Sections 825.600–825.604 cover the special rules applicable to instructional employees. When an eligible instructional employee needs intermittent leave or leave on a reduced schedule basis to care for a covered servicemember, the employee may choose to either (1) take leave for a period or periods of particular duration; or (2) transfer temporarily to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave.

These sections also extend some of the limitations on leave near the end of an academic term to leave requested during this period to care for a covered servicemember. If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the term, the employing office may require the employee to continue taking leave until the end of the term if the leave will last more than two weeks and the employee would return to work during the two-week period before the end of the term. Further, an employing office may require an instructional employee to continue taking leave until the end of the term if the employee begins leave that will last more than five working days for a purpose other than the employee's own serious health condition

during the three-week period before the end of the term. The types of leave that are subject to the limitations are: (1) leave because of the birth of a son or daughter, (2) leave because of the placement of a son or daughter for adoption or foster care, (3) leave taken to care for a spouse, parent, or child with a serious health condition, and (4) leave taken to care for a covered servicemember.

Subpart G—Effect of Other Laws, Employing Office Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

Section 825.700 Interaction with employing office's policies.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.700 provides that an employing office may not limit the rights established by the FMLA through an employment benefit program or plan, but an employing office may provide greater leave rights than the FMLA requires. This section also provides that an employing office may amend existing leave programs, so long as they comply with the FMLA, and that nothing in the FMLA is intended to discourage employing offices from adopting or retaining more generous leave policies. The Board proposes to follow the DOL regulations and delete from the current OOC section 825.700(a) the following: ''If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.'' As explained by the DOL, this last sentence of section 825.700(a) was deleted in order to conform to the U.S. Supreme Court's decision in Ragsdale v. Wolverine World Wide, 535 U.S. 81 (2002), which specifically invalidated this provision.

Section 825.701 Interaction with State laws.

This DOL section does not apply to the CAA and will remain reserved in the OOC regulations.

Section 825.702 Interaction with Federal and State anti-discrimination laws.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.702 addresses the interaction between the FMLA and other Federal and State antidiscrimination laws. Section 825.702 discusses the interaction between the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the FMLA. Under USERRA, a returning servicemember would be entitled to FMLA leave if, after including the hours that he or she would have worked for the civilian employing office during the period of military service, the employee would have met the FMLA eligibility threshold. This is not an expansion of FMLA rights through regulation; this is a requirement of USERRA.

With respect to the interaction of the FMLA and ADA, where both laws may apply, the applicability of each statute needs to be evaluated independently.

Further, the reference to employers who receive Federal financial assistance and employers who contract with the Federal government in this section has not been adopted by the Board because federal contractor employers are not covered by the CAA.

In its final regulations, the DOL removed the following optional-use forms and notices from the Appendix of the regulations, but continued to make them available to the public on the WHD Web site: Forms WH–380–E (Certification of Health Care Provider for Employee's Serious Health Condition); WH–380–F (Certification of Health Care Provider for Family Member's Serious Health Condition); WH–381 (Notice of Eligibility and Rights & Responsibilities); WH–382 (Designation Notice); WH–384 (Certification of Qualifying Exigency for Military Family Leave); WH–385 (Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave); and WH–385–V (Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave). The Board proposes to revise its forms and to make the following OOC forms available on its website: Form A: Certification of Health Care Provider for Employee's Serious Health Condition; Form B: Certification of Health Care Provider for Family Member's Serious Health Condition; Form C: Notice of Eligibility and Rights and Responsibilities; Form D: Designation Notice to Employee of FMLA Leave; Form E: Certification of Qualifying Exigency for Military Family Leave; Form F: Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave; and Form G: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave. The Board's proposed forms now include references to the Genetic Information Nondiscrimination Act of 2008, which is made applicable to employees covered under the CAA. The Board invites comment on whether these forms should be included in the regulations, or whether covered employees and employing offices should be directed to the DOL website for the appropriate forms. In any event, the use of a specific set of forms is optional and other forms requiring the same information may be used instead. In proposing these revised forms, the Board recognizes that the use of specific forms play a key role in employing offices' compliance with the FMLA and employees' ability to take FMLA protected leave when needed.

SUBSTANTIVE REGULATIONS PROPOSED BY THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE EXTENDING RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL ACT OF 1996, AS AMENDED

FINAL REGULATIONS

Part 825—Family and Medical Leave

825.1 Purpose and scope.

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611–2615) to covered employees. (The term ''covered employee'' is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See 825.102 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors (Board) of the Office of Compliance, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA].''

(c) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

SUBPART A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

825.100 The Family and Medical Leave Act.

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows eligible employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months (*see* 825.200(b)) because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). In addition, eligible employees of a covered employing office may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employing office or a disbursing or other financial office of *the House of Representatives or* [italicized language is in only the House and Instrumentalities versions of the regulations] the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office generally has a right to advance notice from the employee. In addition, the employing office may require an employee to submit certification to substantiate that the leave is due to the serious health condition of the employee or the employee's covered family member, due to the serious injury or illness of a covered servicemember, or because of a qualifying exigency. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (*see* 825.312 and 825.313)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

825.101 Purpose of the FMLA.

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employing offices, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employing offices as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

825.102 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*, as amended).

CAA means the Congressional Accountability Act of 1995 (Pub. Law 104–1, 109 Stat. 3, 2 U.S.C. 1301 *et seq.*, as amended).

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99–272, title X, section 10002; 100 Stat. 227; 29 U.S.C. 1161–1168).

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a),

12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. *See also* 825.126(a)(2).

Continuing treatment by a health care provider means any one of the following:

(1) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(iii) The requirement in paragraphs (i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) The term ''extenuating circumstances'' in paragraph (i) means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. *See also* 825.115(a)(5).

(2) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. *See also* 825.120.

(3) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, *etc.*).

(4) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

(6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B). *See also* 825.126(a).

Covered employee as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

Eligible employee as defined in the CAA, means:

(1) A covered employee who has been employed for a total of at least 12 months in any employing office on the date on which any FMLA leave is to commence, except that an employing office need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, *unless:*

(i) The break in service is occasioned by the fulfillment of the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*, covered service obligation (the period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by any employing office, but this section does not provide any greater entitlement to the employee than would be available under the USERRA, as made applicable by the CAA); or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (*e.g.*, for purposes of the employee furthering his or her education or for childrearing purposes); and

(2) Who, on the date on which any FMLA leave is to commence, has met the hours of service requirement by having been employed for at least 1,250 hours of service with an employing office during the previous 12-month period, *except that*:

(i) An employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining whether the employee met the hours of service requirement (accordingly, a person reemployed following absence from work due to or necessitated by USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12-month period to meet the hours of service requirement); and

(ii) To determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

Employ means to suffer or permit to work.

Employee means an employee as defined by the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity. See the definition of *Teacher* in this section.

Employee of the Capitol Police means any member or officer of the Capitol Police.

Employee of the House of Representatives means an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under the definition of *covered employee* above.

Employee of the Office of the Architect of the Capitol means any employee of the Office of the Architect of the Capitol or the Botanic Garden.

Employee of the Senate means any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under the definition of *covered employee* above.

Employing Office, as defined in the CAA, means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. *See also* 825.209(a).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 *et seq.*, as amended).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term *group health plan* shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) The FMLA, as made applicable by the CAA, defines health care provider as:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Department of Labor to be capable of providing health care services.

(2) Others ''capable of providing health care services'' include only:

(i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(ii) Nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(iii) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(iv) Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(3) The phrase ''authorized to practice in the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.*

Instructional employee: See the definition of *Teacher* in this section.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Invitational travel authorization (ITA) or *Invitational travel order* (ITO) mean orders issued by the Armed Forces to a family member to join an injured or ill servicemember at his or her bedside. *See also* 825.310(e).

Key employee means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite. *See also* 825.217.

Mental disability: See the definition of *Physical or mental disability* in this section.

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993. *See also* 825.127.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See also* 825.127(d)(3).

Office of Compliance means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. *See also* 825.127(b)(1).

Parent means a biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents ''in law.''

*Parent of a covered servicemembe*r means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See also* 825.127(d)(2).

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, as amended, provide guidance to these terms.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation. *See also* 825.126(a)(2)(i).

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or continuing treatment by a health care provider as defined in 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 825.113 are met.

Serious injury or illness means:

(1) In the case of a current member of the Armed Forces, including a member of the

National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* 825.127(c).

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See also* 825.127(d)(1).

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See also* 825.126(a)(5).

Spouse, as defined in the FMLA and as made applicable by the CAA, means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either:

(1) was entered into in a State that recognizes such marriages or,

(2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or *employee employed in an instructional capacity*, or *instructional employee*) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

825.103 [Removed and Reserved]

825.104 Covered employing offices.

(a) The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term employing office means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(b) **[Reserved]**

(c) Separate entities will be deemed to be parts of a single employing office for purposes of the FMLA, as made applicable by the CAA, if they meet the ''integrated employer'' test. Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(1) Common management;

(2) Interrelation between operations;

(3) Centralized control of labor relations; and

(4) Degree of common financial control.

825.105 [Reserved].

825.106 Joint employer coverage.

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when:

(1) An employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) Two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

825.107 [Reserved]

825.108 [Reserved]

825.109 [Reserved]

825.110 Eligible employees.

(a) An eligible employee is an employee of a covered employing office who:

(1) Has been employed by any employing office for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months, *provided*:

(1) Subject to the exceptions provided in paragraph (b)(2) of this section, employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employing office for at least 12 months.

(2) Employment periods preceding a break in service of more than seven years must be counted in determining whether the employee has been employed by the employing office for at least 12 months where:

(i) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et*

seq., covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employing office. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (*e.g.*, for purposes of the employee furthering his or her education or for childrearing purposes).

(3) If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months.

(4) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employing office (*e.g.*, Federal Employees' Compensation, group health plan benefits, *etc.*), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as at least 12 months, 52 weeks is deemed to be equal to 12 months.

(5) Nothing in this section prevents employing offices from considering employment prior to a continuous break in service of more than seven years when determining whether an employee has met the 12-month employment requirement. However, if an employing office chooses to recognize such prior employment, the employing office must do so uniformly, with respect to all employees with similar breaks in service.

(c)(1) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached.

(2) Except as provided in paragraph (c)(3) of this section, whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA), as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked under the FLSA's principles may be used.

(3) An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(4) In the event an employing office does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.*, bona fide executive, administrative, and professional employees as defined in the FLSA Regulations, 29 CFR part 541, and as made applicable by the CAA, the employing office has the burden of showing that the employee has not worked the requisite hours. An employing office must be able to clearly demonstrate, for example, that full-time teachers (*see* 825.102 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not eligible for FMLA leave.

(d) The determination of whether an employee has worked for any employing office for at least 1,250 hours in the past 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be FMLA leave. *See* 825.300(b) for rules governing the content of the eligibility notice given to employees.

(e) **[Reserved]**

825.111 [Reserved]

825.112 Qualifying reasons for leave, general rule.

(a) *Circumstances qualifying for leave.* Employing offices covered by FMLA as made applicable by the CAA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child (*see* 825.120);

(2) For placement with the employee of a son or daughter for adoption or foster care (*see* 825.121);

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (*see* 825.113 and 825.122); and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job (*see* 825.113 and 825.123);

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active status) (*see* 825.122 and 825.126); and

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (*see* 825.122 and 825.127).

(b) *Equal Application.* The right to take leave under FMLA, as made applicable by the CAA, applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) *Active employee.* In situations where the employing office/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

825.113 Serious health condition.

(a) For purposes of FMLA, *serious health condition* entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or continuing treatment by a health care provider as defined in 825.115.

(b) The term *incapacity* means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

(c) The term *treatment* includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.*, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.*, oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.*, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

825.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 825.113(b), or any subsequent treatment in connection with such inpatient care.

825.115 Continuing treatment.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in paragraphs (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term *extenuating circumstances* in paragraph (a)(1) of this section means circumstances beyond the employee's control

that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.

(b) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. See also 825.120.

(c) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

(d) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(e) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under paragraphs (b) or (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

825.116 [Removed and Reserved]

825.117 [Removed and Reserved]

825.118 [Removed and Reserved]

825.119 Leave for treatment of substance abuse.

(a) Substance abuse may be a serious health condition if the conditions of 825.113 through 825.115 are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

825.120 Leave for pregnancy or birth.

(a) *General rules.* Eligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows:

(1) Both parents are entitled to FMLA leave for the birth of their child.

(2) Both parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. If the employing office permits bonding leave to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, both parents are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newborn child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. Note, too, that many state pregnancy disability laws specify a period of disability either before or after the birth of a child; such periods would also be considered FMLA leave for a serious health condition of the birth mother, and would not be subject to the combined limit.

(4) The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. See 825.124.

(6) Both parents are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employing office agrees. For example, an employing office and employee may agree to a part-time work schedule after the birth. If the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child. *See* 825.202–825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.121 for rules governing leave for adoption or foster care. *See* 825.601 for special rules applicable to instructional employees of schools.

825.121 Leave for adoption or foster care.

(a) *General rules.* Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement. If the employing office permits leave for adoption or foster care to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, the employee is entitled to FMLA leave even if the adopted or foster child does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee's son or daughter or to care for the child after placement, for the birth of the employee's son or daughter or to care for the child after birth, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newly placed child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Use of intermittent and reduced schedule leave.* An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employing office agrees. Thus, for example, the employing office and employee may agree to a part-time work schedule after the placement for bonding purposes. If the employing office agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child. *See* 825.202–825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.120 for general rules governing leave for pregnancy and birth of a child. *See* 825.601 for special rules applicable to instructional employees of schools.

825.122 Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

(a) *Covered servicemember* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

(b) *Spouse*, as defined in the FMLA and as made applicable by the CAA, means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either:

(1) was entered into in a State that recognizes such marriages or,

(2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(c) *Parent.* Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section. This term does not include parents ''in law.''

(d) *Son or daughter.* For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

(1) *Incapable of self-care* means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.*

(2) *Physical or mental disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

(3) Persons who are ''in loco parentis'' include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(e) *Next of kin of a covered servicemember* means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See* 825.127(d)(3).

(f) *Adoption* means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. *See* 825.121 for rules governing leave for adoption.

(g) *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. *See* 825.121 for rules governing leave for foster care.

(h) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See* 825.126(a)(5).

(i) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See* 825.127(d)(1).

(j) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See* 825.127(d)(2).

(k) *Documenting relationships.* For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.* The employing office is entitled to examine documentation such as a birth certificate, *etc.*, but the employee is entitled to the return of the official document submitted for this purpose.

825.123 Unable to perform the functions of the position.

(a) *Definition.* An employee is unable to perform the functions of the position where the health care provider finds that the employee is unable to work at all or is unable

to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended and made applicable by Section 201(a) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) *Statement of functions.* An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the employing office can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier. *See* 825.306.

825.124 Needed to care for a family member or covered servicemember.

(a) The medical certification provision that an employee is needed to care for a family member or covered servicemember encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party. *See* 825.202–825.205 for rules governing the use of intermittent or reduced schedule leave.

825.125 Definition of health care provider.

(a) The FMLA, as made applicable by the CAA, defines *health care provider* as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Office of Compliance to be capable of providing health care services.

(3) In making a determination referred to in subparagraph (a)(2), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Department of Labor (under section 101(6)(B) of FMLA (29 U.S.C. 2611(6)(B))) that a person is capable of providing health care services, provided the determination by the Department of Labor was not made at the request of a person who was then a covered employee.

(b) Others capable of providing health care services include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

825.126 Leave because of a qualifying exigency.

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

(1) *Covered active duty or call to covered active duty status* in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. See 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) *Deployment of the member with the Armed Forces to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (a)(2) of this section.

(5) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* (i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.* (i) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(ii) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care.* For purposes of leave for parental care listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.* As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employing office and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) *Covered servicemember* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in *outpatient status*; or is otherwise on the temporary disability retired list, for a serious injury or illness. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period described in paragraph (e)(1) of this section may extend beyond the five-year period.

