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Senate

The Senate met at 10 a.m. and was called to order by the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia.

PRAYER

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

Let us pray.

Eternal Spirit, You have said that the truth will set us free. We thank You that Your idea of freedom leads to harmony and productivity.

Lord, liberate our lawmakers from deceptions that misrepresent truth. Teach them the fine art of conciliation, and inspire them to choose roads that lead to progress. Lord, lift them above polarization, and give them the power to walk in Your light, to act in Your strength, to think with Your wisdom, to speak with Your truth, and to live in Your love.

We pray in Your preeminent Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 18, 2023.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RAPHAEL G. WARNOCK, a Senator from the State of Georgia, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Mr. WARNOCK thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Radha Iyengar Plumb, of New York, to be a Deputy Under Secretary of Defense.

RECOGNITION OF THE MAJORITY LEADER

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

DEBT CEILING

Mr. SCHUMER. Mr. President, preserving the full faith and credit of the United States is one of the most important responsibilities that Members of Congress face. It requires cooperation, bipartisanship, and leaders who can instill confidence and calm to markets and working families alike.

But I cannot think of a worse message to send to the world than for Speaker MCCARTHY to travel all the way to New York, look Wall Street in the eye, and threaten that the United States will default on its debt unless Republicans get spending cuts first.

Why the Speaker traveled all the way to New York to give a speech that offered nothing new in substance or concept but the same dangerous message—different than what we have done in the past—is beyond me. If Speaker MCCARTHY continues in this direction, the United States is likely headed toward default.

But do you know what will avoid default? Republicans working with Democrats to avoid this crisis—all together—just as we did under Donald Trump.

The Speaker has insisted for months on cuts, though he has failed to offer any clarity about what kind of cuts Republicans want. House GOP leadership is presenting their wish list to their Members at a closed meeting this morning. No one should confuse this wish list as anything more than a recycling of the same bad ideas we have heard about for weeks, and it is still not clear that Speaker MCCARTHY has the votes to even pass this. Indeed, a handful of House GOP Members insist they won't raise the debt ceiling for anything, not even a GOP wish list.

One of the few specific items is the Speaker's laughable suggestion—and it is laughable—that we avoid default for only a year, ensuring that this dangerous crisis repeats itself in 12 months. Why the Speaker thinks anyone—anyone—would agree to have another debt ceiling crisis next year is beyond me.

Nobody is saying that there cannot be a conversation about what kind of cuts Republicans want, but it doesn't belong in this debate, plain and simple. It belongs in discussions over the budget that Congress has every year and not as a precondition to avoiding default.

So let me make this easy for my Republican colleagues. Don't bother with partisan wish lists and unrealistic proposals that will never solve this debt

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

default crisis. Instead, avoid default using the same approach we did under President Trump twice and under President Biden once: Democrats and Republicans, working together, without preconditions. If Republicans agree to that, there will be no default.

FEDERAL BUREAU OF INVESTIGATION

Mr. President, now on GOP extremism and our FBI resolution, today, the Governor of Florida is meeting with a group of hard-right GOP extremists here in DC. As the Governor comes to the Nation's Capital, the ink is still not dry on the bill he signed a few days ago banning practically all abortions in Florida after just 6 weeks.

The Florida law is not the only one. Over a dozen States in the country now have near total bans on abortions. Idaho, for instance, is now the first State to explicitly outlaw out-of-State travel for abortions. That is sinister.

Freedom of choice is not the only victim of GOP radicalism. Over 11,000 Americans have now died from gun violence in the United States this year in school shootings, birthday parties, and New Year celebrations. But what are Republicans doing in response? They pose with machine guns on their Christmas cards. They gin up the NRA. They even expel State representatives who dare speak out against GOP inaction, as the Tennessee State House did to two members of color earlier this month.

Republican radicalism is even taking aim at law enforcement. A few weeks ago, President Trump called for cutting funding to the Department of Justice and the FBI because of personal grievances, and, to date, we have still yet to hear Speaker MCCARTHY or any Republican leader speak up against this dangerous idea.

But there is good news. The Members of this Chamber will have a chance to do the right thing and stand up for Federal law enforcement later this week. That is because, today, I will be introducing a resolution denouncing the former President's call to cut funding to our Federal law enforcement, and Senators will have to choose between standing with President Trump and his dangerous, dangerous view that we ought to cut funding for law enforcement and the FBI or will they stand with public servants to keep America safe? Again, where will they stand—with the former President's dangerous call to cut funding to Federal law enforcement or with the American people who want to be safe?

The FBI and DOJ do critical work to protect our communities against drug trafficking, gun violence, terrorism, and so much more. We just, yesterday, in New York saw an example where Federal law enforcement arrested two individuals for running a secret, unauthorized Chinese police station right in the middle of Lower Manhattan.

Do Republicans agree with President Trump that funding for Federal law enforcement who guard against terrorism and CCP encroachment should be cut or even eliminated? Again, this is the kind of resolution that should pass unanimously.

If Senate Republicans block this provision, they will be telling the American people that the GOP has been utterly consumed by extremism, where not women, not schools, not even Federal law enforcement are safe.

HOLOCAUST REMEMBRANCE DAY

Mr. President, now on Yom HaShoah and the campaign against anti-Semitism lifted by one patriotic American, today is Yom HaShoah, Holocaust Remembrance Day.

Each year on this day, we are called to do something that sounds simple: ''remember''—in Hebrew, ''zakar.'' But it is much more than mere recollection. It is a moral charge to ensure the Holocaust never, never fades from memory.

Two months ago, on my first codel as majority leader, I visited Yad Vashem in Jerusalem and the Dachau concentration camp in Germany. The trip was deeply personal for me because many of my ancestors were wiped out by the Nazis in western Ukraine.

Yom HaShoah is especially important today in the face of the pernicious, poisonous, and dangerous rise of anti-Semitism in our society. I commend the many dedicated individuals and organizations actively working to rekindle the light of tolerance that has kept anti-Semitism at bay. One important effort is done by Robert Kraft's Foundation to Combat Antisemitism, which recently launched its Stand Up to Jewish Hate campaign to raise awareness about the rise of anti-Semitism in America.

The Stand Up to Jewish Hate campaign is a powerful reminder that we must never allow anti-Semitism to flourish and that we all have a role to play in standing up against bigotry.

I want to thank Mr. Kraft's foundation for their essential work, and I ask unanimous consent to have printed into the RECORD at this point the transcript of one of his videos illustrating the efforts of the Stand Up to Jewish Hate campaign.

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

TRANSCRIPT OF DIGITAL AD FROM STAND UP TO JEWISH HATE AND THE FOUNDATION TO COMBAT ANTISEMITISM

VISUAL ON SCREEN:

Black backdrop throughout the ad. A small blue square appears on the right side of the screen, representing the size of the population of Jewish Americans in the US.

TEXT ON SCREEN:

''Did you notice this blue square on your screen? Maybe you did. Maybe you didn't.''

VISUAL ON SCREEN:

Blue square moves closer to the center of the screen.