(i) For an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable prior to the effective date of this Final Rule, the period between October 28, 2009 and the effective date of this Final Rule shall not count towards the determination of the five-year period for covered veteran status.

(c) A *serious injury or illness* means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

(2) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(d) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(1) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(2) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.''

(3) *Next of kin of a covered servicemember* means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employing office is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to 825.122(k).

(e) An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

(1) The single 12-month period described in paragraph (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employing office to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in paragraph (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described in paragraph (e) of this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employing office is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section, the employing office must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employing offices may retroactively designate leave as leave to care for a covered servicemember pursuant to 825.301(d).

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

Subpart B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT

825.200 Amount of Leave.

(a) Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status (or has been notified of an impending call or order to active duty).

(b) An employing office is permitted to choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(1) The calendar year;

(2) Any fixed 12-month leave year, such as a fiscal year or a year starting on an employee's anniversary date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave under paragraph (a) begins; or

(4) A ''rolling'' 12-month period measured backward from the date an employee uses any FMLA leave as described in paragraph (a).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the ''rolling'' 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employing offices using the rolling 12-month period may

need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of the leave would be FMLA-protected.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section for the leave entitlements described in paragraph (a) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved]

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period for the leave entitlements described in paragraph (a), the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An employing office shall determine the single 12-month period in which the 26 weeks of leave entitlement described in this paragraph occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins. *See* 825.127(e)(1).

(g) During the single 12-month period described in paragraph (f), an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *See* 825.127(e)(3).

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employing office's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in 825.205.

(i)(1) If employing offices jointly employ an employee, and if they designate a primary employing office pursuant to 825.106(c), the primary employing office may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided that the alternative chosen is applied consistently and uniformly to all employees of the primary employing office including the jointly employed employee.

(2) If employing offices fail to designate a primary employing office pursuant to 825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employing office of the employee for purposes of the application of paragraphs (d) and (e) of this section.

825.201 Leave to care for a parent.

(a) *General rule.* An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by the FMLA. *See* 825.122(c) for definition of parent.

(b) *Same employing office limitation.* Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. *See also* 825.127(d).

825.202 Intermittent leave or reduced leave schedule.

(a) *Definition.* FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. *Intermittent leave* is FMLA leave taken in separate blocks of time due to a single qualifying reason. A *reduced leave schedule* is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) *Medical necessity.* For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the certification of a serious injury or illness, if required by the employing office, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. *See* 825.306, 825.310. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition or of a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she does not receive treatment by a health care provider. *See* 825.113 and 825.127.

(c) *Birth or placement.* When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. *See* 825.204 for rules governing transfer to an alternative position that better accommodates intermittent leave. *See also* 825.120 (pregnancy) and 825.121 (adoption and foster care).

(d) *Qualifying exigency.* Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

825.203 Scheduling of intermittent or reduced schedule leave.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. *See* 825.202. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations.

825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave.

(a) *Transfer or reassignment.* If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *See* 825.601 for special rules applicable to instructional employees of schools.

(b) *Compliance.* Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and Federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced scheduled leave.

(c) *Equivalent pay and benefits.* The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) *Employing office limitations.* An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited acts provisions of the FMLA, as made applicable by the CAA.

(e) *Reinstatement of employee.* When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he or she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

(a) *Minimum increment.* (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employing office must account for the leave using an increment no greater than the shortest period of time that the employing office uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employing office may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. *See also* 825.205(a)(2) for the physical impossibility exception, and 825.600 and 825.601 for special rules applicable to employees of schools. If an employing office uses different increments to account for different types of leave, the employing office must account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employing office accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. If an employing office accounts for use of leave in varying increments at different times of the day or shift, the employing office may also account for FMLA leave in varying increments, provided that the increment used for FMLA leave is no greater than the smallest increment used for any other type of leave during the period in which the FMLA leave is taken. If an employing office accounts for other forms of leave use in increments greater than one hour, the employing office must account for FMLA leave use in increments no greater than one hour. An employing office may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employing office that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employing office wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employing office is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave. *See* 825.214.

(b) *Calculation of leave.* (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth (⅕) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight hour days works four-hour days under a reduced leave schedule, the employee would use one half (½) week of FMLA leave each week. Where an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employing office may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of 12 workweeks of leave, or 26 workweeks in the case of military caregiver leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the use of leave. *See also* 825.601 and 825.602 on special rules for schools.

(2) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(3) If an employee's schedule varies from week to week to such an extent that an employing office is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours worked over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(c) *Overtime.* If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48–hour workweek, or one-sixth (⅙) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

825.206 Interaction with the FLSA.

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, as a salaried executive, administrative, or professional

employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employing office provides FMLA leave, whether paid or unpaid, and maintains records regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of the Board's regulations at part 541.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the salary basis requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of covered employing offices who are eligible for FMLA leave, and to leave which qualifies as FMLA leave. Hourly or other deductions which are not in accordance with the Board's FLSA regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's FLSA regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, *e.g.*, leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by the FMLA, as made applicable by the CAA, such as leave in excess of 12 weeks in a year. Employing offices may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, as made applicable by the CAA, or may take such deductions, treating the employee as an hourly employee and pay overtime premium pay for hours worked over 40 in a workweek.

825.207 Substitution of paid leave.

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employing office, and accrued pursuant to established policies of the employing office, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employing office's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employing office's normal leave policy. When an employee chooses, or an employing office requires, substitution of accrued paid leave, the employing office must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. See 825.300(c). If an employee does not comply with the additional requirements in an employing office's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. Employing offices may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

(b) If neither the employee nor the employing office elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above in 825.112 through 825.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(e) The FMLA, as made applicable by the CAA, provides that a serious health condition may result from injury to the employee on or off the job. If the employing office designates the leave as FMLA leave in accordance with 825.300(d), the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the provision for substitution of the employee's accrued paid leave is not applicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree, to have paid leave supplement workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds of an employee's salary. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a light duty job. As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. *See also* 825.210(f), 825.216(d), 825.220(d), 825.307(a) and 825.702 (d)(1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(f) Under the FLSA, as made applicable by the CAA, an employing office always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

825.208 [Removed and reserved]

825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of group health plan is set forth in 825.102. For purposes of FMLA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family

member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, *etc.*, must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, *etc. See* 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for key employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a key employee (*see* 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (*e.g.*, holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

825.210 Employee payment of group health benefit premiums.

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment (*i.e.*, prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (*e.g.*, through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. *See* 825. 300(c).

(e) An employing office may not require more of an employee using unpaid FMLA leave than the employing office requires of other employees on leave without pay.

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking FMLA leave. *See* 825.207(e).

825.211 Maintenance of benefits under multiemployer health plans.

(a) A multi-employer health plan is a plan to which more than one employing office is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employing offices.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employing offices party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use banked hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in 825.209(f) of this part, group health plan coverage must be maintained for an employee on FMLA leave until:

(1) The employee's FMLA leave entitlement is exhausted;

(2) The employing office can show that the employee would have been laid off and the employment relationship terminated; or

(3) The employee provides unequivocal notice of intent not to return to work.

825.212 Employee failure to pay health plan premium payments.

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a group health plan. *See* 825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. *See* 825.215(d)(1)-(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employing office

terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employing office may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

825.213 Employing office recovery of benefit costs.

(a) In addition to the circumstances discussed in 825.212(b), an employing office may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a key employee who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employing office. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional forms developed for this purpose. *See* 825.306(b), 825.310(c)-(d) and Forms A, B, and F. If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, *e.g.*, life insurance, disability insurance, *etc.*, by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable premiums as would be calculated under COBRA, excluding the two percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, *etc.*), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

825.214 Employee right to reinstatement.

General Rule. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. *See also* 825.106(e) for the obligations of employing offices that are joint employers.

825.215 Equivalent position.

(a) *Equivalent position.* An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) *Conditions to qualify.* If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, *etc.*, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent Pay.* (1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employing office's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or nondiscretionary, made to employees consistent with the provisions of paragraph (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

(d) *Equivalent benefits.* Benefits include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire work force, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. See 825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (*e.g.*, paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, 825.209 addresses health benefits.)

(e) *Equivalent terms and conditions of employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) *De minimis exception.* The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

825.216 Limitations on an employee's right to reinstatement.

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work for one employing office for a specific time period, and after that time period has ended, the work was assigned to another employing office, the successor employing office may be required to restore the employee if it is a successor employing office. *See* 825.107.

(b) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees (key employees, as defined in 825.217(c)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in 825.312.

(c) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA. The employing office's obligations may, however, be governed by the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA. *See* 825.702.

(d) An employee who fraudulently obtains FMLA leave from an employing office is not protected by the job restoration or maintenance of health benefits provisions of the FMLA, as made applicable by the CAA.

(e) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA, as made applicable by the CAA, on this basis unless the FMLA leave was fraudulently obtained as in paragraph (d) of this section.

825.217 Key employee, general rule.

(a) A *key employee* is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term *salaried* means paid on a salary basis, within the meaning of the Board's regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313), regarding employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA, as executive, administrative, and professional employees).

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year- to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and nondiscretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, benefits or prerequisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be key employees.

825.218 Substantial and grievous economic injury.

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a key employee threatens the economic viability of the employing office, that would constitute substantial and grievous economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute substantial and grievous economic injury.

(d) FMLA's substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA. *See also* 825.702.

825.219 Rights of a key employee

(a) An employing office that believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and

maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

825.220 Protection for employees who request leave or otherwise assert FMLA rights.

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA, as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA, as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA, as made applicable by the CAA. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employing office to avoid responsibilities under FMLA, for example:

(1) [Reserved]

(2) Changing the essential functions of the job in order to preclude the taking of leave; or

(3) Reducing hours available to work in order to avoid employee eligibility.

(c) The FMLA's prohibition against interference prohibits an employing office from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies. *See* 825.215.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot trade off the right to take FMLA leave against some other benefit offered by the employing office. Except for settlement agreements covered by 1414 and/or 1415 of the Congressional Accountability Act, this does not prevent the settlement or release of FMLA claims by employees based on past employing office conduct without the approval of the Office of Compliance or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. *See* 825.702(d). An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

(e) Individuals, and not merely covered employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA, or regulations.

Subpart C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.300 Employing office notice requirements.

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA, as made applicable by the CAA, are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA, as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (c), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b) *Eligibility notice.* (1) When an employee requests FMLA leave, or when the employing office acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employing office must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. *See* 825.110 for definition of an eligible employee. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. *See* 825.127(c) and 825.200(b). All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

(2) The eligibility notice must state whether the employee is eligible for FMLA leave as defined in 825.110. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employing office and the hours of service with the employing office during the 12-month period. Notification of eligibility may be oral or in writing; employing offices may use Form C to provide such notification to employees. The employing office is obligated to translate this notice in

any situation in which it is obligated to do so in 825.300(a)(4).

(3) If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (*e.g.*, if the employee has not met the hours of service requirement in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the employing office must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

(c) *Rights and responsibilities notice.* (1) Employing offices shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employing office is obligated to translate this notice in any situation in which it is obligated to do so in 825.300(a)(4). This notice shall be provided to the employee each time the eligibility notice is provided pursuant to paragraph (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying (*see* 825.300(c) and 825.301) and the applicable 12-month period for FMLA entitlement (*see* 825.127(c), 825.200(b), (f), and (g));

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so (*see* 825.305, 825.309, 825.310, 825.313);

(iii) The employee's right to substitute paid leave, whether the employing office will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave (*see* 825.207);

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (*see* 825.210), and the possible consequences of failure to make such payments on a timely basis (*i.e.*, the circumstances under which coverage may lapse);

(v) The employee's status as a key employee and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (*see* 825.218);

(vi) The employee's right to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave (*see* 825.214 and 825.604); and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (*see* 825.213).

(2) The notice of rights and responsibilities may include other information—*e.g.*, whether the employing office will require periodic reports of the employee's status and intent to return to work—but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employing office shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(5) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA, as made applicable under the CAA.

(6) A prototype notice of rights and responsibilities may be obtained in Form C, or from the Office of Compliance. Employing offices may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) *Designation notice.* (1) The employing office is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employing office has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (*e.g.*, after receiving a certification), the employing office must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employing office determines that the leave will not be designated as FMLA-qualifying (*e.g.*, if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employing office must notify the employee of that determination. If the employing office requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employing office has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employing office may provide the employee with the designation notice at that time.

(3) If the employing office will require the employee to present a fitness-for-duty certification to be restored to employment, the employing office must provide notice of such requirement with the designation notice. If the employing office will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employing office must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. *See* 825.312. If the employing office's handbook or other written documents (if any) describing the employing office's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (*e.g.*, by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation), the employing office is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is contained in Form D or may be obtained from the Office of Compliance. If the leave is not designated as FMLA leave because it does not meet the requirements of the FMLA, as made applicable by the CAA, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employing office to the employee in the designation notice changes (*e.g.*, the employee exhausts the FMLA leave entitlement), the employing office shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employing office must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employing office designates the leave as FMLA-qualifying, the employing office must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employing office must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) *Consequences of failing to provide notice.* Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c).

825.301 Designation of FMLA leave.

(a) *Employing office responsibilities.* The employing office's decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson (*e.g.*, if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, *etc.*, may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the employing office has acquired knowledge that the leave is being taken for a FMLA-qualifying reason, the employing office must notify the employee as provided in 825.300(d).

(b) *Employee responsibilities.* An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA, as made applicable by the

CAA, or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in 825.302 or 825.303 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine whether the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employing office denies the employee's request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employing office is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) *Disputes.* If there is a dispute between an employing office and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(d) *Retroactive designation.* If an employing office does not designate leave as required by 825.300, the employing office may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by 825.300 provided that the employing office's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employing office and an employee can mutually agree that leave be retroactively designated as FMLA leave.

(e) *Remedies.* If an employing office's failure to timely designate leave in accordance with 825.300 causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). For example, if an employing office that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employing office's actions. However, if an employee took leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employing office's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously-ill son or daughter if the leave had been designated timely.

825.302 Employee notice requirements for foreseeable FMLA leave.

(a) *Timing of notice.* An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employing office for such information.

(b) *As soon as practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

(c) *Content of notice.* An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), and that the requested leave is for one of the reasons listed in 825.126(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employing office has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. *See* 825.305. An employing office may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. *See* 825.309, 825.310. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employing office may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(d) *Complying with the employing office policy.* An employing office may require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employing office's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employing office's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA-protected leave may not be delayed or denied where the employing office's policy requires notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section.

(e) *Scheduling planned medical treatment.* When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. For example, if an employee who provides notice of the need to take FMLA

leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider. *See* 825.203 and 825.205.

(f) Intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition or a serious injury or illness. An employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. *See* 825.304.

825.303 Employee notice requirements for unforeseeable FMLA leave.

(a) *Timing of notice*. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employing office as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employing office's usual and customary notice requirements applicable to such leave. *See* 825.303(c). Notice may be given by the employee's spokesperson (*e.g.*, spouse, adult family member, or other responsible party) if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employing office promptly after ensuring the child has used the inhaler.

(b) *Content of notice*. An employee shall provide sufficient information for an employing office to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), that the requested leave is for one of the reasons listed in 825.126(b), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the employing office has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in ''sick'' without providing more information will not be considered sufficient notice to trigger an employing office's obligations under the FMLA, as made applicable by the CAA. The employing office will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries office regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(c) *Complying with employing office policy*. When the need for leave is not foreseeable, an employee must comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved. If an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

825.304 Employee failure to provide notice.

(a) *Proper notice required*. In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Compliance to the employing office in a manner suitable for posting.

(b) *Foreseeable leave—30 days*. When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employing office may delay FMLA coverage until 30 days after the date the employee provides notice. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) *Foreseeable leave—less than 30 days*. When the need for FMLA leave is foreseeable fewer than 30 days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employing office two weeks' notice but instead only provided one week's notice, then the employing office may delay FMLA-protected leave for one week (thus, if the employing office elects to delay FMLA coverage and the employee nonetheless takes leave one week after providing the notice (*i.e.*, a week before the two week notice period has been met) the leave will not be FMLA-protected).