TEXT ON SCREEN:

''But that's the point. The size of this square is 2.4% of your screen.''

VISUAL ON SCREEN:

Blue square moves even closer to the center of the screen.

TEXT ON SCREEN:

''The same size of the Jewish population of in the US.''

VISUAL ON SCREEN:

Blue square moves to the very center of the screen and enlarges to take up nearly half the screen.

TEXT ON SCREEN:

''Yet Jews are on the receiving end of 55% of all religious crimes''

VISUAL ON SCREEN:

Photographs of anti-Semitic messages and crimes appear on screen, including a poster reading ''Wicked Jew Devils,'' ''Hitler was right'', and the image of graffiti of a swastika.

Headlines appear on screen: ''NYPD Warns about Possible Anti-Semitic protests.'' ''Law enforcement warns of Potential Neo-Nazi 'Day of Hate' ''

On screen appear photos of families grieving and police activity.

TEXT ON SCREEN:

''Show them your support. And share this blue square''

VISUAL ON SCREEN:

The Blue Square reappears next to the image of a hashtag.

Ten images of appear on screen showing supporters posting social media messages in support of Jewish Americans, using the hashtag and blue square

TEXT ON SCREEN:

''Let the Jewish community know they are not fighting alone. Anymore''

VISUAL ON SCREEN:

Blue square returns to the center, with a hashtag and final message

TEXT ON SCREEN:

Stand up to Jewish hate. StanduptoJewishhate.org. Paid for by the Foundation to Combat Anti-Semitism inc.

Mr. SCHUMER. On this solemn day—on this solemn day—we owe it to the survivors, their families, and the world to continue bearing witness to the tragic legacy of the Holocaust and keep repeating our conviction and our prayer: Never again.

BUSINESS BEFORE THE SENATE

Mr. President, on Senate business, it is a busy week here in the Senate. We are starting with a very important bill that is going to help so many communities, particularly rural and suburban communities in America, and that is the Fire Grants and Safety Act, which I expect to pass the Senate this week.

The overwhelmingly bipartisan legislation would ensure that two important Federal grant programs that support our firefighters—SAFER and AFG—remain available. We had a 96-to-nothing vote last month to move forward with the fire grants legislation, and I hope it portends swift action this week.

And on the nominations front, we are continuing to move ahead. On Thursday, the HELP Committee will hold a confirmation hearing for President Biden's nomination for Secretary of Labor, Julie Su. Julie Su is an outstanding nominee who will be a strong fighter for America's workers, and we should confirm her.

And for the information of all Senators, tomorrow, Members will receive a classified briefing from the administration on the leaked classified U.S. documents on the war in Ukraine.

INTERNAL REVENUE SERVICE

Mr. President, one final note on the IRS, today is Tax Day, and thanks to the additional resources provided to

the IRS in the Inflation Reduction Act, this tax-filing season has been much smoother for taxpayers.

Five thousand additional customer service agents were hired and call waiting times were reduced by 85 percent. There have been legitimate complaints across the country that when you call the IRS because you need help, it takes forever for them to answer. To reduce those by 85 percent because of the IRA bill that we just passed last summer is a very good thing. Thanks to our work, this party's work—it was opposed by every Republican—the IRA now has the resources to modernize the Agency and cut wait times, saving people heartache and making sure middle-class families get the credits they deserve. The Agency will do this while cracking down on tax enforcement for the uberwealthy and biggest corporations.

I want to thank my colleagues for their work.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

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

JUDICIARY COMMITTEE

Mr. MCCONNELL. Mr. President, I want to address an extremely unusual request that our Democratic colleagues have made with respect to the Judiciary Committee.

Our dear friend Senator FEINSTEIN is a titanic figure and a stateswoman. Elaine and I have been honored to count the Senator and her late husband Dick as close, personal friends for many, many years. We miss our colleague. We wish her the very best for a speedy recovery and a smooth return.

In the meantime, our colleague's temporary absence has really not ground the Judiciary Committee to a halt. So far this Congress, the committee has reported out 40 judicial nominees—listen to this—more than half of them—more than half of them—on a bipartisan basis.

Let me say that again. More than two dozen judicial nominees have been reported out this Congress on bipartisan votes.

There are more than a dozen article III judges already waiting on the Executive Calendar, and a whole bunch of the nominees currently in committee are likely to receive bipartisan support as well. So the administration does not face any obstacle to moving nominees who are remotely qualified for the job. People who are mainstream and qualified have a path forward.

Yet some of the same far-left voices who have attacked Senator FEINSTEIN in the past are now suggesting that the Senate move her off the Judiciary Committee indefinitely—indefinitely. The stated reason, the supposed emergency, is that Senate Democrats are unable to push through the small fraction of their nominees who are so extreme—so extreme—and so unqualified that they cannot win a single Republican vote in Committee.

Let me say that again. The far left wants the full Senate to move a Senator off a committee so they can ram through a small sliver of their nominees who are especially extreme or especially unqualified.

There are four main nominees whom our Democratic colleagues are currently unable to move. One of them threatened an underage abuse victim while representing her prep school. One of them didn't know what article II of the Constitution says. One of them didn't know what a Brady motion is. The fourth one argued that the sex offender registry—listen to this—does not help keep children safe. Those are the four they are having a hard time moving. They are not on track to get bipartisan support.

It is purely the Democrats' political choice to hold relatively more reasonable nominees hostage so the unqualified ones can move in a pack. So even though they could move a number of less controversial nominees right now—right now—they want to sideline Senator FEINSTEIN so they can ram through the worst four as well.

I understand our Judiciary Committee colleagues report they cannot find a single past example where their committee let a Member be temporarily replaced in this fashion that some Democrats are advocating.

So let's be clear. Senate Republicans will not take part in sidelining a temporarily absent colleague off a committee just so Democrats can force through their very worst nominees.

The ACTING PRESIDENT pro tempore. The Republican whip.

TAX DAY

Mr. THUNE. Mr. President, today is Tax Day, and I think it is probably fair to say it is not most Americans' most favorite day. No one enjoys writing a check to the IRS or contemplating just how much of his or her yearly earnings goes to the Federal Government, especially when the Federal Government doesn't always make the best use of taxpayer dollars.

If you have a question for the IRS, things can get even more grim. The IRS does not exactly have a reputation for excellent customer service. During fiscal year 2021, the Agency answered just 11 percent of the 282 million calls it received—11 percent. That means that 250 million taxpayer calls went unanswered—250 million. And 2022 was barely better. During fiscal year 2022, 87 percent of taxpayer calls—87 percent—went unanswered. Any business with a customer service record like that would soon be out of business.

That is not even the worst of it. On top of its customer service problems, the IRS has a troubling record of mishandling taxpayer data. Everyone remembers the infamous targeting of conservative groups for extra scrutiny under the Obama IRS. Then there was the 2021 leak or hack of confidential taxpayer information that ended up in the hands of the left-leaning organization ProPublica and was used to advance a partisan agenda. Last September, the IRS reported that it had inadvertently posted confidential taxpayer data for around 120,000 individuals on its website. Then, after fixing its mistake, the IRS inadvertently made much of that same information public again just 2 months later.

It is no surprise that interacting with the IRS doesn't exactly inspire confidence. Given the IRS's record, you would think everyone could agree the Agency is ripe for reform. Democrats, however, apparently thought the Agency was simply ripe for more funding, a lot more funding—funding targeted not toward reforming taxpayer services but overwhelmingly toward increasing tax enforcement.

The so-called Inflation Reduction Act Democrats passed last August contained a staggering $80 billion for the IRS. Just 4 percent of that funding—4 percent out of $80 billion—was earmarked for improving taxpayer services. More than half, roughly $46 billion, was earmarked for increased audits and other tax collection efforts.

But that is not all. President Biden is now proposing to boost the IRS's budget by 15 percent next year—over and above the massive funding boost the IRS already received from the Inflation Reduction Act. And it doesn't even end there. The President's budget would also provide a separate and additional $29 billion to the IRS for enforcement—again, in addition to the $46 billion for enforcement the IRS received last August.

I don't need to tell anyone that President Biden's campaign to flood the IRS with unprecedented funding is motivated not by a desire to improve the Agency's performance but by a need to find money to help offset some of the cost of Democrats' Green New Deal schemes and other big-government spending.

There is reason to be concerned about where the President will be getting all this money he expects to collect. The IRS has pledged not to use its increased funding to raise audit rates on small businesses and households making under $400,000 a year ''relative to historic levels.'' But not only is it not clear what the Agency means by ''historic levels,'' there is also nothing to prevent the Biden IRS from going back on that commitment—if, for example, the President finds he can't pay for his Green New Deal schemes just by increasing audits of higher earning taxpayers.

Suddenly and dramatically increasing the size of any government Agency is a cause for concern. Are there plans in place to make sure the money is used wisely, efficiently? Can the Agency in question handle such a swift expansion? These are serious questions no matter what Agency we are talking about, but these questions are particularly relevant when the Agency in question—in this case, the IRS—is already doing a poor job of handling its basic responsibilities.

Any funding infusion like the $80 billion the IRS received in August should

be paired with commensurate oversight measures, including a requirement for a comprehensive strategy and effective execution from the IRS and appropriate safeguards and accountability for taxpayers. But that, interestingly enough, is something Democrats failed to include in their legislation, and they have shown little interest in IRS oversight since.

That cannot continue.

We need to put safeguards in place to ensure that the tens of billions of dollars Democrats have funneled to the IRS are being used responsibly and efficiently and that the IRS is not mismanaging its tax collection powers.

The National Taxpayer Advocate has noted that the money from the so-called Inflation Reduction Act has been ''disproportionately allocated for enforcement activities and should be reallocated to achieve a better balance with taxpayer service needs and IT modernization.''

''We need to put taxpayers first,'' the advocate said, and she is right. But, unfortunately, Democrats' priority is not taxpayers; it is tax collection.

Earlier this year, I introduced legislation along with Senator CHUCK GRASSLEY, cosponsored by all Senate Finance Committee Republicans, to improve oversight and hold the IRS accountable for its spending decisions. Our legislation, the IRS Funding Accountability Act, would require the IRS to provide Congress with an annual plan for how the Agency intends to use its new funding—a plan that could be rejected by Congress with a joint resolution of disapproval.

The IRS would also be required to provide Congress with quarterly updates on implementation of the spending plans, and there would be real consequences for failing to submit plans and reports on time, including the rescission of funds until the IRS complies with reporting requirements.

The IRS did recently release an underwhelming report on how it intends to spend its funding windfall, but the report, which was submitted more than 45 days late, was exceptionally vague and short on important details. Our legislation would require the IRS to put forward detailed plans on time and ensure that Congress has the ability to prevent misuse of funds or violations of taxpayer receipts. And I would hope that my Democrat colleagues would recognize the need for this kind of commonsense legislation.

Any massive funding infusion to a Federal Agency needs to be accompanied by meaningful oversight to protect taxpayer dollars and doubly so when it comes to an Agency like the IRS with a track record for poor customer service and mishandling Americans' priority information. As we move forward, I will continue to do everything I can to push for accountability at the IRS to make sure that taxpayers' rights are respected and that Americans' tax dollars are being used responsibly.

I yield the floor.

I suggest the absence of a quorum.

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

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I ask unanimous consent to speak and complete my remarks before the rollcall starts.

The PRESIDING OFFICER. Also without objection.

U.S. SUPREME COURT

Mr. DURBIN. Mr. President, the highest Court in America should not have the lowest standards when it comes to ethics, but for too long that has been the case for the U.S. Supreme Court. It definitely needs to change.

While the Senate was out of session for the Easter recess, the independent nonprofit news organization ProPublica published a series of stunning reports.

They found that a billionaire real estate developer and prominent Republican donor, Harlan Crow, has given Supreme Court Justice Clarence Thomas as nearly 20 years of undisclosed luxury gifts and getaways: a lavish yacht vacation in Indonesia, private plane trips, visits to a deluxe mountainside resort, and more.

Then, just days ago, ProPublica found that in 2014, Crow's company bought properties owned by Thomas and his family, including the house where the Justice's mother still lives. These transactions were also hidden, undisclosed, even though Federal law clearly requires that they be reported publicly.

Let's be clear. Serving as a Federal judge, and especially a Supreme Court Justice, is one of the highest honors in the Nation that we can confer on an individual. But above all, it is a public service. Judges and Justices are entrusted by the American people to serve the public interest and administer equal justice under the law. That is why taxpayers and not billionaire donors fund judicial salaries, courthouses, and operations. Judges have a responsibility to put service to others ahead of their own personal self-interest.

But the conduct revealed in ProPublica's reporting tells a much different story. They show a Justice accepting secret, lavish luxury trips and real estate purchases from a wealthy donor with interests affected by the Court.

This is conduct we cannot tolerate, whether it is from a mayor, a city council member, or other elected official, and we certainly shouldn't tolerate it in the highest Court of the land. The Supreme Court needs to clean up its act and fast.

Throughout our history, ethics scandals at every level of government have inspired reform. Congress has repeatedly amended ethics laws governing the House and Senate to ensure that there is transparency and disclosure for the trips we take and the donations we receive. We have a Code of Official Conduct that we must follow and Ethics Committees that provide guidance and oversight for our activities. These committees can launch investigations and penalize misconduct when it occurs.

Congress has also passed numerous laws that affect the operation of the Federal judiciary, including the Supreme Court. We pass appropriations bills each and every year to cover judges' paychecks and the operations of our courthouses. We have enacted financial disclosure laws like the Ethics and Government Act and recusal laws like 28 U.S.C. 455 that apply to all Federal judges, including Supreme Court Justices.

We have long known there are shortcomings in the current ethics standards for the highest Court in the land, the Supreme Court. For example, the Justices do not consider themselves bound by the Code of Conduct that every other Federal judge follows. Additionally, they do not have clear and uniform processes for making and explaining their decisions on whether to recuse themselves from a case where there is a conflict of interest or an appearance of one. And as the recent ProPublica series has revealed, some Justices simply aren't telling the American people about the gifts and travel that they are accepting.