(d) *Unforeseeable leave*. When the need for FMLA leave is unforeseeable and an employee fails to give notice in accordance with 825.303, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For example, if it would have been practicable for an employee to have given the employing office notice of the need for leave very soon after the need arises consistent with the employing office's policy, but instead the employee provided notice two days after the leave began, then the employing office may delay FMLA coverage of the leave by two days.

(e) *Waiver of notice*. An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements. If an employing office does not waive the employee's obligations under its internal leave rules, the employing office may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with 825.303(a).

825.305 Certification, general rule.

(a) *General*. An employing office may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employing office may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification, as described in 825.309 and 825.310, respectively. An employing office must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by 825.300(c). An employing office's oral request to an employee to furnish any subsequent certification is sufficient.

(b) *Timing*. In most cases, the employing office should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employing office within 15 calendar days after the employing office's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employing office provides more than 15 calendar days to return the requested certification.

(c) *Complete and sufficient certification*. The employee must provide a complete and sufficient certification to the employing office if required by the employing office in accordance with 825.306, 825.309, and 825.310. The employing office shall advise an employee whenever the employing office finds a certification incomplete or insufficient, and

shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employing office receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employing office receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employing office must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employing office are not cured in the resubmitted certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. A certification that is not returned to the employing office is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) *Consequences*. At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employing office with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employing office to support the employee's FMLA request. This provision will apply in any case where an employing office requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness-for-duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient. *See* 825.306, 825.307, 825.308, and 825.312.

(e) *Annual medical certification*. Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year (as defined in 825.200), the employing office may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 825.307, including second and third opinions.

825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *Required information*. When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employing office may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (see 825.123(b) and (c));

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in 825.124, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, as described in 825.124 and 825.203(b), which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) The Office of Compliance has developed two optional forms (Form A and Form B) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements, as made applicable by the CAA. (*See* Forms A and B.) Optional Form A is for use when the employee's need for leave is due to the employee's own serious health condition. Optional Form B is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Forms A and B are modeled closely on Form WH–380E and Form WH–380F, as revised, which were developed by the Department of Labor (*see* 29 C.F.R. Part 825). The employing office may use the Office of Compliance's forms, or Form WH–380E and Form WH–380F, as revised, or another form containing the same basic information; however, no information may be required beyond that specified in 825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employing office from following the applicable workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employing office may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employing office informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant to such policy or plan may be considered in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave. *See* 825.207(a).

(d) If an employee's serious health condition may also be a disability within the meaning of the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

(e) While an employee may choose to comply with the certification requirement by providing the employing office with an authorization, release, or waiver allowing the employing office to communicate directly with the health care provider of the employee or his or her covered family member, the employee may not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

(a) *Clarification and authentication*. If an employee submits a complete and sufficient certification signed by the health care provider, the employing office may not request additional information from the health care provider. However, the employing office may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employing office has given the employee an opportunity to cure any deficiencies as set forth in 825.305(c). To make such contact, the employing office must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider.

For purposes of these regulations, *authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employing offices may not ask health care providers

for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, (*see* 45 CFR parts 160 and 164), which governs the privacy of individually-identifiable health information created or held by HIPAA-covered entities, must be satisfied when individually-identifiable health information of an employee is shared with an employing office by a HIPAA-covered health care provider. If an employee chooses not to provide the employing office with authorization allowing the employing office to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employing office may deny the taking of FMLA leave if the certification is unclear. *See* 825.305(d). It is the employee's responsibility to provide the employing office with a complete and sufficient certification and to clarify the certification if necessary.

(b) *Second Opinion*. (1) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA, as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (*e.g.*, a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) *Third opinion*. If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a third opinion in order to render a sufficient and complete third opinion.

(d) *Copies of opinions*. The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

(e) *Travel expenses*. If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable ''out of pocket'' travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) *Medical certification abroad*. In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employing office with a written translation of the certification upon request.

825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *30-day rule*. An employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) *More than 30 days*. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employing office must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employing office must wait 40 days before requesting a recertification. In all cases, an employing office may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employing office would be permitted to request recertification every six months in connection with an absence.

(c) *Less than 30 days*. An employing office may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (*e.g.*, the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employing office to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employing office to request a recertification more frequently than every 30 days; or

(3) The employing office receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employing office to request a recertification in less than 30 days.

(d) *Timing*. The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) *Content*. The employing office may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in 825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. *See* 825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employing office may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

825.309 Certification for leave taken because of a qualifying exigency.

(a) *Active Duty Orders*. The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member (*see* 825.126(a)), an employing office may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employing office once. A copy of new active duty orders or other documentation issued by the military may be required by the employing office if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active

duty) of the same or a different military member;

(b) *Required information.* An employing office may require that leave for any qualifying exigency specified in 825.126 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves *Rest and Recuperation* leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) The Office of Compliance has developed an optional form (Form E) for employees' use in obtaining a certification that meets FMLA's certification requirements. (*See* Form E). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form E, or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section.

(d) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the employing office may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employing office may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employing office. An employing office also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested and the employee's permission is not required.

825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) *Required information from health care provider.* When leave is taken to care for a covered servicemember with a serious injury or illness, an employing office may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (''DOD'') health care provider;

(2) A United States Department of Veterans Affairs (''VA'') health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider; or

(5) Any health care provider as defined in 825.125.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator) or an authorized VA representative. An employing office may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(i) A DOD health care provider;

(ii) A VA health care provider;

(iii) A DOD TRICARE network authorized private health care provider;

(iv) A DOD non-network TRICARE authorized private health care provider; or

(v) A health care provider as defined in 825.125.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(i) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy;

(ii) In the case of a covered veteran, such medical facts must include:

(A) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(C) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(D) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in 825.124, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (*e.g.*, episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) *Required information from employee and/or covered servicemember.* In addition to the information that may be requested under 825.310(b), an employing office may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employing office of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces, the National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employing office may require the employee to provide documentation issued by the military which indicates that the covered servicemember is

a veteran, the date of separation, and that the separation is other than dishonorable. Where an employing office requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status. *See* 825.127(c)(2).

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) The Office of Compliance has developed an optional form (Form F) for employees' use in obtaining certification that meets FMLA's certification requirements. (*See* Form F). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. Form F, or Form WH–385 (developed by the Department of Labor), or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employing office may seek authentication and/or clarification of the certification under 825.307. However, second and third opinions under 825.307 are not permitted for leave to care for a covered servicemember. Additionally, recertifications under 825.308 are not permitted for leave to care for a covered servicemember. An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(j) of the FMLA.

(e) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the Office of Compliance's optional certification form (Form F) or an employing office's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employing office may request that the employee have one of the authorized health care providers listed under 825.310(a) complete the Office of Compliance optional certification form (Form F) or an employing office's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employing office may seek authentication and clarification of the ITO or ITA under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 during the period of time in which leave is supported by an ITO or ITA.

(3) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employing office may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employing office may also require an employee to provide documentation, such as a veteran's Form DD–214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employing office, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. *See* 825.305(b). In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.311 Intent to return to work.

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to COBRA requirements or 5 U.S.C. 8905a, whichever is applicable) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (*i.e.*, within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

825.312 Fitness-for-duty certification.

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (*i.e.*, same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employing office) in the fitness-for-duty certification process as in the initial certification process. *See* 825.305(d).

(b) An employing office may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employing office may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employing office must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by 825.300(d), and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employing office satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job. Following the procedures set forth in 825.307(a), the employing office may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) The designation notice required in 825.300(d) shall advise the employee if the employing office will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notice required in paragraph (d) of this section. If an employing office provides the notice required, an employee who does

not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. *See* 825.313(d).

(f) An employing office is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employing office is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. If an employing office chooses to require a fitness-for-duty certification under such circumstances, the employing office shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employing office can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employing office advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employing office may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. *Reasonable safety concerns* means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employing office should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

(h) Requirements under the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, apply. After an employee returns from FMLA leave, the ADA requires any medical examination at an employing office's expense by the employing office's health care provider be job-related and consistent with business necessity. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his or her job or to his/her impairment. If an employee's serious health condition may also be a disability within the meaning of the ADA, as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA.

825.313 Failure to provide certification.

(a) *Foreseeable leave.* In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by 825.305, then an employing office may deny FMLA coverage until the required certification is provided. For example, if an employee has 15 days to provide a certification and does not provide the certification for 45 days without sufficient reason for the delay, the employing office can deny FMLA protections for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

(b) *Unforeseeable leave.* In the case of unforeseeable leave, an employing office may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employing office can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

(c) *Recertification.* An employee must provide recertification within the time requested by the employing office (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employing office may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

(d) *Fitness-for-duty certification.* When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (*see* 825.312(a)) if the employing office has provided the required notice (*see* 825.300(e)); the employing office may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. *See also* 825.213(a)(3).

SUBPART D—ENFORCEMENT MECHANISMS

825.400 Enforcement of FMLA rights, as made applicable by the CAA.

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA, made applicable by the CAA, must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA, as made applicable by the CAA, have been violated:

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at **www.compliance.gov.**

825.401 [Reserved]
825.402 [Reserved]
825.403 [Reserved]
825.404 [Reserved]

SUBPART E—[RESERVED]

SUBPART F—SPECIAL RULES APPLICABLE TO EMPLOYEES OF SCHOOLS

825.600 Special rules for school employees, definitions.

(a) Certain special rules apply to employees of local educational agencies, including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA, as made applicable by the CAA (and these special rules). The usual requirements for employees to be eligible do apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. *Instructional employees* are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

825.601 Special rules for school employees, limitations on intermittent leave.

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the

special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. *Periods of a particular duration* means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (*see* 825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met.

825.602 Special rules for school employees, limitations on leave near the end of an academic term.

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

(b) For purposes of these provisions, *academic term* means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA, as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

825.603 Special rules for school employees, duration of FMLA leave.

(a) If an employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

825.604 Special rules for school employees, restoration to an equivalent position.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of ''established school board policies and practices, private school policies and practices, and collective bargaining agreements.'' The ''established policies'' and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to an equivalent position must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. *See* 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SUBPART G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

825.700 Interaction with employing office's policies.

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (*e.g.*, provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA, as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

825.701 [Reserved]

825.702 Interaction with anti-discrimination laws, as applied by section 201 of the CAA.

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (*e.g.*, Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act and as made applicable by the CAA). FMLA's legislative history explains that FMLA is ''not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990 [as amended] or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA] . . . or the Federal government itself. The purpose of the FMLA, as applied by the CAA, is to make leave available to eligible employees and [employing offices] within its coverage, and not to limit already existing rights and protection.'' S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes (double relief may not be awarded for the same loss; when remedies coincide a claimant may be allowed to utilize whichever avenue of relief is desired. *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 445 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, *etc.*, barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's ''*disability*'' and FMLA's ''*serious health condition*'' are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. *See* 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. *See* 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* 825.207 (e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office (and, therefore, not an ''eligible'' employee under FMLA, as made applicable by the CAA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. *See* 825.110(b)(2)(i) and (c)(2) and 825.802(c).

(h) For further information on Federal antidiscrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

ENDNOTES

1. In contrast, the committee report accompanying the bill containing the ADA Amendments Act of 2008 complied with section 102(b)(3) of the CAA and contained a provision that indicated an intent to apply the ADA Amendments to the legislative branch. Committee on Education and Labor, H.Rpt. 110–730 § VII (June 23, 2008).

2. By regulation, the Board can require employing offices to provide the additional rights and protections for servicemembers and their families added to the FMLA since 1996. This is because, unlike executive branch agencies, the rulemaking power of the Board (after Congressional approval) is ''an exercise of the rulemaking power of the House of Representatives and the Senate'' under the Constitution. 2 U.S.C. § 1431(1). The rulemaking power of Congress under the Constitution, U.S. Const. Art. 1, § 5, cl. 2, is a ''broad grant of authority'' that allows each house of Congress to determine its own internal rules bounded only by ''constitutional restraints and fundamental rights.'' *Consumers Union of U.S., Inc. v. Periodical Correspondents' Ass'n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975); *United States v. Ballin*, 144 U.S. 1, 5 (1892).

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Health Care Provider for Employee's Serious Health Condition
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form A

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee's essential job functions: _____

_____

Check if job description is attached: ☐

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313.Your employing office must give you at least 15 calendar days to return this form. OOC regulations at 825.305(b).

Your Name: _____
First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA, as made applicable by the CAA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests

as defined in 29 C.F.R §1635.3(f), genetic services, as defined in 29 C.F.R. §1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. §1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Mark below as applicable:

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   ☐ No ☐ Yes If so, dates of admission:

   _____

   Date(s) you treated the patient for condition:

   _____

   Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

   Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (*e.g.*, physical therapist)?
   ☐ No ☐ Yes If so, state the nature of such treatments and expected duration of treatment:

   _____

2. Is the medical condition pregnancy? ☐ No ☐ Yes If so, expected delivery date: _____

3. Use the information provided by the employing office in Section I to answer this question. If the employing office fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

   Is the employee unable to perform any of his/her job functions due to the condition: ☐ No ☐ Yes

   If so, identify the job functions the employee is unable to perform:

   _____

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

   _____

   _____

_____

_____

_____

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☐ Yes

   If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☐ Yes

   If so, are the treatments or the reduced number of hours of work medically necessary? ☐ No ☐ Yes

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Estimate the part-time or reduced work schedule the employee needs, if any:

   _____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☐ Yes

   Is it medically necessary for the employee to be absent from work during the flare-ups? ☐ No ☐ Yes

   If so, explain: _____

   _____

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (*e.g.*, 1 episode every 3 months lasting 1-2 days):

   Frequency: _____ times per _____ week(s) _____ month(s)

   Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

_____

_____

_____

_____

Signature of Health Care Provider **Date**

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Health Care Provider for Family Member's Serious Health Condition
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form B

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: _____

_____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313. Your employing office must give you at least 15 calendar days to return this form to your employing office. OOC regulations at 825.305(b).

Your Name: _____
First Middle Last

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

_____

_____

_____

_____ _____

Employee Signature Date

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA, as made applicable by the CAA, to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests as defined in 29 C.F.R §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

   ☐ No ☐ Yes If so, dates of admission: _____

   Date(s) you treated the patient for condition: _____

   Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes

   Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (*e.g.,* physical therapist)?

   ☐ No ☐ Yes If so, state the nature of such treatments and expected duration of treatment:

   _____

   _____

2. Is the medical condition pregnancy? ☐ No ☐ Yes If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes

   Estimate the beginning and ending dates for the period of incapacity: _____

   During this time, will the patient need care? ☐ No ☐ Yes

   Explain the care needed by the patient and why such care is medically necessary: _____

5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes

   Estimate the hours the patient needs care on an intermittent basis, if any:

   _____ hour(s) per day;_____ days per week from _____ through _____

   Explain the care needed by the patient, and why such care is medically necessary: _____

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ☐ No ☐ Yes

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (*e.g.*, 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

Does the patient need care during these flare-ups? ☐ No ☐ Yes

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

_____

_____

_____

_____

_____ _____

Signature of Health Care Provider Date:

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Notice of Eligibility Rights and Responsibilities

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form C

In general, to be eligible a covered employee must have worked for an employing office for at least 12 months and have worked at least 1,250 hours in the 12 months preceding the leave. While use of this form by employing offices is optional, a fully completed form provides employees with the information required by the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(b), which must be provided within five business days of the employee notifying the employing office of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by the Board's FMLA regulations at 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employing Office Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

☐ The birth of a child, or placement of a child with you for adoption or foster care;

☐ Your own serious health condition;

☐ Because you are needed to care for your ☐ spouse; ☐ child; ☐ parent due to his/her serious health condition.

☐ Because of a qualifying exigency arising out of the fact that your ☐ spouse; ☐ son or daughter; ☐ parent is on covered active duty or call to covered active duty status with the Armed Forces.

☐ Because you are the ☐ spouse; ☐ son or daughter; ☐ parent; ☐ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

☐ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)

☐ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

- ☐ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
- ☐ You have not met the FMLA's 1,250-hours-worked requirement.