Frankly, the excuses we have heard thus far from Justice Thomas are laughable. Claiming that a private luxury yacht in Indonesia from a major political donor was ''personal hospitality'' that didn't need to be disclosed is an absurd conclusion, and it is insulting to the American people who expect Justices to be held to the same standards as anyone else in government.

That is why reform is essential. It is critical to our justice system and to our democracy that the American people have confidence that the judges and especially the Supreme Court Justices can't be bought and that they are serving the public interest and not their own personal interests.

In the past, Congress has stepped up to strengthen court ethics. Just last June, we passed the bipartisan Courthouse Ethics and Transparency Act which applies the STOCK Act's reporting and disclosure requirements to Federal judges and Justices. But the Supreme Court doesn't need to wait on Congress to clean up its act. The Justices could take action today if they wanted to, and if the Court fails to act, Congress must.

In the coming days, the Senate Judiciary Committee will hold a hearing on the need to restore public confidence in the highest Court of our land, the Supreme Court. This won't be our first hearing on the topic. We have held a

number of important hearings over the years on the need for judicial ethics reform, including an important hearing in the last Congress on the Court Subcommittee, chaired by Senator WHITEHOUSE of Rhode Island. Some on the Republican side may claim that this focus on ethics is just a reaction to decisions being handed down by the rightwing activist majority of the Supreme Court. To them I say, check the record.

I have been at this pursuit for more than 10 years. I wrote a letter, joined by Democratic colleagues, to the Chief Justice 11 years ago urging him to adopt a Code of Conduct. The Senate Judiciary Committee held a hearing in 2011 with Justices Scalia and Breyer. During that hearing, I asked them about Supreme Court ethics, which was in the news because of troubling reports even then of gifts being made by Mr. Harlan Crow. Unfortunately, Chief Justice Roberts rejected our call to act 10 years ago; and it appears that Harlan Crow took that as a sign that he should ante up and increase his largesse. Is it any wonder that we face a crisis of public confidence in the Supreme Court?

Our Constitution established a system of checks and balances between the branches of government, and it established a system in which no person is above the law.

There are few positions in our Federal Government more elevated than Supreme Court Justices, but Justices are public servants, and they must conduct themselves in that manner. Our job in the Senate Judiciary Committee, and in the Senate, is to make certain that they do—nothing less.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Idaho.

VOTE ON PLUMB NOMINATION

Mr. CRAPO. Mr. President, I ask unanimous consent that the rollcall begin immediately.

The PRESIDING OFFICER. Without objection.

The question is, Will the Senate advise and consent to the Plumb nomination?

Mr. CRAPO. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), and the Senator from New York (Mrs. GILLIBRAND) are necessarily absent.

The result was announced—yeas 68, nays 30, as follows:

[Rollcall Vote No. 84 Ex.]

YEAS—68

Baldwin	Heinrich	Romney
Bennet	Hickenlooper	Rosen
Blumenthal	Hirono	Rounds
Booker	Kaine	Sanders
Boozman	Kelly	Schatz
Brown	Kennedy	Schumer
Cantwell	King	Shaheen
Capito	Klobuchar	Sinema
Cardin	Luján	Smith
Carper	Manchin	Stabenow
Casey	Markey	Tester
Collins	McConnell	Thune
Coons	Menendez	Tillis
Cortez Masto	Merkley	Van Hollen
Cramer	Moran	Warner
Duckworth	Murkowski	Warnock
Durbin	Murphy	Warren
Ernst	Murray	Welch
Fetterman	Ossoff	Whitehouse
Fischer	Padilla	Wicker
Graham	Peters	Wyden
Grassley	Reed	Young
Hassan	Ricketts	

NAYS—30

Barrasso	Daines	Mullin
Blackburn	Hagerty	Paul
Braun	Hawley	Risch
Britt	Hoeven	Rubio
Budd	Hyde-Smith	Schmitt
Cassidy	Johnson	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Sullivan
Crapo	Lummis	Tuberville
Cruz	Marshall	Vance

NOT VOTING—2

Feinstein	Gillibrand

The nomination was confirmed.

The PRESIDING OFFICER (Mr. HICKENLOOPER). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 57, Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General.

Charles E. Schumer, Richard J. Durbin, Catherine Cortez Masto, Sheldon Whitehouse, Sherrod Brown, Margaret Wood Hassan, Raphael G. Warnock, Gary C. Peters, Jack Reed, Christopher A. Coons, Brian Schatz, Tina Smith, Ben Ray Luján, Elizabeth Warren, Martin Heinrich, Christopher Murphy, Tammy Baldwin, Alex Padilla.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) and the Senator from New York (Mrs. GILLIBRAND) are necessarily absent.

The yeas and nays resulted—yeas 58, nays 40, as follows:

[Rollcall Vote No. 85 Ex.]

YEAS—58

Baldwin	Hirono	Rosen
Bennet	Kaine	Sanders
Blumenthal	Kelly	Schatz
Booker	Kennedy	Schumer
Brown	King	Shaheen
Cantwell	Klobuchar	Sinema
Cardin	Luján	Smith
Carper	Manchin	Stabenow
Casey	Markey	Tester
Collins	Menendez	Tillis
Coons	Merkley	Van Hollen
Cornyn	Moran	Warner
Cortez Masto	Murkowski	Warnock
Duckworth	Murphy	Warren
Durbin	Murray	Welch
Fetterman	Ossoff	Whitehouse
Graham	Padilla	Wyden
Hassan	Peters	Young
Heinrich	Reed	
Hickenlooper	Romney	

NAYS—40

Barrasso	Fischer	Ricketts
Blackburn	Grassley	Risch
Boozman	Hagerty	Rounds
Braun	Hawley	Rubio
Britt	Hoeven	Schmitt
Budd	Hyde-Smith	Scott (FL)
Capito	Johnson	Scott (SC)
Cassidy	Lankford	Sullivan
Cotton	Lee	Thune
Cramer	Lummis	Tuberville
Crapo	Marshall	Vance
Cruz	McConnell	Wicker
Daines	Mullin	
Ernst	Paul	

NOT VOTING—2

Feinstein	Gillibrand

The PRESIDING OFFICER (Mr. LUJÁN). The yeas are 58, the nays are 40.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Amy Lefkowitz Solomon, of the District of Columbia, to be an Assistant Attorney General.

RECESS

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

Thereupon, the Senate, at 1:19 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. LUJÁN).

EXECUTIVE CALENDAR—Continued

NOMINATION OF AMY LEFKOWITZ SOLOMON

Mr. DURBIN. Mr. President, this week, the Senate will vote to confirm Amy Solomon as Assistant Attorney General for the Office of Justice Programs—OJP—within the Department of Justice.

Ms. Solomon is a devoted public servant whose policy expertise and commitment to the rule of law will serve

the Justice Department and communities across America. She has spent nearly a decade working at OJP during the Obama and Biden administrations, and she has served as the Principal Deputy Assistant Attorney General for OJP since 2021.

Throughout her career, Ms. Solomon has led efforts to lower recidivism, improve parole systems, and equip members of law enforcement with the tools they need to combat crime. Previously, she worked at Arnold Ventures and the Urban Institute, where she spearheaded policy research on policing, prisons, and crime-reduction programs.

A graduate of the Harvard Kennedy School of Government, Ms. Solomon has distinguished herself—both inside and outside of government—as a foremost expert in creating a more efficient, evenhanded criminal justice system that protects our communities and our families.

In a testament to her qualifications and temperament, Ms. Solomon has been endorsed by the International Association of Chiefs of Police, the Correctional Leaders Association, and several former OJP officials.

After more than 5 years without a Senate-confirmed head of OJP, Ms. Solomon's confirmation is long overdue. With her years of experience within the Agency and her deep insights into our Nation's criminal justice system, she will be ready to lead OJP from day one.

I urge my colleagues to join me in voting for her confirmation.

VOTE ON SOLOMON NOMINATION

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Solomon nomination?

Mr. SCHATZ. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN), is necessarily absent.

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 86 Ex.]

YEAS—59

Baldwin	Hickenlooper	Romney
Bennet	Hirono	Rosen
Blumenthal	Kaine	Sanders
Booker	Kelly	Schatz
Brown	Kennedy	Schumer
Cantwell	King	Shaheen
Cardin	Klobuchar	Sinema
Carper	Luján	Smith
Casey	Manchin	Stabenow
Collins	Markey	Tester
Coons	Menendez	Tillis
Cornyn	Merkley	Van Hollen
Cortez Masto	Moran	Warner
Duckworth	Murkowski	Warnock
Durbin	Murphy	Warren
Fetterman	Murray	Welch
Gillibrand	Ossoff	Whitehouse
Graham	Padilla	Wyden
Hassan	Peters	Young
Heinrich	Reed	

NAYS—40

Barrasso	Fischer	Ricketts
Blackburn	Grassley	Risch
Boozman	Hagerty	Rounds
Braun	Hawley	Rubio
Britt	Hoeven	Schmitt
Budd	Hyde-Smith	Scott (FL)
Capito	Johnson	Scott (SC)
Cassidy	Lankford	Sullivan
Cotton	Lee	Thune
Cramer	Lummis	Tuberville
Crapo	Marshall	Vance
Cruz	McConnell	Wicker
Daines	Mullin	
Ernst	Paul	

NOT VOTING—1

Feinstein

The nomination was confirmed.

The PRESIDING OFFICER (Mr. WELCH). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

The majority leader.

LEGISLATIVE SESSION

FIRE GRANTS AND SAFETY ACT

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate resume legislative session and resume consideration of S. 870.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 870) to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs.

Pending:

Schumer amendment No. 58, to add an effective date.

UNANIMOUS CONSENT AGREEMENT—S. 870

Mr. SCHUMER. Mr. President, I ask unanimous consent that the cloture motion with respect to S. 870 be withdrawn and that the only amendments in order to the bill be the following: Lee No. 80; Scott No. 81; Hagerty No. 72, as modified; Van Hollen No. 85; Sullivan No. 83; and Paul No. 79; that if offered, the Senate vote in relation to the amendments listed at a time to be determined by the majority leader following consultation with the Republican leader; that following disposition of the above amendments, amendment No. 58 be withdrawn; that the bill, as amended, if amended, be considered read a third time and the Senate vote on passage of the bill; that 60 affirmative votes be required for the adoption of these amendments and passage of the bill, with the exception of the Sullivan and Paul amendments; and that there be 2 minutes for debate equally divided between the two leaders or their designees prior to each vote, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SCHUMER. For the information of the Senate, the vote on the Lee amendment will be at approximately 4:30 p.m. today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

S. 870

Ms. COLLINS. Mr. President, I am delighted that the Senate is proceeding to consideration of the Fire Grants and Safety Act.

This bipartisan legislation, which my colleague from Michigan, Senator PETERS, the chairman of the Homeland Security Committee, and I have introduced, is cosponsored by our fellow congressional Fire Caucus chairs: Senators MURKOWSKI, TESTER, and CARPER. Our bill would extend critical FEMA fire prevention programs, some of which are set to expire at the end of this fiscal year.

Mr. President, your State of Vermont and mine are a lot alike. Firefighters are critical to the safety of our communities, whether they are small or large.

Firefighters across Maine and the country courageously serve their communities. Recognizing their commitment in 2000 and 2003, I helped create FEMA's firefighter grant programs as part of a bipartisan effort to ensure that firefighters have the adequate staffing, equipment, and training to do their essential jobs as effectively and safely as possible. At that time, I was the chair or ranking member of the Senate Homeland Security Committee.

The Fire Grants and Safety Act would reauthorize four critical firefighting and emergency services programs: the U.S. Fire Administration, which provides training and data to State and local fire departments, as well as education and awareness for the public; the Assistance to Firefighters Grant Program, known as the AFG, which helps to equip and train firefighters and emergency personnel; the Fire Prevention and Safety Grant Program, which provides resources to carry out fire prevention education and training; and the Staffing for Adequate Fire and Emergency Response Program, better known as the SAFER Program, which helps our local fire departments recruit, hire, and retain additional firefighters.

Since October of 2020, fire departments across Maine have received just under $12 million from the AFG and SAFER grant programs. These critical investments in local, rural fire departments supported replacements of decades-old fire engines and obsolete breathing apparatuses. They also allowed for the hiring of additional firefighters, thus helping to ensure that Maine communities continue to provide excellent public safety services to our residents.

I have visited many of the fire stations around the State, and I have seen firsthand the difference these Federal grant programs make in improving the safety of our firefighters who risk their lives to protect ours. Many of the fire stations in Maine are decades or even a century old. They need updated equipment. They need better breathing

equipment. They need better fire engines. That is the purpose of many of these programs.

They also are helped by these programs in getting a sufficient number of firefighters and emergency medical personnel. Fire chiefs across the State of Maine tell me of the critical importance of these programs in helping their local fire departments keep their communities safe. And that is one reason that this bill has such broad support from the International Association of Firefighters, the International Association of Fire Chiefs—the list goes on and on and on.

Failure to reauthorize these programs would lessen the ability of our firefighters to perform their vital jobs and thus would reduce the safety of the public. So I urge all of my colleagues to support the swift passage of this legislation to support our firefighters. We simply cannot allow these vital programs to expire.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, I rise today to highlight the importance of supporting the brave men and women who protect us every day in all 50 States. As I laid out on this floor last month, the fires that we face are getting worse, not better. Every day, there are more fires ravaging our communities and more folks relying on firefighters for protection.

Just last week, almost 4,000 acres in our neighboring State of New Jersey were scorched by the Jimmy's Waterhole fire, forcing evacuations from something like 170 buildings and homes.

In Pennsylvania, over 2,500 acres were burned and over 150 homes threatened, forcing the Pennsylvania Turnpike to temporarily close.