If you have any questions, contact: _____ or view the FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by** _____. (If a certification is requested, employing offices must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

☐ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request ___ **is**/___ **is not** enclosed.

☐ Sufficient documentation to establish the required relationship between you and your family member.

☐ Other information needed (such as documentation for military family leave): _____

_____

_____

☐ No additional information requested

If your leave does qualify as FMLA leave, you will have the following **responsibilities** while on FMLA leave (only checked blanks apply):

☐ Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

☐ You will be required to use your available paid ___ **sick,** ___ **vacation**, and/or ___ **other leave** during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

☐ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We ___ **have**/___ **have not** determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

☐ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following **rights** while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

☐ the calendar year (January – December).

☐ a fixed leave year based on _____.

☐ the 12-month period measured forward from the date of your first FMLA leave usage.

☐ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.

- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____.

- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)

- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have ____ **sick**, ____**vacation**, and/or ___ **other leave** run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

☐ For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____.

☐ Applicable conditions for use of paid leave: _____

_____

_____

_____

_____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact: _____ at _____.

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Designation Notice

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form D

Leave covered under the Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), must be designated as FMLA-protected and the employing office must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employing office may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employing office must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employing offices is optional, a fully completed form provides an easy method of providing employees with the written information required by the regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(d), 825.301, and 825.305(c).

To: _____

Date: _____

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on _____ and decided:

____ **Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.**

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

____ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: _____.

____ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

____ You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

____ We are requiring you to substitute or use paid leave during your FMLA leave.

____ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position __ **is** __**is not** attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

____ **Additional information is needed to determine if your FMLA leave request can be approved:**

____ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than _____,
(Provide at least seven calendar days)
unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

_____
(Specify information needed to make certification complete and sufficient)

_____

____ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

____ Your FMLA Leave request is Not Approved.

____ The FMLA does not apply to your leave request.

____ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

Office of Compliance
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Certification of Qualifying Exigency for Military Family Leave

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form E

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.309.

Employing office name: _____

Contact Information: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II fully and completely. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. OOC regulations at 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employing office must give you at least 15 calendar days to return this form to your employing office.

Your Name: _____
First Middle Last

Name of military member on covered active duty or call to covered active duty status:

_____
First Middle Last

Relationship of military member to you: _____

Period of military member's covered active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a military member's covered active duty or call to covered active duty status. Please check one of the following and attach the indicated document to support that the military member is on covered active duty or call to covered active duty status.

___ A copy of the military member's covered active duty orders is attached.

___ Other documentation from the military certifying that the military member is on covered active duty (or has been notified of an impending call to covered active duty) is attached.

___ I have previously provided my employing office with sufficient written documentation confirming the military member's covered active duty or call to covered active duty status.

PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

_____

_____

_____

_____

2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming the military member's Rest and Recuperation leave; a document confirming an appointment with a third party, such as a counselor or school official, or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached.
Yes ☐ No ☐ None Available ☐

PART B: AMOUNT OF LEAVE NEEDED:

1. Approximate date exigency commenced: _____

Probable duration of exigency: _____

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? ☐ Yes ☐ No

If so, estimate the beginning and ending dates for the period of absence:

_____

3. Will you need to be absent from work periodically to address this qualifying exigency? ☐ Yes ☐ No

Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

_____

_____

_____

Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (*i.e.*, 1 deployment-related meeting every month lasting 4 hours):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours _____ day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school, childcare or parental care providers, to make financial or legal arrangements, to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact

information of the individual or entity with whom you are meeting (*i.e.*, either the telephone or fax number or email address of the individual or entity). This information may be used by your employing office to verify that the information contained on this form is accurate.

Name of Individual: _____ Title: _____

Organization: _____

Address: _____

Telephone: (_____)_____ Fax: (_____)_____

Email: _____

Describe nature of meeting: _____

_____

_____

_____

_____

_____

_____

_____

PART D:

I certify that the information I provided above is true and correct.

_____ _____

Signature of Employee Date:

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Current Servicemember – for Military Family Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form F

Notice to the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a serious injury or illness of a current servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee is Requesting Leave

INSTRUCTIONS to the EMPLOYEE or CURRENT SERVICEMEMBER: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a servicemember. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. Board's regulations at 825.310(f). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed on Page 2 has requested leave under the FMLA, as made applicable by the CAA, to care for a family member who is a current member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the servicemember's injury or illness was incurred in the line of duty on active duty or if not, that the current servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that the current servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as

to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the servicemember's condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee Is Requesting Leave:

(This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employing Office (this is the employing office of the employee requesting leave to care for the current servicemember):

Name of Employee Requesting Leave to Care for Current Servicemember:

Name of the Current Servicemember (for whom employee is requesting leave to care):

Relationship of Employee to the Current Servicemember:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin

Part B: SERVICEMEMBER INFORMATION

(1) Is the Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves?
☐ Yes ☐ No

If yes, please provide the servicemember's military branch, rank and unit currently assigned to:

Is the servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)?
☐ Yes ☐ No

If yes, please provide the name of the medical treatment facility or unit:

---

(2) Is the Servicemember on the Temporary Disability Retired List (TDRL)?
☐ Yes ☐ No

Part C: CARE TO BE PROVIDED TO THE SERVICEMEMBER

Describe the Care to Be Provided to the Current Servicemember and an Estimate of the Leave Needed to Provide the Care:

_____

_____

SECTION II: For Completion by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator).

(Please ensure that Section I above has been completed before completing this section. Please be sure to sign the form on the last page.)

Part A: HEALTH CARE PROVIDER INFORMATION

Health Care Provider's Name and Business Address:

_____

Type of Practice/Medical Specialty:

_____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125:

_____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

Email: _____

PART B: MEDICAL STATUS

(1) The current Servicemember's medical condition is classified as (Check One of the Appropriate Boxes):

☐ **(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

☐ **NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a "serious health condition" under 825.113 of the FMLA,

as made applicable by the CAA. If such leave is requested, you may be required to complete the OOC's optional certification form (Form B) or an employing office-provided form seeking the same information.)

(2) Is the current Servicemember being treated for a condition which was incurred or gravitated by service in the line of duty on active duty in the Armed Forces? ☐ Yes ☐ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the servicemember undergoing medical treatment, recuperation, or therapy for this condition? ☐ Yes ☐ No

If yes, please describe medical treatment, recuperation or therapy:

_____

PART C: SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

(1) Will the servicemember need care for a single continuous period of time, including any time for treatment and recovery? ☐ Yes ☐ No

If yes, estimate the beginning and ending dates for this period of time:

_____

(2) Will the servicemember require periodic follow-up treatment appointments? ☐ Yes ☐ No

If yes, estimate the treatment schedule: _____

(3) Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointments? ☐ Yes ☐ No.

(4) Is there a medical necessity for the servicemember to have periodic care for other than scheduled follow-up treatment appointments (*e.g.*, episodic flare-ups of medical condition)? ☐ Yes ☐ No.

If yes, please estimate the frequency and duration of the periodic care:

_____

_____

Signature of Health Care Provider: _____ **Date**:_____

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form G

Notice to the EMPLOYING OFFICE

The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE and/or the VETERAN for whom the employee is requesting leave

INSTRUCTIONS to the EMPLOYEE and/or VETERAN: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. OOC regulations at 825.310(g). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

(This section must be completed before Section II can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and address of employing office (this is the employing office of the employee requesting leave to care for a veteran):

_____

Name of employee requesting leave to care for a veteran:

_____
First Middle Last

Name of veteran (for whom employee is requesting leave):

_____
First Middle Last

Relationship of employee to veteran:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin ☐ _____ (please specify relationship):

Part B: VETERAN INFORMATION

(1) Date of the veteran's discharge: _____

(2) Was the veteran **dishonorably** discharged or released from the Armed Forces (including the National Guard or Reserves)? ☐ Yes ☐ No

(3) Please provide the veteran's military branch, rank and unit at the time of discharge:

_____

(4) Is the veteran receiving medical treatment, recuperation, or therapy for an injury or illness? ☐ Yes ☐ No

Part C: CARE TO BE PROVIDED TO THE VETERAN

Describe the care to be provided to the veteran and an estimate of the leave needed to provide the care:

_____

_____

SECTION II: For completion by: (1) a United States Department of Defense ("DOD") health care provider; (2) a United States Department of Veterans Affairs ("VA") health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee named in Section I has requested leave under the military caregiver leave provision of the FMLA, as made applicable by the CAA, to care for a family member who is a veteran. For purposes of FMLA military caregiver leave, a serious injury or illness means an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the servicemember became a veteran, and is:

(i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.

A complete and sufficient certification to support a request for FMLA military caregiver leave due to a covered veteran's serious injury or illness includes written documentation confirming that the veteran's injury or illness was incurred in the line of duty on active duty or existed before the beginning of the veteran's active duty and was aggravated by service in the line of duty on active duty, and that the veteran is undergoing treatment, recuperation, or therapy for such injury or illness by a health care provider listed above. Answer fully and completely all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA military caregiver leave coverage. Limit your responses to the veteran's condition for which the

employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

(Please ensure that Section I has been completed before completing this section. Please be sure to sign the form on the last page and return this form to the employee requesting leave (See Section I, Part A above). **DO NOT SEND THE COMPLETED FORM TO THE OFFICE OF COMPLIANCE.)**

Part A: HEALTH CARE PROVIDER INFORMATION

Health care provider's name and business address: _____

_____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

Email: _____

Type of Practice/Medical Specialty: _____

Please indicate if you are:

- ☐ a DOD health care provider
- ☐ a VA health care provider
- ☐ a DOD TRICARE network authorized private health care provider
- ☐ a DOD non-network TRICARE authorized private health care provider
- ☐ other health care provider

PART B: MEDICAL STATUS

Note: If you are unable to make certain of the military-related determinations contained in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as, DOD Recovery Care Coordinator) or an authorized VA representative.

(1) The Veteran's medical condition is:

- ☐ A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating.
- ☐ A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave.
- ☐ A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment.
- ☐ An injury, including a psychological injury, on the basis of which the covered veteran is enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.
- ☐ None of the above.

(2) Is the veteran being treated for a condition which was incurred or aggravated by service in the line of duty on active duty in the Armed Forces? ☐ Yes ☐ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the veteran undergoing medical treatment, recuperation, or therapy for this condition? ☐ Yes ☐ No

If yes, please describe medical treatment, recuperation or therapy: _____

_____

PART C: VETERAN'S NEED FOR CARE BY FAMILY MEMBER

"Need for care" encompasses both physical and psychological care. It includes situations where, for example, due to his or her serious injury or illness, the veteran is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport him or herself to the doctor. It also includes providing psychological comfort and reassurance which would be beneficial to the veteran who is receiving inpatient or home care.

(1) Will the veteran need care for a single continuous period of time, including any time for treatment and recovery? ☐ Yes ☐ No

If yes, estimate the beginning and ending dates for this period of time: _____

(2) Will the veteran require periodic follow-up treatment appointments? ☐ Yes ☐ No

If yes, estimate the treatment schedule: _____

(3) Is there a medical necessity for the veteran to have periodic care for these follow-up treatment appointments? ☐ Yes ☐ No

(4) Is there a medical necessity for the veteran to have periodic care for other than scheduled follow-up treatment appointments (*e.g.*, episodic flare-ups of medical condition)? ☐ Yes ☐ No

If yes, please estimate the frequency and duration of the periodic care: _____

_____

_____

Signature of Health Care Provider: _____ **Date**: _____

AUTHORIZING THE USE OF THE CAPITOL GROUNDS FOR THE DISTRICT OF COLUMBIA SPECIAL OLYMPICS LAW ENFORCEMENT TORCH RUN

AUTHORIZING THE USE OF THE CAPITOL GROUNDS FOR THE 2ND ANNUAL FALLEN FIREFIGHTERS CONGRESSIONAL FLAG PRESENTATION CEREMONY

AUTHORIZING THE USE OF THE CAPITOL GROUNDS FOR AN EVENT TO COMMEMORATE THE 20TH ANNIVERSARY OF THE MILLION MAN MARCH

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the en bloc consideration of the following House concurrent resolutions, which are at the desk: H. Con. Res. 70, H. Con. Res. 73, and H. Con. Res. 74.

There being no objection, the Senate proceeded to consider the concurrent resolutions en bloc.

Mr. MCCONNELL. I ask unanimous consent that the resolutions be agreed to and the motions to reconsider be laid upon the table en bloc.

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

The concurrent resolutions were agreed to.

ORDERS FOR THURSDAY, SEPTEMBER 17, 2015

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Thursday, September 17; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that following leader remarks, the Senate resume consideration of H.J. Res. 61, with the time until 11 a.m. equally divided between the two leaders or their designees; finally, that the filing deadline for all second-degree amendments be at 10:30 a.m. tomorrow.

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

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned, following the remarks of Senator DAINES.

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

The Senator from Montana.

CYBER SECURITY

Mr. DAINES. Mr. President, this generation is at the forefront of technological advances. In fact, it is making the United States and this generation that lives here one of the best networked in history, in fact, not only here but around the world.

The need for new and better technology to accommodate such a generation has also left a gaping hole in the security of our country. In recent years, cyber security attacks and breaches have multiplied and left American citizens incredibly vulnerable. Make no mistake, the cyber security of the United States is in great danger. But, unfortunately, proper precautions and reforms needed to set a better course have yet to be taken.

Just look at last week's headlines. USA Today recently reported hackers have attempted to compromise the Department of Energy over 1,100 times between 2010 and 2014, and these attackers have been successful over 150 times.

In a 2013 breach these attackers gained access to the information of over 104,000 Energy Department employees. After these attacks, the auditors noted ''unclear lines of responsibility'' and ''lack of awareness by responsible officials.'' Yet nothing was done to mitigate the potential for future attacks.

Our government needs to stop being content with simply being reactive to serious cyber threats. There are no deterrents or consequences to these foreign attackers. Not one person at the Department of Energy has faced consequences. The CIO of the Office of Personnel Management, or OPM, remains in charge after one of the largest hacks on Federal employees.

In an age ruled by technology, it is our responsibility to make sure we take the necessary steps to protect the information of the American people.

This past Monday I held the first biannual Montana High Tech Jobs Summit in my hometown of Bozeman at my alma mater, Montana State University. We had over 600 Montanans attend.

We need to be more disruptive of the status quo in the technology sector, rather than passively sitting by as other nations innovate and leave us behind. We need to encourage STEM education in our classrooms and bring more people into the science and technology sector.

In my home State of Montana, high-tech jobs are growing 10 times faster than the statewide job growth rate. Last year alone, 40 percent of the wage growth in our entire State took place in Gallatin County, the county where Bozeman is located, and it has become a hub of technology. Yet too often Montana kids have to leave to find work. We need more high-paying technology jobs in Montana.

During my time at the cloud computing company RightNow Technologies, which was founded, started up, and grew to a company that was acquired by Oracle for $1.8 billion, over the 12 years I was there, I saw firsthand how Montana is becoming a leading hub for innovation and high-tech job growth. Montana has a qualified workforce and an unparalleled quality of life that makes our State a wise investment for tech companies. In fact, where the campus of our software company is located in Bozeman we are just minutes away from the Gallatin River. The Gallatin River is where the movie ''A River Runs Through It'' was filmed, where Brad Pitt made his debut, and directed by Robert Redford.

This tech summit showcased the great work done in our State, a State where we can combine the quality of life of fishing, hunting, backpacking, mountain climbing, spending time with family outdoors with technology and create a world-class high-tech company, because millennials want to have that quality of life, but they also want to have a world-class career in building global companies.