Let me just make this as clear and as strong as I can. We have to support our firefighters. We have to support our firefighters so that when they bravely run toward danger to help others, they are well prepared; they are properly trained and equipped.

That is one of the reasons why I continue to colead the Fire Grants and Safety Act with my colleagues on the Congressional Fire Service Caucus. Firefighters put their lives on the line for us every day—every day—and it is our duty to provide them with the necessary support that they need.

I am proud to join alongside Senators GARY PETERS, SUSAN COLLINS, and LISA MURKOWSKI in fighting for this crucial legislation to better ensure that our firefighters are armed with the tools that they need to get the job done on behalf of other people.

Today, I want to talk for a few minutes, if I could, about the Fire Grants and Safety Act and how it will actually have an impact on communities not just on the east coast, not just on the west coast, the middle of our country, but all over the United States of America.

At a high level, this bill reauthorizes three critical Federal programs that support the local fire departments. Let me break it down just a little bit, if I could.

First, this legislation will reauthorize the Federal Emergency Management Agency Staffing for Adequate Fire and Emergency Response—also known as the SAFER Grant Program. The SAFER Grant Program provides funding for career, for volunteer, and some combination of local fire departments to increase the number of men and women on duty at any point in time.

The job of a firefighter can be incredibly demanding, and baseline industry standards include protocols like 24-hour staffing to make sure our communities have adequate protection of all hours of day and night.

The SAFER Grant Program also provides funding to recruit staff so that we can ensure staffing needs can actually be met. For example, SAFER grants could help ensure that more personnel are properly trained and available on the ground to assist in major fires in the areas that need it the most.

In States like Delaware, where the majority of our firefighters are volunteers, it is particularly important that staffing needs are met and resources are provided so that all first responders are ready to take on each day that lies ahead of them.

The Fire Grants and Safety Act also reauthorizes the Assistance to Firefighters Grant Program. The Assistance to Firefighters Grant Program helps local fire departments and EMS organizations to fulfill equipment and training needs, like firetrucks and protective gear, all of which lead to a more effective emergency response.

But firefighters do a whole lot more than just put out fires—I think the Presiding Officer and other of our colleagues know. Annually, there are over 36 million emergency calls that fire services across the country respond to.

Let me say that again. There are over 36 million emergency calls that fire services respond to across the country. That is not going down. That is going up. I think it increased about 20 percent over the last dozen or so years.

Just a few weeks ago, in my own State, a strong, dangerous tornado struck Southern Delaware in the area of Sussex County, our southernmost county, near a community called Greenwood and another community called Bridgeville. It was our firefighters who showed up to lead people to safety.

We lost a grandfather when the tornado struck Bridgeville, as I recall. I think he was in his seventies. He left behind a family.

Ensuring that funding is provided for EMS alongside fire services is critical to the emergency response.

Finally, the Fire Grants and Safety Act will reauthorize the U.S. Fire Administration to provide leadership, to provide coordination, and to provide training for first responders and healthcare leaders. Responding to emergencies is no small undertaking. It is a huge undertaking. In addition to our firefighters, healthcare leaders help to guide the disaster response by making sure that people are taken care of, both during and after emergency response.

The U.S. Fire Administration also plays a critical role in that coordinated effort, ensuring that our first responders are ready to handle hazards, from saving lives to preventing loss of homes and personal belongings.

Beyond the initial response, the Administration collects fire data, conducts important research and prevention methods, and hosts public safety information and fire service training. This proactive approach assists local fire departments in handling future emergencies and creates a more comprehensive approach to fire safety.

The lifesaving work made possible by these three Federal programs must continue, and we have the opportunity here in the Senate to make that happen. Last month, we came together—Democrats and Republicans—to vote to take up the Fire Grants and Safety Act. That vote passed by a whopping 96 to 0. As the Presiding Officer knows, that doesn't happen here every day, and it is a testament to the power of bipartisanship. It is also a testament to the critical role that firefighters play in communities across America.

Today, we will improve our emergency response, and we will make sure that our firefighters have, if not everything they need, more of what they need. I am pleased that our President has announced his support for this legislation. I want to strongly encourage our colleagues and friends over in the House of Representatives to do their part once we have taken care of business here and send the Fire Grants and Safety Act to the President's desk.

Mr. President, I want to go back a little in time. I remember a time when my sister and I were young and playing with other kids in our neighborhood. Maybe our cousins were with us. We had a firetruck. In fact, we had a couple of little firetrucks. We would take turns being a firefighter. Some days we would put out fires, and other days we would respond to imaginary weather events that endangered our community where we lived.

Later on, decades later, my sister would have her kids—a son and daughter—and my wife and I had a couple of boys, and one of their favorite toys was firetrucks. On more than a few occasions, they and their friends would come over to our house to play, and we would bring out the firetrucks.

They didn't have anything else to do but fight fires. For them, it was just

fun. They loved doing it—doing it with their neighbors and friends—and loved doing it with their cousins who might be visiting with us. That was fun for them.

In the real world, being a firefighter can be enormously satisfying. I don't know that I would say it is fun. It is dangerous, and there is a chance that someone will get hurt trying to help out other people, and the risks can be, as we know, great. I just want to make sure that those young kids who grow up to be firefighters—like the ones whom we honored this past month in the Bridgeville Fire Company in Southern Delaware—I just want to make sure they know that we value them. We value their service. We value their willingness to risk their own lives on behalf of other people, including people they may not even know.

In the legislation that is before us, we have the opportunity to make that clear to firefighters around the country—States large and small, east and west, blue and red—how much we value them and the service they provide to so many of us.

That is what I have today. I don't see anybody else yearning to address our colleagues.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

VLADIMIR KARA-MURZA

Mr. WICKER. Mr. President, I come before the Senate this afternoon to address the disturbing matter of Vladimir Kara-Murza and to call on the State Department to act and act decisively now on behalf of Mr. Kara-Murza.

Vladimir Kara-Murza is a courageous Russian leader and outspoken opponent of the dictatorship of President Putin there in Russia and a leader in the democracy effort in his home country of Russia.

Many colleagues, myself included, know Vladimir Kara-Murza personally. I admire him. I consider him a friend. Other Senators will remember who Mr. Kara-Murza is after I remind the Senate of his history.

Mr. Kara-Murza was the right-hand man of the late Russian opposition leader Boris Nemtsov. I say the late Russian leader because he was assassinated within the shadows of the Kremlin in 2015, after a career of courageous, outspoken opposition to the dictatorship in Russia. That was Boris Nemtsov.

His assistant and right-hand man, Kara-Murza, was just this week sentenced to a 25-year prison term in Russia, having already served 1 year in prison for the simple offense of speaking out on behalf of freedom and democracy in Russia.

Over the years, Vladimir Kara-Murza has spoken up against President Putin's invasion of Ukraine. He has spoken out against the suppression of human rights in Russia.

He has worked with members of Congress. He has worked with Senator CARDIN. He has worked with Senators like me and with former Senator John McCain. And he has been instrumental in getting us to pass and getting the administrations to sign important human rights legislation, like the Magnitsky Act, which has now been signed by 35 or more countries internationally, to crack down on those individuals within a dictatorship regime who have benefited from the violations of human rights.