This tech summit allowed our Nation's tech leaders to share their views and experiences and encouraged our future tech leaders to lead. It provided a unique opportunity for our State's tech and business leaders to learn from one another. We had a great slate of speakers and panelists from across the technology industry: Laef Olson, the senior VP for cloud operations at Oracle; Dr. Dava Newman, a Montana native and the new Deputy Administrator at NASA. We had two of the five FCC Commissioners, Ajit Pai and Michael O'Rielly. We had Doug Burgum, the former CEO and chairman of Great Plains Software. Great Plains Software was started up in North Dakota. He grew that company. It was acquired by Microsoft in 2001 for $1.1 billion, the largest acquisition at that time for Microsoft. Now Doug is cofounder and partner of Arthur Ventures and chairman of the Kilbourne Group. We had Craig Barrett. Dr. Craig Barrett received his undergrad, master's, and Ph.D. at Stanford and was a professor at Stanford for 10 years in metallurgical engineering and then went to this small company in 1974 called Intel. There, he rose all the way to CEO, and in fact, worked with Gordon Moore, who became CEO of Intel and who is famous for Moore's law.

Mike Goguen, the managing director of Sequoia Capital, a company that was an early initial investor in companies such as Google, YouTube, Apple, PayPal. We had Will Lansing, a former board member of RightNow Technologies who is now the CEO of FICO. We had Matt Rose, the BNSF Railway executive chairman.

We had panelists as well who explored issues of critical importance to our technology sector, cyber security infrastructure, and our economy. All convened in Bozeman on Monday. One doesn't think of the Gallatin Valley as being a hub of technology—maybe the Silicon Valley—but as the world is changing, as technology removes geography as a constraint, you have a quality of life that is exceptional, where

you are an hour away from Yellowstone National Park and can grow world-class tech companies there.

We heard from cyber security professionals from Microsoft and Facebook that we need not only to run faster, technically speaking, but work together between the private and public sectors to fend off potential hackers.

We heard how technology is removing geography as a constraint. We heard how companies are adopting innovative cyber security practices to keep information safe while maintaining global competitiveness. We learned about the importance of maintaining and advancing our technology infrastructure and the factors that affect start-up companies willing to grow, attract investments, and create jobs.

We have great technology leaders moving our country forward and working to protect our country, but we need to run faster than those seeking to destroy us. We need to ensure that we don't have burdensome regulations facing our entrepreneurs and our companies. We need to continue to encourage policies that drive innovation.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow morning.

Thereupon, the Senate, at 6:45 p.m., adjourned until Thursday, September 17, 2015, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

AFRICAN DEVELOPMENT FOUNDATION

JOHN W. LESLIE, JR., OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 2019. (REAPPOINTMENT)

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

EDUARDO CASTELL, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 2019, VICE JAVAID ANWAR, TERM EXPIRED.

STEVEN H. COHEN, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 2019. (REAPPOINTMENT)

VICKI MILES-LAGRANGE, OF OKLAHOMA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 2015, VICE ROGER L. HUNT, TERM EXPIRED.

VICKI MILES-LAGRANGE, OF OKLAHOMA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE HARRY S TRUMAN SCHOLARSHIP FOUNDATION FOR A TERM EXPIRING DECEMBER 10, 2021. (REAPPOINTMENT)

DEPARTMENT OF STATE

DEBORAH R. MALAC, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF UGANDA.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

CATHERINE ANN NOVELLI, OF VIRGINIA, TO BE UNITED STATES ALTERNATE GOVERNOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, VICE ROBERT D. HORMATS, RESIGNED.

DEPARTMENT OF STATE

LISA J. PETERSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SWAZILAND.

H. DEAN PITTMAN, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MOZAMBIQUE.

ERIC SETH RUBIN, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER–COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BULGARIA.

KYLE R. SCOTT, OF ARIZONA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SERBIA.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROBERT MCKINNON CALIFF, OF SOUTH CAROLINA, TO BE COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, VICE MARGARET A. HAMBURG, RESIGNED.

NATIONAL MEDIATION BOARD

LINDA A. PUCHALA, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2018. (REAPPOINTMENT)

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

DAVID S. ABRAHAMS
LAWRENCE N. AIELLO
SARAH K. ALBRYCHT
DEMETRIUS C. ALEXANDER
JAMES C. ALLEN
SCOTT ALLEN
DAVID K. ALMQUIST
BRENDAN J. ARCURI
THOMAS D. ASBERY
PATRICK C. ASPLAND
GAIL E. ATKINS
MAYCROS I. BAEZ
DESMOND V. BAILEY
RICHARD J. BALL
ERIC A. BAUS
KYLE W. BAYLESS
JONATHAN R. BEASLEY
SLADE H. BEAUDOIN
JOHN C. BECKING
BRIAN T. BECKNO
ERIK M. BERDY
CARL L. BERGMANN
BARRETT M. BERNARD
MICHAEL J. BIRMINGHAM
RONALD C. BLACK
ADRIAN T. BOGART III
MATTHEW W. BRAMAN
JASON T. BRIDGES
MARK E. BROCK
CHRISTOPHER L. BUDIHAS
JAY P. BULLOCK
JONATHAN C. BYROM
PAUL R. CALLAHAN
CHAD A. CALLIS
ROMAN J. CANTU
STEVEN P. CARPENTER
NEIL T. CHAFFEE
JERRY E. CHANDLER, JR.
CHAD E. CHASTEEN
STEVEN N. CHO
ROBERT J. CLARK
JOHN P. COGBILL
ROLANDA D. COLBERT
KENNETH C. COLE
PATRICK T. COLLOTON
CHRISTOPHER D. COMPTON
WILLIAM M. CONDE
JAMES L. CONNER
ERNESTO A. CORTEZ
KEVIN E. COUNTS
CLINTON W. COX
RICHARD R. COYLE
JEFFREY S. CRAPO
MICHAEL A. CRAWFORD
SHAWN P. CREAMER
DALE S. CROCKETT
COREY L. CROSBIE
PAUL E. CUNNINGHAM II
LAWRENCE J. DALEY
GILBERT F. DEIMEL
JAMES A. DEORE, JR.
LARRY C. DEWEY, JR.
OSCAR F. K. DIANO
ROLAND H. DICKS
BENJAMIN T. DIMAGGIO
JAMES E. DIMON
ROBERT C. DONNELLY
AARON L. DORF
OSCAR W. DOWARD, JR.
LYNN E. DOWNIE
WILLIAM S. DOWNING
WILLIAM E. DUVALL IV
JOHN E. ELRICH
JOSEPH E. ESCANDON
LEE H. EVANS
GEORGE G. FERIDO
ERIC C. FLESCH
ROBERT B. FOUCHE
PARKER L. FRAWLEY
MICHAEL D. GAFFNEY
PHILLIP K. GAGE
WILLIAM S. GALLAWAY
ANTOINETTE R. GANT
CHARLES E. GETZ, JR.
JEFFREY P. GOTTLIEB
BRIAN R. GREATA
CHRISTOPHER A. GRICE
FERNANDO GUADALUPE, JR.
BRIAN M. HAGER
SCOTT M. HALTER
MICHAEL L. HAMMERSTROM
THOMAS D. HANSBARGER
BERNARD J. HARRINGTON
BRIAN J. HARTHORN
SHAUNA M. HAUSER
EDWARD B. HAYES, JR.
JAMES E. HAYES
PETER J. HEBERT
ERIC L. HEFNER
MICHAEL C. HENSHAW
ROBERT B. HENSLEY
RAYMOND J. HERRERA
DANIEL H. HIBNER
DAVID R. HIBNER
CHRISTOPHER W. HOFFMAN
JOHN C. HOPKINS
BRIAN S. HORINE
BRIAN E. HOWELL
JOHN L. HUDSON
MICHAEL J. JACKSON
WILLIAM G. JACOBS II
KEITH R. JAROLIMEK
DARREN K. JENNINGS
JAMES H. JENSEN
RONNY A. JOHNSON
KEVIN L. JOHNSTON
KENNETH E. JONES
JASON E. JOOSE
ROBERT R. KEETER
ANDREW D. KELLY, JR.
CURTIS W. KING
DON A. KING, JR.
MATTHEW S. KINKEAD
ROBERT KJELDEN
JAMES R. KOEPPEN
MICHAEL KORNBURGER
KIP A. KORTH
ROBERT A. KRIEG
ERIK KRIVDA
SETH D. KRUMMRICH
JOSEPH P. KUCHAN
ROBERT B. KUTH
MARC V. LAROCHE
PAUL L. LARSON
JOSEPH L. LEARDI
RYAN T. LEHMAN
THOMAS E. LEWIS, JR.
JAMES L. LOCK
ERIC P. LOPEZ
RAFAEL LOPEZ
MATTHEW D. MACNEILLY
AARON P. MAGAN
TOBIN A. MAGSIG
ROBERT W. MARSHALL
JOSEPH J. MCGRAW
JEREMY P. MCGUIRE
WILLIAM J. MCKNIGHT
HENRY I. B. MCNEILLY
NORBERTO R. MENENDEZ III
ANGEL C. MESA
DAVID A. MEYER
JASON L. MILLER
JASON A. MISELI
JOSHUA L. MOON
JON P. MOORE
THEO K. MOORE
MICHAEL E. MORA
SHANE P. MORGAN
DANIEL Y. MORRIS
JOHN B. MOUNTFORD
SCOTT W. MUELLER
STEPHEN O. MURPHY
THOMAS M. NELSON
CLAY E. NOVAK
TIMOTHY F. OBRIEN
MARK P. OLIN
JOHN A. OLIVER, JR.
PATRICK S. ONEAL
LUIS A. ORTIZ
DARCY L. OVERBEY
ANTONIO M. PAZ
HENRY C. PERRY, JR.
THOMAS C. PETTY
STEVEN M. PIERCE
OSCAR PINTADORODRIGUEZ
ESLI T. PITTS
DAWSON A. PLUMMER
JOSE L. POLANCO
DONALD S. POTOCZNY
JEFFREY H. POWELL II
LEWIS J. POWERS
CARTER L. PRICE
BRIAN K. PRUITT
MARK T. PURDY
CHARLES R. RAMBO
MATTHEW D. RAUSCHER
KYLE A. REED
AARON W. REISINGER
WILLIAM E. RIEPER
MICHAEL T. RIPLEY
LUIS M. RIVERA
CHRISTOPHER M. RIZZO
THOMAS J. ROBINSON, JR.
JOSEPH D. ROLLER
MONTE L. RONE
FIDEL V. RUIZ
THOMAS M. RUSSELLTUTTY
JUSTIN W. SAPP

TERESA A. SCHLOSSER
GLENN C. SCHMICK
MARTIN J. SCHMIDT
CURTIS M. SCHROEDER
JAMES M. SCHULTZE
JACKSON J. SEIMS
GEORGE M. SELF
ARTHUR W. SELLERS
DAVID E. SHANK
JOHN D. SHANK
ERIC P. SHWEDO
SAMUEL K. SIMPSON II
BRYAN K. SIZEMORE
ERIC T. SMITH
JAMES P. SMITH
ROBERT L. SMITH
STUART S. SMITH
FREDERICK R. SNYDER
MIKE SOLIS
SCOTT E. SONSALLA
JAVIER C. SORIA
NORMAN D. SPIVEY
CIRO C. STEFANO
LAWRENCE I. STEWART
ERIC S. STRONG
MICHAEL D. SULLIVAN
MICHAEL P. SULLIVAN
MATTHEW J. TACKETT
BRUCE W. TERRY
GREGORY S. TRAHAN
JAMES A. VANATTA
JEFFREY T. VANCLEAVE
TERRY R. VEENEMAN
JOHN A. VEST
CHRISTOPHER C. VINE
THOMAS P. VOGEL
BRIAN E. WALSH
CHAD E. WARD
LARS A. WENDT
JASON A. WESBROCK
LAWRENCE B. WHITE
SCOTT D. WILKINSON
MICHAEL R. WILLIAMS
JASON A. WOLTER
SCOTT C. WOODWARD
RICHARD W. WRIGHT
STEVEN G. YAMASHITA
RICHARD H. ZAMPELLI
MICHAEL T. ZERNICKOW
DAVID J. ZINN
D002605
D003450
D004487
D005229
D005322
D005670
D005950
D006293
D012577
D012627

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

STEPHANIE R. AHERN
DANIEL M. ALLEN
EDWARD G. ANDERSON IV
PHILIP R. ARCHER
AMANDA I. AZUBUIKE
DANIEL J. BENICK
DANIEL T. BENNETT
JAMES T. BLEJSKI, JR.
NATHAN J. BOLLINGER
BA K. BOOZE
ROGER L. BOWMAN
ADAM J. BOYD
STEPHON M. BRANNON
KAREN L. T. BRIGGMAN
COREY L. BRUMSEY
JASON A. BRYAN
JOEL M. BUENAFLOR
CURTIS R. BURNS
LAWRENCE M. BURNS
ULISES V. CALVO
CHAD G. CARROLL
CHARLES B. CHALFONT
JUANITA A. CHANG
JASON A. CHARLAND
PATRICK C. CHAVEZ
NATHAN S. CLINE
RICHARD D. CONKLE
WILLIAM W. COPPERNOLL
SCOTT A. CRUMP
JEFFREY S. DAVIS
MICHAEL A. DAVIS
SCOTT T. DAVIS
MARK L. DOTSON
MARK S. DREWETT
DARRELL W. DRIVER
DAVID M. DUDAS
MATTHEW W. DUNLOP
MONTGOMERY C. ERFOURTH
TROY L. EWING
WILLIAM M. FAIRCLOUGH
KEVIN N. FAUGHNDER
RYAN J. FAYRWEATHER
JOHN M. FERRELL
SCOTT W. FITZGERALD
ANDREW S. FLETCHER
GREGORY J. FORD
CALONDRA L. FORTSON
JAMES A. FOSBRINK
JOSHUA J. FULMER
JOHN P. GALLAGHER
BRAD T. GANDY
JOSEPH C. GELINEAU III
THOMAS M. GILLERAN
KENNON S. GILLIAM
NICHOLAS H. GIST
PAUL L. GOETHALS
VINCENT S. GOLEMBESKI
JOHN P. GREGOR
JEFFREY S. GRIBSCHAW
KATHERINE P. GUTTORMSEN
JOSEPH E. GUZMAN
DAVID A. HARPER
JERAD I. HARPER
BRIAN D. HARRIS
JOHN K. HARRIS
KENNETH D. HARRISON
PETER G. HART
GARY M. HAUSMAN
MICHAEL T. HEATON
MICHAEL C. HERRERA
CHRISTOPHER J. HICKEY
KEVIN L. HILL
CHRISTOPHER L. HOPKINS
BRITTON T. HOPPER
PAUL D. HOWARD
CHAD T. JAGMIN
JEFFERY N. JAMES
KYLE F. JETTE
STEVEN K. JONES
JASON R. KALAINOFF
MELINDA Z. KALAINOFF
PATRICK N. KAUNE
LAURA L. KNAPP
MICHAEL K. KOLB
JOHN M. KOSTUR
MICHAEL J. KULIKOWSKI
DAVID J. LAMBRECHT
DAVID R. LAMY
HAROLD L. LAROCK II
WILLIAM I. LEWIS, JR.
JOEL S. LINDEMAN
ABIGAIL T. LINNINGTON
KIMBERLY K. LUBICH
LANGDON J. LUCAS
DAVID S. LYLE
KEVIN R. LYNCH
ANDREW F. MACLEAN
MICHAEL P. MARTEL
JOSEPH G. MATTHEWS
SCOTT D. MAXWELL
SHON A. MCCORMICK
MICHAEL S. MCCULLOUGH
INGO MCLEAN
THOMAS A. MCNALLY
WILLIAM H. MENGEL, JR.
MARK D. MILES
TRENT I. MILLS
ROBB C. MITCHELL
SCOTT H. MORGAN
JONATHAN C. MUENCHOW
CHRISTOPHER W. MULLER
BRUCE A. MURPHY
STEPHEN M. MURPHY
JASON R. MUSTEEN
STEVEN L. OATMAN
CHRISTOPHER M. OCONNOR
FRANCIS J. PARK
INGRID A. PARKER
JAREN K. PRICE
VANESSA K. RAGSDALE
ARMANDO J. RAMIREZ
ERIC M. REMOY
BRETT J. RIDDLE
JOSEPH F. ROACH
JARED D. H. ROBBINS
JEFFERY D. ROBERTSON
WELLINGTON W. SAMOUCE
AARON A. SAMPSON
PATRICIA K. SAYLES
JEFFREY M. SCHROEDER
JOSEPH E. SCROCCA
PATRICK R. SEIBER
STEVEN E. SEXTON
STEPHEN T. SHORE
ROBERT B. SIMS
SCOTT H. SINKULAR
CHRISTOPHER L. SMITH
GREGORY K. SMITH
JEFFREY S. SPEAR
RYAN T. STEWART
DARLENE M. STRAUB
BARBARA A. STREATER
MARNE L. SUTTEN
CURTIS D. TAIT
COREY M. TEJCHMA
DIANNA N. TERPIN
DAVID A. THOMAS
MARK A. THOMSON
MARIO TORRES
DEITRA L. TROTTER
MICHAEL A. TRUE
PAUL W. TURNBULL, JR.
KATHLEEN T. TURNER
HEIDI A. URBEN
RICHARD D. VANGORDEN
JUAN C. VEGA
BRIAN D. VILE
BRITTIAN A. WALKER
JAMES P. WALSH
ADAM Z. WALTON
LISA D. WHITTAKER
PETER B. WILSON
WARREN R. WOOD
MICHAEL F. YANKOVICH
JOHN B. YORKO
ROBERT E. YOUNG
JOHN J. ZAVAGE
JERZY S. ZUBR
D001832
D012473
G001147
G001255
G001433
G010027
G010047
G010384

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

CHRISTOPHER W. ABBOTT
JON W. ALTHOFF
TACILDAYUS ANDREWS
GREGORY N. ASH, JR.
JON P. BEALE
LESLIE D. BEGLEY
BETH A. BEHN
JOSEPH D. BLANDING
RALPH T. BORJA
DARRIN M. BOWSER
RODNEY O. BRIGGMAN
JEFFREY J. BRITTON
MICHAEL C. BRUENS
TODD W. BURNLEY
ELLIOTT R. CAGGINS
JEFFREY L. CALDWELL
FRAZARIEL I. CASTRO
PHILIP R. CLARK
JUANITA R. CLARKE
ENRIQUE L. COSTASOLIVERA
KEVIN L. COTMAN
PETER J. CRANDALL
GARY J. CREGAN
JASON A. CROWE
FRED L. DELACRUZ
SCOT A. DOBOSZENSKI
DANIEL J. DUNCAN
MICHAEL D. EGAN
STEPHEN F. ELDER
ANDREW J. ESCH
BRIAN R. FORMYDUVAL
GREGORY S. FORTIER
BRYAN E. FOWLER
RACQUEL M. GALLMAN
ALLEN B. GARRISON, JR.
ISABEL E. GEIGER
ADDALYRICA Q. GEORGE
JAMES J. GODFREY
HECTOR A. GONZALEZ
DAVID A. GRANT
DAVID K. GREEN
GARY A. GRUBB
MEGAN A. GUMPF
LAMONT J. HALL
MICHAEL R. HARPER
CHAD M. HARRIS
ARCHIE S. HERNDON
HAROLD B. HODGE III
ELLSWORTH K. JOHNSON
GREGORY S. JOHNSON
STEPHEN L. KAVANAUGH
JIM R. KEENE
DENNIS W. KERWOOD
MICHAEL S. KNAPP
JOSEPH R. KURZ
ROGER D. KUYKENDALL
KENNETH W. LETCHER
KARL S. LINDERMAN
BRUCE A. LLOYD
RALPH A. LOUNSBROUGH
NICOLE M. LUCAS
NEIL R. MAHABIR
RENEE L. MANN
ROBERT P. MANN
ADRIAN A. MARSH
HOLLIE J. MARTIN
ROBERT S. MATHEWS, JR.
WILLIAM P. MCDONOUGH
JASON J. C. MCGUIRE
ROBERT J. MIKESH, JR.
JEFFREY S. NIEMI
JIN H. PAK
RALPH N. PERKINS IV
ROBERT L. PHILLIPS III
ROSS C. POPPENBERGER
ANTONIO D. RALPH
ROBERT L. RALSTON
JOSEPH O. RITTER
JOSEPH W. ROBERTS
CHRISTOPHER H. ROBERTSON
ROBERT D. ROUSE
PAUL U. ROYLE
ARIZMENDI E. SANTIAGO
MARIA D. SCHNEIDER
MATTHEW F. SCHRAMM
SHAWN C. SCHULDT
ERIC M. SCHWARTZ
CARMELIA J. SCOTTSKILLERN
TALMADGE C. SHEPPARD
THEODORE B. SHINKLE
WILLIAM J. SHINN, JR.
TERRY D. SIMMS
CHARLONE E. STALLWORTH
RODRIDGUEZ L. STUCKEY
SHANE M. SULLIVAN
STEPHEN K. SULLIVAN
NATHAN M. SWARTZ
JAMES B. SWIFT
PATRICK E. TAYLOR
JARRETT A. THOMAS II
KIM M. THOMAS
GREGORY S. TOWNSEND
GRANT A. VAUGHAN

LUIS A. VELEZCORTES
MARK A. VINEY
DINA S. WANDLER
MONICA P. WASHINGTON
JOHN L. WEDGES III
JEANINE M. WHITE
DANIEL J. WILLIAMSON
HERBERT R. WILLINGHAM, JR.
PATRICIA K. WRIGHT
CODY L. ZILHAVER
D012591
D011026

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be colonel

NEIL I. NELSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

BENJAMIN J. BIGELOW

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

DAVID M. JACKSON

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

WHITNEY A. ABRAHAM
JOSEPH F. ABRUTZ III
BRANDON J. ADAMS
CHRISTINA C. ADAMS
JAMESON R. ADLER
KURT W. ALBAUGH
CORY E. ALEXANDER
BENJAMIN E. ALSUP
BRIAN D. ANDERSON
JAMES A. ANDERSON
TOY W. ANDREWS
MATTHEW M. ANTHONY
JOHN T. APPELBAUM
JEFFREY L. APPLEBAUGH
MATTHEW APPLETON
ROBERT D. ARCHER
MATTHEW D. ARNDT
WILLIAM F. ASHLEY, JR.
GLENN A. ATHERTON
JESSICA S. ATHERTON
FREDERICK J. AUTH
ANDREW D. BABAKAN
BLAKE A. BACCIGALOPI
JONATHAN H. BACCUS
PAUL M. D. BAINBRIDGE
AARON J. BAKER
RYAN L. BALDWIN
ROBERT C. BALLARD, JR.
TAMMI L. BALLINGER
VICTOR M. BARBA
JAMES R. BARBER III
STEVEN D. BARBER
ALLEN J. BARD
JARED J. BARNARD
GLEN A. BARNETT
GEOFFREY S. BAUCHMAN
JASON R. BAUMANN
AMANDA B. BAXTER
JAMES T. BEAMAN, JR.
CHARLES A. BEAUCHENE
KYLE M. BEILKE
ROBERT M. BELFLOWER II
ANDREW T. BELL
DAN J. BELLINGHAUSEN
DAVID V. BELLIS
JENS D. BERDAHL
BENJAMIN J. BERNARD
JEFFREY R. BERNHARDT
BRAD M. BERTHELOTTE
MATTHEW G. BERTHOLD
STEVEN B. BETTIS
CHRISTOPHER M. BEULIGMANN
GARY J. BICKEL
STEPHANIE M. BIEHLE
GARY W. BISSONETTE
KERRY L. BISTLINE, JR.
LISA C. BLACHFORD
MICHAEL C. BLACKMAN
BRADLEY A. BLANCHETTE
MARC P. BLANCO
DAVID S. A. BLAS
JAMES H. BLATTER
TYLER C. BLOECHER
ERIC J. BLOMBERG
MARTIN J. BLOMBERG
SHANE R. BOBBE
ALEXANDER W. BOCK
CHRISTOPHER G. BOEHM
LANDERRICK E. BOLDING
JAMES H. BOND
RICHARD A. BOWERS
DANIEL P. BRADLEY
PETER M. BRAS
THOMAS K. BREWER
TIMOTHY B. BROCK
LEVI D. BROECKELMAN
CHRISTOPHER D. BROOKS
RYAN L. BROOKS
BURNES C. W. BROWN
MATTHEW D. BROWN, JR.
ANNE C. BRUCKMAN
MICHAEL J. BRUGGER
CHRISTOPHER J. BRUGLER
STEPHEN G. BRUNER
CHELSEA R. BRUNOEHLER
OMARI D. BUCKLEY
NICHOLAS K. BULLARD
DANIEL P. BURBA
MARK A. BURCHILL
GABRIEL D. BURGI
CAMERON J. BURNETTE
MARTY E. BURNS
JOSHUA A. CALANDRA
MICHELLE C. CALARASU
JOHN A. CALDECUTT
JOHN R. CALLAHAN
SARAH B. CAMARENA
DEREK M. CAMERON
JOSEPH A. CAMPBELL
MATTHEW W. CAMPBELL
RICHARD E. CAMPBELL, JR.
DANA S. CANBY
JOSEPH M. CANDRILLI
ZACHARY N. CAPACETE
GUY K. CARLSWARD
BARRY F. CARMODY, JR.
KENDRA B. CARTER
MARK W. CARTWRIGHT
CHRISTOPHER A. CASE
BRANDON S. CASTLE
SEAN T. CAVANAGH
KEVIN P. CAVICCHI
JONATHAN E. CEBIK
COLIN B. CHANCE
ROBERT J. CHANDLER
JEREMIAH M. CHASE
MERLIN J. CHRISOSTOMIDIS
XAVIER M. CHRISTIAN
JOHN D. CICCOCIOPPI
RONNIE P. CITUK
CORY D. CLARK
TIMOTHY B. CLARK
MICAH W. CLAY
DANIEL P. CLAYTOR
KATIOUSKA L. CLEA
MATTHEW S. CLIFFORD
ROBERT A. COFFMAN, JR.
BARRY J. COHEN
JESSE P. COHEN
ANDREW M. COLE
JOSEPH R. COLLINS
PATRICK R. COLLINS
JASON COLTELLINO
BRANDON J. COLVIN
BRIAN T. CONNER
GLENN A. CONRAD
CHRISTOPHER T. COOK
DONALD E. COOMES
JASON A. COPARE
MICHAEL S. COPPOCK
DEREK W. CORBETT
BENJAMIN A. CORDRAY
JON A. CORKEY
LINDA M. CORRELL
MATTHEW R. COULTER
ANDREW S. COUNTISS
GREGORY M. COY
BENJAMIN G. COYLE
WILLIAM W. CRAIG
MATTHEW P. CRAWFORD
DANIEL R. CRENSHAW
CHAD P. CRONAUER
BRIAN R. CROSBY
CHARLES N. CUDDY
RYAN D. CUNNINGHAM
MATTHEW C. CURRID
BRIAN M. CUSH
DAVID M. DAGOSTINO
CHRISTOPHER M. DANLEY
BRAD M. DANSE, JR.
JASON E. DATINGUINOO
BRANDON C. DAUGHTRY
DARRIN D. DAVIS
EDWARD J. DAVIS, JR.
JAY L. DAVIS
SEAN F. DAVIS
JEREMY D. DAWSON
RICHARD A. DEAN II
CHRISTOPHER K. DEANGELIS
OLIVIA K. DEGENKOLB
MATTHEW J. DEGREE
MARCOS A. DELGADONAZARIO
JEFFREY A. DELLAPENTA
CHRISTOPHER B. DELONG
ALFRED A. DELVECCHIO II
JESSICA L. DENNEY
CAMERON D. DENNIS
DUSTIN W. DETRICK
ROBERT J. DIBBERN
CHARLES B. DIEHL
MORGAN M. DIETZEL
RYAN E. DINNEN
JAMES A. DIPASQUALE
KENNETH P. DITTIG
MICHAEL J. DIXON
RANDALL L. DODDS
ANNE L. DOMKO
THOMAS D. DOTSTRY
PETER J. DOWNES, JR.
JASON S. DOYLE
MEREDITH J. DOZIER
JEFFREY A. DREWISKE
KEITH D. DROWN
LANE R. DRUMMOND
MATTHEW E. DRYDEN
VICTOR T. DUENOW
ERIC W. DUFFIELD
ANDREW E. DUMM
ANDREW J. DYLAG
PATRICK J. EARLS
ANDREW J. ECKENFELS
MICHAEL J. ECKERT
GABRIEL V. EDWARDS
SEAN A. EDWARDS
SHANE L. EHLER
ANGELA A. EICKELMANN
MARK D. EISBRENNER II
JASON D. ELFE
DOUGLAS S. ELKINS
CHRISTOPHER H. ELLIOTT
RYAN D. ELLISON
LEWIS R. EMERY
W. T. EMMONS
CLINTON D. EMRICH
NICHOLAS R. EPPERS
JOSHUA P. ESTEVAN
GIOVANNI A. ESTRADA
JUSTIN J. ESTRADA
TAYLOR A. EVANS
MCINTOSH K. EWELL II
RONALD C. FAIRBANKS
DAMON J. FALDOWSKI II
MATTHEW B. FANNIN
ADAM M. FARBER
MICHAEL R. FARLEY
MICHAEL W. FARMER
MATTHEW G. FARRELL
JAYNE T. FAUL
MICHAEL FEAGANS
TIMOTHY W. FEDRICK
JOSHUA C. FELDMAN
CORY M. FENTON
HECTOR B. FERRELL
RANDALL L. FIELDS, JR.
IAN P. FISHER
TIMOTHY F. FITZGERALD
GRAHAM D. FLETTERICH
BRADFORD S. FOSTER
JEFFREY C. FOULDS
COLLIN R. FOX
LUCAS A. FRANCAVILLA
RYAN D. FRANTZ
JOSHUA J. FREEZE
FORREST F. FRENCH
SAMUEL S. I. FROMILLE
MATTHEW R. FURTADO
THOMAS D. FUTCH
AMY M. GABRIEL
TROY GACHETT
GEOFFREY C. GAINES
PHILIP GALINDO
ISAIAH D. GAMMACHE
JOSEPH P. GARBITELLI
JEREMY D. GARCIA
MICHAEL V. GARCIA
DAVID T. GARDNER
JASON M. GARFIELD
IAN T. GARRISON
DANIEL C. GATELY
BRIAN K. GAUTHIER
DANIEL M. GAUVIN
STEPHEN C. GAY
JAMES W. GELSINON
JORDAN T. GENTRY
MORGAN D. GEORGE
RYAN C. GEORGE
MATTHEW L. GERMAN
IAN B. GETZLER
KEITH R. GIACOPUZZI
ANDREW P. GIBBONS
RYAN T. GIELEGHEM
PAUL A. GILLETT
JONATHAN M. GILLIOM
DANA P. GILMOUR
KEVIN W. GOETTSCHE
ZACHARY A. GOLDSTEIN
VINCENT C. GOMES
VERONICA A. GOMEZ
JOSE GONCALVES
ROBERT M. GORE
JUSTIN M. GOYER
RIDGELY H. M. GRAHAM
TIMOTHY J. GRANT
WILLIAM S. GREEN
MICHAEL B. GREENSTREET
FORREST J. GRIGGS
CHRISTOPHER A. GRILLO
ZACHARY S. GRISWOLD
JUSTIN L. GUERNSEY
JOHN W. GUSTINE
DAVID C. HAERTEL
JAMES B. HAIZLIP
CHAD W. HALL
DEAN R. HALTON
JOHN R. L. HANSEN
RICHARD K. HANSING
CORY J. HANSON
SETH L. HARBIN
BRANDON C. HARDIN
SEAN M. HARRINGTON
CHAD R. HARRIS
JACOB A. HART
SAMUEL F. HARTLEY
MICHAEL S. HARTZELL
BRENDON A. HATHORN
BRETT R. HAVELKA
JAMES P. HAWKE
CAMERON H. HAYES
ERIC E. HAYES
DEREK G. HAYNES