How has Mr. Vladimir Kara-Murza paid for this offense of speaking out on behalf of democracy and freedom? He is the one who has twice been poisoned by the Putin regime—on two occasions. And they fumbled it twice. Now they have a third chance to kill him, and it may be that, unless the State Department acts quickly, the Putin regime may finally get their wish and see the obituary of Vladimir Kara-Murza.

His life is in danger now. Because of his previous poisonings, both of which he recovered from, he has suffered already from polyneuropathy. After a year in prison, he has lost 40 pounds. He has lost feeling in both of his feet now and is losing the feeling in one of his arms. That is the situation he finds himself in, the week when he was sentenced to a 25-year prison term simply for speaking out on behalf of freedom. Even under Russian law, a statutory scheme that none of us would approve of—even under Russian law—a diagnosis such as this would lead to the release of any prisoner, but not, apparently, for Vladimir Kara-Murza. Predictably, the Russian courts have violated their own law to keep him detained.

Today, we read about many victims of Russia's despotism. We have been talking this week about former U.S. Marine Paul Whelan, who has been sitting in a Russian prison since 2018 under fabricated charges, and then the recently detained Wall Street Journal reporter, Evan Gershkovich.

Those two individuals need our support and are getting the support of the State Department—the same support that Mr. Vladimir Kara-Murza needs now and that the Senate should demand of the State Department.

The State Department has the capability, as they have done for these two other prisoners, Gershkovich and Whelan. They have the ability to designate Mr. Kara-Murza as ''wrongfully detained'' under the Levinson Act. This classification would make the release of Vladimir Kara-Murza a top U.S. Government priority.

Granting this designation would be a major step forward and would raise this case to the highest level of attention within the State Department and with regard to their negotiations with the Kremlin. It would give negotiators new tools to act strongly and quickly. Strong action and quick action is needed now to save the very life of Vladimir Kara-Murza.

Efforts on his behalf could be conducted alongside the efforts that are being initiated for Mr. Whelan and Mr. Gershkovich, which I very much support.

I implore the State Department to elevate this case also and save the life of Vladimir Kara-Murza, and I implore all Members of Congress to join me in urging our government to take immediate action to support all three of these gentlemen.

Let's resolve that our government and our State Department act in every way possible to gain the release of these prisoners and in particular this prisoner whose life is hanging at the very moment by a thread.

I met with Vladimir Kara-Murza's wife only yesterday. She had met with the State Department, along with her attorneys, along with some advocates. Clearly, she fears for the life of her husband.

She is a resident of Northern Virginia, by the way, with two small children.

She fears for the life of her husband, and she worries about the future of herself and her children, but also she wonders why the State Department would not act in the most forceful way possible, and that is with this designation of ''wrongfully detained.''

Senator CARDIN and I will be speaking to Members of the Senate and the House about this. We will be passing around a letter to sign to the Secretary of State urging that this matter be given the highest consideration. And perhaps we can diplomatically obtain the release of this courageous person who has committed no crime and save the life of Vladimir Kara-Murza.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 80

Mr. LEE. Mr. President, wildfires pose a significant threat to the safety and well-being of our citizens, particularly those living near Federal lands. One way to protect against wildfires is with the use of fuel breaks.

Fuel breaks are—think of them as firewalls, firewalls for our communities. They are manmade areas with a reduced fuel load that are set up to act as a barrier to slow the spread of a wildfire. They slow it down and make it so the fire can't spread as quickly.

In 2021, Congress created a series of categorical exclusions specifically for the creation of fuel breaks. That was good. They were intended to protect communities adjacent to Federal land from the devastating effects of wildfires. However, the Federal Agencies responsible for implementing these

exclusions have been bogged down by regulatory delays.

These delays are really problematic, and they are adding up, especially in certain parts of the country where there is a lot of Federal land and where there is a lot of Federal land near where people live. For example, in California, there are 5.1 million homes in the wildland-urban interface. The Forest Service and the BLM will never have the capacity to protect these homes. The hands of the States shouldn't be tied while they watch their homes being burned.

So Congress did a good thing by creating these categorical exclusions, but it has been more or less rendered—I think by mistake—a dead letter in many areas because of these regulatory problems.

Rather than throwing the baby out with the bathwater, we need to make this one work. My amendment aims to do precisely that. It aims to create a process for States to assume responsibility for the environmental analysis, approval, and execution of these projects. By allowing States to take on these responsibilities, we can expedite these critical projects for community protection.

The safety and well-being of our citizens and our communities are at stake. By passing my amendment, we can take a significant step toward protecting our homes, communities, and critical infrastructure from the devastating effects of wildfires.

Mr. President, I call up my amendment No. 80 and ask that it be reported by number.

The PRESIDING OFFICER. The clerk will report the amendment by number.

The senior assistant legislative clerk read as follows:

The Senator from Utah [Mr. LEE] proposes an amendment numbered 80.

The amendment is as follows:

(Purpose: To make a categorical exclusion available for use on certain land by States and Indian Tribes through a project delivery program)

At the appropriate place, insert the following:

SEC. ___. STATE AND TRIBAL USE OF CATEGORICAL EXCLUSION FOR ESTABLISHMENT OF FUEL BREAKS IN FORESTS AND OTHER WILDLAND VEGETATION.

Section 40806 of the Infrastructure Investment and Jobs Act (16 U.S.C. 6592b) is amended by adding at the end the following:

''(g) STATE AND TRIBAL PROJECT DELIVERY PROGRAMS.—

''(1) IN GENERAL.—On request of a State or an Indian Tribe, the Secretary concerned shall enter into an agreement (which may be in the form of a memorandum of understanding) with the State or Indian Tribe, under which the Secretary concerned assigns, and the State or Indian Tribe assumes, the responsibilities of the Secretary concerned with respect to—

''(A) 1 or more projects under this section using the categorical exclusion established by subsection (b), including—

''(i) environmental review, consultation, and any other action required under any Federal environmental law with respect to the review or approval of a project, including the preparation of a supporting decision memorandum in accordance with subsection (b); and

''(ii) carrying out the forest management activities described in subsection (c) on public lands or National Forest System land in the State or under the jurisdiction of the Indian Tribe, as applicable; or

''(B) any other project on public lands or National Forest System land in the State or under the jurisdiction of the Indian Tribe, as applicable, using any other categorical exclusion that the Secretary concerned determines to be appropriate for use by the State or Indian Tribe, as applicable, to protect communities from wildfire.

''(2) COLLABORATION.—A State or an Indian Tribe may enter into an agreement under paragraph (1) in collaboration with a unit of local government, a private entity, or a community organization and associated contractors.

''(3) REQUIREMENTS.—

''(A) IN GENERAL.—A State or an Indian Tribe that assumes responsibilities under paragraph (1) shall be subject to the same procedural and substantive requirements as to which the Secretary concerned would be subject.