DAVID C. HEBERT
CHRISTOPHER J. HEINE
ROBERT V. HEINZE
JARRETT L. HELLER
STEVEN W. HELMER
EVAN E. HENTSCHEL
TAYLOR A. HESSE
WILLIAM E. HESSELL
ADAM L. HILL
RICHARD D. HILL
JOHN W. HILLS
CHRISTOPHER M. HIMES
EDWARD T. HINE
WILLIAM C. HINSON
JONATHAN L. HIRSCH
EAN P. HOBBS
RYAN M. HOFER
ROBERT C. HOFFACKER
JASON E. HOLBROOK
SEAN K. HOLLOWWA
DAVID A. HOOPENGARDNER, JR.
SETH T. HOOPER
MICHAEL P. HOOTEN
ZACHARY T. T. HOPE
ALEXANDER F. HORN
JAMES D. HOSTETLER
JASON A. HOUSER
MATTHEW M. HOWELL
JOSEPH S. HUCK
JUSTIN J. HUGGINS
CALE B. HUGHES
MICHAEL C. HUGHES
JONATHAN A. HULECKI
CALEB J. HUMBERD
DAVID A. HUNT
SPENCER S. HUNT
DOUGLAS A. IVEY
RYAN R. JACKSON
ANDREW N. JAEGER
PETER S. JAGLOM
CHRISTOPHER T. JAMES
TIMOTHY R. JARRATT
BRETT J. JASIONOWSKI
AARON C. JOHNSON
ALAN J. JOHNSON
KEITH Z. JOHNSON
WESLEY A. JOHNSON
CHARLES P. JONES
DANIEL T. JONES
MASON P. JONES
AARON K. JORDAN
JAMES C. JORDAN
KEVIN M. KAHL
ANTHONY M. KANIA
CHRISTOPHER R. KARAPOSTOLES
ISAAC A. KEEVER
ROBERT E. KELLER
JORDAN W. KELLY
JEFFREY J. KELSO
IAN A. KEMP
DAVID W. KENDALL
TYLER KENDALL
ALEXANDER B. KENDRIS
MATTHEW C. KENFIELD
TOWNEY G. KENNARD III
PETER J. KEUSS
PATRICK L. KIEFER
SEAN M. KILGORE
DERMOT N. KILLIAN II
JAE Y. KIM
JASON C. KIM
JONATHAN D. KINDEL
JACOB E. KING
JOSHUA C. KING
SAULOMON D. KING
JOHN D. KINMAN
MATIAS J. KINSMAN
JUSTIN P. KIRKPATRICK
KENNETH M. KIRKWOOD
MATTHEW G. KLOCK
ERIC J. KNEPPER
WILLIAM E. KNIPS
ROBERT W. KNOERZER
MATTHEW T. KNUTH
DANIEL M. KOHLBECK
BRENTON A. KOLB
WILLIAM J. KOZLOWSKI
DUSTIN T. KRAEMER
CARL J. KRUEGER
CHRISTOPHER M. KRUEGER
JOSEPH W. KRUKAR
CHRISTOPHER P. KRUKOWSKI
DEREK J. KUNZMAN
RONALD A. LABORDE, JR.
PATRICK D. LAFFEY
ANDREW L. LAIDLER
JEFFREY K. LAIRD
KRISTIN S. LAKE
JOSEPH R. LANDI
RYAN C. LANGHAM
SEAN S. LANSANG
LEVI J. LAROCHE
JAYSON C. LARSEN
BRIAN C. LAWS
SEAN P. LAWSON
COREY K. LEEWRIGHT
RAMSES N. LEON
JOHN M. LESTER
CARLO D. LEVERONE
MATTHEW D. LIASHEK
ANDREW G. LICHTENSTEIN
KEVIN J. LIND
BRYAN J. LINGLE
PATRICK E. LINK
YILEI LIU
PAUL A. LLANO
JASON D. LOCKE
AUSTIN M. LONG IV
STEPHEN R. LONG
STEPHEN J. LOONEY
IAN M. B. LOPEZ
ASHLEY M. LORENZ
MICHAEL J. LORINGER
ERRIC N. LOTT
MATTHEW R. LOVICK
MATTHEW S. LUKEVICS
ANDREW M. LUKICH
PHILLIP O. LUNDBERG
JONATHAN J. LUSHENKO
KEN H. LUSK
MICHAEL C. MABREY
RUSSELL J. MACKAY
SEAN J. MAHONEY
JARED M. MALLIS
STEPHANIE L. MARCELO
CHAD A. MARTIN
JOHN E. MARTIN
ROBERT W. MARTIN
NICHOLAS A. MARUCA
REBECCA A. Z. MARVIN
NATHAN P. MATHERLY
MICHAEL Q. MATT
CASEY J. MATTHEWS
EDWARD J. MAY, JR.
STEVEN G. MAY
RICHARD A. MAYER
SCOTT D. MAYNES
ONYINYE I. MBANO
MICHAEL L. MCBRIDE
MICHAEL R. MCCABE
ANDREW J. L. MCCAFFREY
SCOTT R. MCCANN
GREGORY A. MCCARTHY
BENJAMIN I. MCCARTY
MATTHEW E. MCCAY
PATRICK L. MCCLERNON
BRADEN C. MCCORMACK
THOMAS R. MCCURDY
GORDON R. MCDONALD
JOSEPH R. MCDONALD
THOMAS J. MCDONALD
MATTHEW C. MCDONOUGH
COLIN S. MCFERRAN
ANDREW S. MCGOVERN
MICHAEL J. MCINERNEY
JASON L. MCKEOWN
TYLER P. MCKNIGHT
GREGORY E. MCLEAN
DOUGLAS V. MCMAHON
ELIZABETH E. MCMULLEN
JAMES S. MCNAMEE
THOMAS E. MCNEIL
TYLER C. MCQUIGGAN
JAMES T. MCRANDLE
MICHELLE MECKLENBURG
RUBEN A. MEDALLA, JR.
SCOTT B. MEHAFFEY
MICHAEL E. MELVILLE
JOSHUA D. MENKS
PHILIP W. MESSNER
BRANDON J. MILLER
JOSHUA B. MILLER
MATTHEW C. MILLER
NATHAN A. MILLER
STEPHEN E. A. MILLER
THOMAS F. MILLER
WALLACE E. MILLER II
ZACHARY R. MILLER
JEFFERY A. MILOTA
MATTHEW J. MINCK
JEREMY B. MITCHELL
PETER P. MITCHELL
ADAM L. MOFFIT
ERIK N. MOLINA
DENNIS W. MONROE
JASON M. MOODY
ANDREW Y. MOORE
CALEB C. MOORE
DAXTON H. MOORE
JON T. MOORE
JOSHUA J. MOORE
TYLER B. MOORE
EMILY M. MOOREN
MICHAEL S. MOORSE
RAMON MORALES, JR.
DANIEL E. MORAN
ROBERT J. MORENO
TREVOR D. MOREY
DOUGLAS J. MORROW
JOHN R. MOSS
CHRISTOPHER M. MOTTINO
MICHAEL N. MOWRY
JOHN D. MULCAIR
MARK A. MUNCY
JARED P. MUNDE
DONACIANO MUNOZ, JR.
RYAN C. MURGIA
DOUGLAS E. MURPH
CONSTANTY M. MURPHY
COREY C. MURPHY
GWENDOLYN H. MURPHY
PATRICK M. MURPHY
STEPHEN A. MURPHY
JONATHON D. MURRAY
WILLIAM P. MURTHA III
DOUGLAS V. NASSIF
BRIAN J. NAUGHTON
JEREMY T. NAUTA
JUSTIN M. NEFF
ROBERT C. NEMETH
JOSEPH V. NEPOMUCENO
JASON A. NERIO
MATTHEW C. NICHOLS
MATTHEW A. NOBLE
EDWARD J. NOWAK
JASON T. NOWELL
XYRONE R. OCAMPO
ADAM J. OCHS
RYAN H. OCONNOR
PAUL G. ODANIEL
JUSTIN D. OGBURN
MARY K. OGDEN
MICHAEL R. OLDENBORG
DANIEL E. OLSON
MARK D. P. OLSON
MATTHEW D. OLSON
BRADY D. ONEAL
MICHAEL P. ORFINI
MATTHEW J. ORNER
CARLOS A. OROZA
ROBERT J. OSBORNE
CHRISTOPHER S. OSIPOWER
MICHAEL J. OSTERHAUS
JESSICA C. PACHTER
DUSTIN A. PACKER
ELI C. PADELL
DENNIS R. PALANIUK
JOSEPH E. PALCHAK
DHRUV PARASHAR
LUKE A. PARCHMENT
RICHARD S. PARISI
DAVID J. PARNELL
MATTHEW A. PARR
JOSEPH G. PASKO
JAMES M. PATTERSON
LLOYD G. PATTERSON
PAUL G. PAVELIN
THOMAS F. PAVLIK
ADAM R. PAWLAK
DONALD W. PELTIER III
ASHLEY E. PELZEK
BRIAN R. PENNINGTON
JOHN R. PEPIN
TIMOTHY S. PERKINS
PATRICK J. PERROTT
CHRISTOPHER J. PETERS
JOSHUA D. PETERS
CHRISTOPHER A. PETERSEN
ANDREW P. PETRY
THOMAS N. PETTY
ALLAN T. PHILLIPS
JAMES D. PIERCE III
KEVIN A. PILCHER
JARRAD O. PILGRIM
REBECCA M. PING
CHRISTOPHER J. PITTMAN
MATTHEW E. PLANT
CARL P. POE
CHARLES C. POGUE
JESSICA L. PONIATOSKI
BROCK B. POOLER
ANDREW S. POREDA
BRIAN R. PULTRO
ERIN L. PURSLEY
DAVID M. PUTMAN
ANDREW D. PYLE
ANDREW R. RA
TERRELL W. RADFORD
DAVID M. RADOMILE
VINCENT J. RAGONA
TRAVIS L. RAINEY
CHRISTOPHER B. RAMIRO
TYLER J. RASMUSSEN
KEVIN A. RASPET
ALEXANDER E. RATCLIFFE
HUSSEIN M. RAWJI
RICHARD S. RAY
ETHAN A. REBER
JUSTIN L. REDDICK
GARY A. REDMAN
SEAN REED
JOSHUA A. REEDER
DANA E. REEVES
JAMES M. REEVES
GRANT H. REGELIN
JOHN L. REID
ETHAN E. REINHOLD
KENNETH L. RELETHFORD, JR.
CATHERINE A. B. REPPERT
JAMES P. REYNOSO
PAUL F. RICHARDSON III
RANDALL K. RIEWERTS
JASON A. RILEY
BRETT M. RINGO
PAUL C. RITTER
COLE C. ROBERTS
LINDSAY J. ROBERTSON
RYAN W. ROBERTSON
SCOTT A. ROBERTSON
JEFFREY F. ROBESON
BRIAN J. ROBINSON
CHRISTOPHER L. ROBINSON
DANIEL R. ROGERS
DENNIS A. ROPP
MARTIN E. ROSCHMANN
KALLIE M. ROSE
BENJAMIN A. ROSS
JEFREY A. ROSS
JUSTIN L. ROSS
IAN M. RUMMEL
WILLIAM A. RUSSELL
GRETCHEN M. RYBARCZYK
MARTIN A. SALAZAR
CHRIS L. SALOMON
MARK T. SANDEEN
JOHNNYE A. SANSON
PATRICK B. SARGENT
KEVIN R. SARTAIN
CASEY D. SCAMEHEORN
CODY M. SCARBOROUGH
HARVEY J. SCHAFER II

DAVID M. SCHALLER
KASEY S. SCHEEL
NATHAN T. SCHEIBER
MICHAEL A. SCHENK
BRANDON K. SCHMIDT
THOMAS F. SCHMITZ
ALLYSON K. SCHOLL
JOSEPH M. SCHULTZ
JEFFREY D. SCHWAMB
KURTIS D. SCOBY
THOMAS J. SCULTHORPE
ANDREW J. SEATOR
ANDREW C. SERFASS
FRANK J. SGROI, JR.
JAY T. SHALLINGTON
ADAM A. SHAPIRO
GREG D. SHARP
ROBERT B. SHARY II
MICHAEL P. SHAUGHNESSY
JAMES E. SHEETS
GREGORY D. SHERMAN
TIMOTHY W. SHILLING
KRISTOPHER M. SHOLD
FRANCIS E. SHOUP
ADAM R. SHREDERS
VINCENT F. SIMMON, JR.
CHANEL G. SIMS
SHEILA M. SINGER
MARIO T. SINGLETARY
JOSHUA B. SINK
JONATHAN E. SITORIUS
DAVID H. SIVLEY
DANIEL A. SLEDZ
BRENDON P. SMERESKY
ALTON L. SMITH
CHRISTOPHER R. SMITH
DAVID A. SMITH
DAVID J. SMITH
DUSTIN T. SMITH
KEVIN P. SMITH
PHILIP S. SMITH
RONALD L. SMITH
TYLER L. SMITH
WILLIAM E. SOPP
ROBERT M. SPANN II
EDWIN M. SPENCER
JEFFREY W. SPENCER
SAMUEL M. SPLETZER
JUSTIN B. SPOTSER
TIMOTHY P. SPRAGUE II
RANSOME N. SPRINGER
SETH M. SQUYRES
KARL D. STAEHLE
RONNIE D. STAHL, JR.
NATHAN L. STAPLES
BRADLEY D. STEIDLE
CHRISTOPHER H. STEIN
ADAM R. STEPHENS
ANDREW R. STEWART
RYAN A. STEWART
WILLIAM C. STEWART
BENJAMIN N. STICKLER, JR.
JOHNATH D. STINNETTE
JOHN L. STOCKDILL
CHRISTOPHER M. STOLLE
JARED M. STOLLE
ERIC M. STOLPMAN
CHRISTOPHER B. STONE
TIMOTHY W. STONE
GREGORY B. STORER
SEAN M. STUART
DOUGLAS B. STUHLMAN
DANIEL S. SUPPLE
JOHAN E. W. SUYDERHOUD
MATTHEW J. P. SUYDERHOUD
KEVIN A. SWIFT
DAVID S. SWIMM
ROBERT SZELIGOWSKI
ANDREW C. TABELLION
TIANA TAFUA
ROBERT A. TALBOT
ANDREW G. TALBOTT
HEATHER O. TALLEY
JOHN G. TAYLOR
NICHOLAS B. TAYLOR
JAMES W. TEAL
TODD C. TEASDALE
BRADLEY C. TEGTMEYER
CHAD T. TELLA
KRISTOFER A. TESTER
CHRISTOPHER O. THOMAS
CURTIS L. THOMAS
DAVID M. THOMAS
JOSHUA D. THOMPSON
KYLE L. THOMPSON
JOSHUA P. THURMAN
GERRALL E. TIEMAN
DAVID R. TIFFIN
JOSHUA H. TILEY
STEVEN G. TIMM
ANDREW E. TINGLEY
MICHAEL S. TOBIN
MATTHEW E. TODD
ROBERT J. TOOHIG, JR.
TIMOTHY S. TROSSEVIN
KEITH P. TURNBULL
CHRISTOPHER S. TURNER
DAVID M. TURNER
LATHAM H. TURNER
JON K. TURNIPSEED
DAVID A. TURPIN
LINDSAY C. UNDERWOOD
ANDREW J. VALERIUS
THOMAS B. VANDAM
KYLE R. VANDEGRIFF
NICHOLAS J. VANDYKE
KYLE J. VANHEEST
ADAM T. VANHORN
CHAD J. VANKEULEN
JOHN N. VANWAGONER
RICHARD B. VAUGHN
OMAR J. VIEIRA
BRETT R. VINING
JOSEPH R. VIOLA
JUAN P. VIVES
ARPRELL WALKER II
ROBERT O. WALKER
JOSEPH F. WALTER
KEVIN W. WALTER
NELLIE WANG
GRANT A. WANIER
ERNEST O. WASHINGTON
TIMOTHY R. WATERS
JOHN W. WEAVER
NICHOLAS C. WEIDEMAN
JONATHAN L. WENDT
ANDREW J. WENDTH
MARK H. WERNLY
LIONEL P. WESLEY
RICHARD S. WESTERFIELD
KRISTEN A. WHEELER
TIMOTHY M. WHITE
CHARLES S. WICKWARE
RAYMOND C. WIGGIN
NATHAN W. WILKINSON
BRADLEY S. WILLIAMS
JONATHAN C. WILLIAMS
KIRBY WILLIAMS II
RONALD T. WILLIAMS
THOMAS A. WILLIAMS
ERIC W. WILSON
RODERICK D. WILSON
JASON M. WINDOM
ADAM C. WISEMAN
CHRISTOPHER M. WOLF
REBECCA E. WOLF
MICHAEL F. WOLFE
BLAKE J. WOMBLE
ANDREW C. WOOD
DUSTIN S. WOOD
MATTHEW E. WOOD
DANIELLE G. WOODS
JOHN E. WOODSON
DAVID A. WRIGHT
STEVEN H. YANG
CAMERON R. YASTE
JENNIFER M. YEDONI
JESSE D. YOAST
DAVID R. YOCUM
MATTHEW T. YOKELEY
CHRISTOPHER J. YOUNG
THOMAS J. YOUNG, JR.
THOMAS J. YOUNGHANS
ALEXANDER K. YURANK
THOMAS M. ZAGER
MICHAEL A. ZDUNKIEWICZ
NICHOLAS M. ZERLER
KEITH S. ZEUNER
BRADLEY C. ZINGONE
BETHANY R. ZMITROVICH

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

REBECCA K. ADAMS
SUNG H. AHN
DAVID M. ARMANDT
MICHAEL J. BAHR
WARREN H. C. BONG
STEPHAN C. BROCK
BRENTON N. CAMPBELL
DUSTIN R. CUNNINGHAM
CHRISTOPHER R. DEIGEL
TIMOTHY J. EMGE II
KATHERINE L. GERHARD
SAVANNAH L. GILL
PATRICK M. GILLEN
KRISTINE Y. C. HIME
DANIEL B. HOGUE
MATTHEW C. HORTON
DANIEL D. C. HUYNH
ARTURO JACINTO II
RANDALL T. JAGOE
LESLIE A. JARVIS, JR.
ADAM T. JONES
TIMOTHY D. KUBISAK
REBECCA I. MACUS
NICHOLAS A. MANZINI
AMBER J. MASON
TYLER B. MCDONALD
ANDREW J. METZCUS
DAMIAN G. OSLEBO
ANDRES A. OTERO
LUCAS S. PAROBEK
ROXANE B. POWERS
RYAN R. REED
MICHAEL R. ROWLES, JR.
ERIC D. SHUEY
ROBERT J. SMITH
TAYLOR J. SOUTH
JUSTIN K. STEPANCHICK
JON M. WASHKO
CORY L. WHEATLEY
ALEXANDER G. WILLIAMS
MATTHEW J. WILLIAMS
TODD A. WILLIAMSON
MARCELA C. ZELAYA
MICHAEL L. ZUEHLKE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

CHRISTOPHER M. BADE
KRISTINE N. BENCH
ERIC R. DRIDGE
STEPHEN M. FLEET
JESSICA A. GARRETT
LARRY T. GULLIVER
RICHARD E. ILCZUK, JR.
STEPHANIE A. JOHNSON
JESSICA S. KOSCINSKI
PAUL W. LENZ
ALLISON B. MABREY
MICHELLE L. MAHAN
BETHANY E. MCDONALD
CHRISTOPHER J. MERRIAM
JOSEPH R. OXENDINE
ELIZABETH A. PARKS
KATHRYN A. PARRISH
RICHARD B. RAINER
CASSANDRA M. SISTI

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

JAMIE P. DRAGE
DERRICK A. DREESE
ANDREW R. GATES
JAMES D. GOLLIDAY
ALEXANDRA M. GRAYSON
VALERIE A. GREENAWAY
LOUIS J. JACKSON
RICHARD A. JARCHOW, JR.
ROBERT J. KENNING
WILLIAM P. LANGFORD
CHRISTOPHER Z. MATTHEWS
TIMOTHY S. SHAFFER
EMILY K. WILSON
SHANE T. WRIGHT
RICHARD M. YATES

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

JASON M. BAUMAN
JEREMY M. BECKHAM
KENNETH L. CHAMBERS
ANTHONY J. CLARK
JOHN P. CURRY
AARON J. DILLION
JOSHUA J. KAISER
JOHN B. KRAFT
JAMES A. MAGIN
CHRISTOPHER A. MEDFORD
THOMAS D. MIYANO
TOBY L. NEWTON
WAYNE A. SHIPMAN III
CLEMENT L. SMITH
MARK A. WILLIAMS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

JOSHUA A. AISEN
JOSEPH T. BALLARD
JASON K. BRUCE
LYNDSEY D. FATZ
ZHRA M. GHAVAM
PHILIP D. HENRY
PAUL D. KANE, JR.
VANESSA M. N. RIGOROSO
TONJA W. ROSS
BRIAN M. SHECKELLS
SEAN M. SONODA
SCOTT M. THORNBURY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

RICHARD S. CHERNITZER
LAUREN E. COLE
RYAN R. P. DEVERA
REBECCA B. HAGGARD
MEGAN E. ISAAC
REAGAN B. LAURITZEN
DAVID A. LEVY
DAVID C. LLOYD
ROBERT G. MYERS
LAURA K. STEGHERR
BETH A. TEACH

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

NICHOLAS A. DENISON
BRYANNA H. HERRING
THEODORE J. STOW

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

TRAVIS C. ADAMS
TIMOTHY M. AGUIAR
ISAM S. ALMABROUK
CHRISTOPHER M. ANCTIL
RODERIGUS C. ANDERSON
TRAVIS W. ARRINGTON

DAVID L. BADMAN, JR.
ANTONIO BARCELOS, JR.
CHARLES E. BARRERAS
MICHAEL L. BECKMAN
MARC D. BENOIT
MICHAEL A. BERBERICH
BRIAN L. BITNER
TIMOTHY C. BITTNER
RUSSELL L. BLACKBURN, JR.
JASON L. BLICKENS
PATRICK J. BLOTZER
STEPHEN G. BOATWRIGHT
WARREN A. BOWMAN
CLARENCE M. BRADLEY
CHERIE Y. BRANDT
STEPHEN D. BROWN
CHARLES S. BRYANT
JONATHAN BUTLER
FERNANDO C. BYRD
MICHAEL M. CAFFEY
CHARLES E. CALDWELL
WILLIAM R. CALLAHAN
DANVECO M. CARTER
MAURY C. CASTANEDA
ADAM D. CHAMBERS
ODARIOUS L. CHAMBERS
FRANCISCO N. CHAVEZ III
JESSICA R. CHRISTIANSEN
KEMUEL A. CLARK
DARRYL D. COLBERT
FRANKIE S. COLVIN
REFUS M. COMBS, JR.
JASON E. CONYER
SHANE V. COOK
PAUL K. COOPER, JR.
QUENTIN M. COOPER
CHARLES M. CRANSTON, JR.
CHRISTIAN CRUZ
PHILLIP E. DAVIS
TIMOTHY D. DAY II
BRANDON T. DEHAAN
MARK E. DEMAREE
HARRISON A. DEPONDICCHELLO
REISHEID L. DIXON
JEFFREY D. DOLAN
BENJAMIN T. DORSCH
KEVIN G. DUNCAN
ARNEL R. EBUE
MICHAEL W. EFIRD
GERALD L. EPPOLITO
KEVIN A. FOLLETT
JONATHAN S. FRANCE
ROBERT GALLARDO
ALFONSO G. GARCIA
ALBERT H. GONZALES
DUANE A. GOWINS
TODD M. GRAHEK
JOSEPH GRAYER, JR.
BRIAN K. GRONDIN
MARIO D. HAGGERTY
STEPHEN F. HANDSOM
JEFFERY D. HANSON
MICHAEL J. HARMON
PAUL D. HARMON
MICHAEL E. HARRIS
ROGER L. HEGGS, JR.
JAMES M. HIGGINS, JR.
DAVID L. HIGHSMITH
MICHELLE V. HIGINGBOTHAM
JASON R. HINKLEY
JEREMY D. HOLLAWAY
JASON W. HOLMES
GARY J. HUGHES
PETER D. IULI
CARLTON R. JACKSON
SAMUEL S. JACKSON
KABRAN N. JOHNSON
AARON M. KASTRUP
ROBERT F. KERSEY III
DAVID W. KING
JAMES A. KNEPP
MICHAEL W. KRALLMAN
JOSEPH M. LANEY
MOSE T. LETOI
MICHAEL A. LOMBARDOZZI
JOEL J. LOPEZ
RICARDO LOPEZ, JR.
GARY D. MABRY
DALLAS MARTIN
DEREK D. MARTIN
GEORGE A. MCINTOSH III
GILDANIEL L. MCKETHAN
JERRY L. MCNEW, JR.
STEPHEN B. MERRITT
DAVID L. MIMS
CURTIS M. MITCHELL
CARRIE A. MONTGOMERY
DONALD R. NEESE
DANIEL T. NEWMAN
KENNETH W. NICHOLS
CAMERON S. NORRIS
NATASHA NORRIS
JOSHUA L. NORVILLE
ANGEL O. OLIVERA
JEREMY E. OLSEN
JAMES M. PADDOCK
ART K. PALALAY
ANDREW J. PALAS
EDWIN V. PARKER
RICHARD D. PARNELL
ROBERT E. PARSONS
MATTHEW A. PAUL
MARK J. PETERSON
MICHAEL A. PETERSON
MICHAEL C. PITTMAN, JR.
ARTHUR L. PORCHE, JR.
MICHAEL S. PREASTER
DANIEL C. RAYBURN
BRIAN M. RE
JEREMY S. REED
STEPHANIE A. RIVERA
ALBERTO C. RUIZ
WILLIAM A. RUSSELL
HEATH M. RUSSERT
STEPHEN C. SAMPICA
ALEXA SANDIFER
JAMES H. SANDIFER, JR.
LAWRENCE E. SCHAFFER
MARK E. SMITH
JACK L. SMOCK, JR.
WILLIAM E. SNIDER III
GEORGE R. SPANN
CHARLES L. STAMPS IV
ERIC R. STOFFERS
TODD H. STOVER
JOANN M. SWAPP
PATRICK K. SWEETEN
KIMBERLEY A. TEMPLE
DERRICK A. THOMAS
TIMOTHY G. THOMPSON
KARL C. THOMSEN
JEFFREY D. TOBOLA
RICARDO M. TOVAR
TERESA L. TURNER
WILLIAM A. TURNER
KATHERINE VESTER
JARRETT C. WALKE
LYNN M. WALL
ROBERT C. WARD
WILLIAM W. WEAVER
CHARLES S. WHITE, JR.
TIMOTHY D. WIK
ALFRED J. WILLIAMS
DARRIN L. WILLIAMS
HAYWOOD WILLIAMS, JR.
KEVIN R. WILLIAMS
RONALD E. WILLIAMS
MARVIN L. WILSON
TROY L. WRIGHT
ADRIAN D. YOUNG
ALAN W. YOUNG
ANTONIO ZUBIA

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

MICHAEL K. ALLEN
RACHEL K. BARNETT
ADAM M. BECKER
DANIEL F. BELLE
CHRISTOPHER M. BINGHAM
MAXWELL E. BJERKE
CHRISTOPHER J. BLAKE
JEFFREY K. BRILL
CANDACE M. BRUEGGEMAN
MICHAEL J. BUTLER
MICHAEL A. CANTILO
SEAN B. CANTWELL
KIMBERLY E. CARSON
KENNY L. CASWELL
RALPH W. COREY IV
RYAN C. COWAN
ERIC L. CUMMINS
WESLEY R. CURTIS
STEVEN I. DAVIS
MICHAEL T. DEHNZ
BENJAMIN C. DEWITT
JESSICA M. FERNANDEZ
WILLIAM B. FOX
ANTONETTE R. GEDDIS
ALAINA M. GEMBARA
JAMES C. GEORGE
ADRIANA M. GIBSON
TARYNE C. A. HASKAMP
JOSEPH M. HATFIELD
NICHOLAS J. HEDBERG
DAVID M. JAKUBEK
DAVID R. JOHANSON II
DANE E. JOHNSON
LAVAUGHN KELLEY, JR.
JENNIFER L. KING
PAUL J. KNITTLE
JOSHUA J. LAMBERTUS
RICHARD A. LISTER II
CHRISTOPHER J. MANNING, JR.
JAY P. MCVANN
MICHAEL E. MOORE
CHRISTOPHER P. OSEGUEDA
BRIAN S. PAGE
BRANDY S. PLOTNER
NICHOLE T. REINER
DAVID J. RIVERA
SAMUEL M. ROBERTS
JAMES R. SANBORN
JAMES E. SAULS
AMIR M. SHAREEF
GREGORY R. STORWICK
RICHARD A. TUININGA
JEFFREY T. VANAK
EDUARDO J. VARGAS
RYAN A. WEBER
PETER C. WENGEL
JERRY W. WYRICK II

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

BRIELLE L. ADAMOVICH
ANDREW J. ADAMS
JOSHUA M. ANGICHIODO
MARK A. BARNES
MARK A. BOYLE
JOEY C. CARTER
MICHAEL J. CILIA
DANIEL R. CLARK
AGUSTIN COLLAZO, JR.
PATRICK J. CONDREN
JOSHUA D. CORNEY
TRULEA M. CRAIG
BRADLEY S. CROCKER
DANIEL B. DITCHBURN
ERNEST M. FERNANDEZ
PHILLIP J. FORD
LOUIS M. FORTI
NICHOLAS J. GODDARD
BRIAN P. GREENFIELD
STACEY L. GROSS
JASON R. HENDERSON
MICHAEL P. HETTINGER, JR.
LEIGHTON T. HILL
JASON L. HOOPER
NICHOLAS F. JENSEN
KENNETH D. JEW
JOSEPH J. KRUPPA
CHRISTY L. LAWSON
ANDREW D. LINGG
JOHN M. LUNDGREN, JR.
PETER B. MANZOLI
CAYANNE V. MCFARLANE
DONALD K. MOARATTY, JR.
YASMIN M. ODUNUKWE
TYRONE D. PHAM
CARRIE K. SANDERS
GRIFFIN E. SAVING
DREW C. SKINNER
LAURICE H. STROTHER II
CAMERON R. THOMAS
JOSEPH A. TOWNS
SAMUEL T. TRASSARE
MARK J. TURNER
JENNIFER L. VAUGHN
ROBERT D. VIRDEN
NICHOLAS P. WALKER
CHRISTOPHER A. WEIS
ERIC R. WEISS
BRADLEY J. WILLIFORD
JASON M. WITTROCK
SHEIVON A. YUILLE
RICHARD S. ZIBA

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

GILBERT R. BAUGHN
QUINZELL T. BROWN
SEAN S. BROWN
JARED D. BURGESS
LLEWELLYN E. CHALLENGER
JEFFREY T. COVINGTON
JAMES R. CROWE
KEVIN D. CUMMINGS
LISA M. GEBREAMLAK
ERIK C. HANSEN
ELIZABETH E. HUNTOON
PATRICK HURRINUS
BRANDON D. LAMBAISO
CHRISTOPHER B. LANDIS
KARRIE M. LANG
WELTON LAWRENCE, JR.
THOMAS S. LEVIER
DAVID C. LIMMER
MATTHEW R. LIVINGSTONE
JUAN G. LUNA
CAMERON J. MACKLEY
EHAB MAKHLOUF
MICHAEL J. MCGONAGLE
JOHNATHAN V. MOORING
NELSON J. MOZZINI
MICHAEL M. ORDONEZ
VICENTE ORTIZ
MICHAEL D. PAWLUK
ROBERT R. PINCKNEY, JR.
MAXIMILIANO PINO III
DAVID T. SCOTT
ARIC S. SHELBY
VAN E. STEWART, JR.
CHRISTOPHER D. SWARTZ
RICHARD B. THOMPSON
JOHN R. VANASSCHE
KERRI L. WILLIAMS
SERGIO B. WOODEN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

GREGORY A. GRUBBS