''(B) RETENTION OF RESPONSIBILITIES.—Any responsibility of the Secretary concerned that is not explicitly assigned to and assumed by a State or an Indian Tribe under an agreement under paragraph (1) shall remain the responsibility of the Secretary concerned.

''(C) PROHIBITION.—The Secretary concerned may not require a State or an Indian Tribe, as a condition on entering into an agreement under paragraph (1), to forgo any other means for carrying out the applicable project that is otherwise permissible under applicable law.

''(D) VERIFICATION OF RESOURCES.—As a condition on entering into an agreement under paragraph (1), the Secretary concerned may require a State or an Indian Tribe to verify that the State or Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.

''(4) AGREEMENTS.—An agreement under paragraph (1) shall—

''(A) be executed by the Governor or the top-ranking official of the State or Indian Tribe that is charged with responsibility for the applicable project;

''(B) be in such form as the Secretary concerned may prescribe;

''(C) provide that the State or Indian Tribe—

''(i) agrees to assume all or part of the responsibilities of the Secretary concerned;

''(ii) expressly consents to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary concerned assumed by the State or Indian Tribe;

''(iii) certifies that State or Tribal laws (including regulations) are in effect that—

''(I) authorize the State or Indian Tribe to take the actions necessary to carry out the responsibilities being assumed; and

''(II) provide that any decision regarding the public availability of a document under those State or Tribal laws is reviewable by a court of competent jurisdiction; and

''(iv) agrees to maintain the financial and personnel resources necessary to carry out the responsibilities being assumed;

''(D) require the State or Indian Tribe to provide to the Secretary concerned any information that the Secretary concerned reasonably considers necessary to ensure that the State or Indian Tribe is adequately carrying out the responsibilities assigned to the State or Indian Tribe;

''(E) have a term of not more than 5 years; and

''(F) be renewable.

''(5) JUDICIAL REVIEW.—

''(A) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction over any civil action against a State or an Indian Tribe for a failure to carry out any responsibility assigned to and assumed by the State or Indian Tribe under an agreement under paragraph (1).

''(B) LEGAL STANDARDS AND REQUIREMENTS.—A civil action described in subparagraph (A) shall be governed by the legal standards and requirements that would apply if the civil action were against the Secretary concerned had the Secretary concerned taken the relevant actions.

''(C) INTERVENTION.—The Secretary concerned may intervene in any civil action described in subparagraph (A).

''(6) STATE OR TRIBAL RESPONSIBILITY AND LIABILITY.—A State or an Indian Tribe that assumes responsibilities under an agreement under paragraph (1) shall be—

''(A) solely responsible for carrying out the responsibilities; and

''(B) solely liable for any action or failure to take an action in carrying out those responsibilities.

''(7) TERMINATION.—

''(A) IN GENERAL.—A State or an Indian Tribe may terminate an agreement entered into by the State or Indian Tribe under paragraph (1), at any time, by submitting to the Secretary concerned a notice not later than the date that is 90 days before the date of termination.

''(B) TERMS AND CONDITIONS.—A termination under subparagraph (A) shall be subject to such terms and conditions as the Secretary concerned may provide.

''(8) EDUCATION AND OTHER INITIATIVES.—The Secretary concerned, in cooperation with representatives of State and Tribal officials, may carry out education, training, peer-exchange, and other initiatives, as appropriate—

''(A) to assist States and Indian Tribes in developing the capacity to carry out projects under this subsection; and

''(B) to promote information-sharing and collaboration among States and Indian Tribes that are carrying out projects under this subsection.''.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I don't rise every day to oppose amendments offered by Senator LEE. I am afraid I am going to have to oppose this one for a couple of reasons.

One, as the chairman of the Senate Committee on Environment and Public Works and as a recovering Governor who has helped run a State and was actually the chair of the National Governors Association for a while, I believe this amendment undercuts the National Environmental Policy Act and the Federal Government's important role in managing our Federal lands.

While I appreciate the need for Federal Agencies and States to work together to minimize wildfire risks on our public lands, this amendment, I am sorry to say, misses the mark.

Specifically, this amendment would require—and I underline the word ''require''—this amendment would require the Forest Service and the Bureau of Land Management to allow States to take over Federal responsibilities for environmental reviews of many activities on public lands. This would be a

significant change in the management of our public lands, which belong, as we know, to all Americans.

Although Senator LEE's proposal is modeled on a program at the Department of Transportation that allows States to assume some responsibilities for highway projects, this amendment is far broader in scope and impact and lacks the numerous safeguards that are in place for the highway program.

For instance, this amendment establishes mandatory—I emphasize ''mandatory''—not discretionary assignment of responsibilities to States. It has no requirement, as best I can tell, for public notice and comment and does not require the Federal Agency to verify that the State has the resources and the personnel available to carry out Federal responsibilities. It also includes, as best I can tell, no auditing or monitoring requirements.

I am working with my colleagues, I believe on both sides of the aisle, on opportunities to improve environmental review procedures. But I must say, this is not the right vehicle or way to proceed on this provision, and I am reluctantly going to have to urge our colleagues to vote no on this particular amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, I appreciate the insight and the observations of my friend and distinguished colleague, the Senator from Delaware. I appreciate the amount of effort that he puts into this and I am sure a lot of hard work.

He raises some good points, and there are points that I might find persuasive if they were accurate. He seems to be under the impression that these would be broad categorical inclusions, that these procedures we contemplate would apply broadly to all Forest Service operations. It wouldn't. This is talking only about fuel breaks and only about fuel breaks in narrow sets of circumstances.

He suggested incorrectly that there is no requirement in place to make sure that the States have the resources financially, regulatorily, and otherwise to undertake the analysis contemplated under this. It does. He has been misinformed on that point.

Finally, I might feel differently about this if, like my friend from Delaware, if I were from a different State, if I were from the State of Delaware. But when you look at the Western United States, we have Federal land everywhere.

In every State to the east of Colorado's eastern border, the Federal Government owns less than 15 percent of the land in each State, and in most cases, it is in the single digits. In many States, it is in the low single digits. I don't remember what the percentage of land is in Delaware. I can find that out. But in Utah it is two-thirds of our land. It is 67 percent. In every State to the west of Colorado's Eastern Rim, it is more than 15 percent and usually a lot more than that. That affects people. These are people's homes, their livelihoods, their communities, their economies are all put in jeopardy by the fact that the Federal Government owns too much land. It owns so much land that no one would have the capacity to operate this. No one. It is impossible.

More than 5 million homes in California alone are in these affected areas. No matter how efficient we may be in the Forest Service, no matter how many employees we authorized them to hire, they are still not going to be able to keep up with it.

It is a matter of doing this or losing more property, losing more ecosystems and losing more homes and communities and sources of economic activity. That is what is at stake.

Now, if the points he made were factually correct or legally correct, he might be right, but they are not correct. We need this, and we need to pass this now.

Mr. President, thank you.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I don't think I have got this wrong. I may be mistaken, but I don't think so.

I would just say, again, Senator LEE's proposal appears to be modeling on a program at the Department of Transportation that allows States—and I underline ''allows States''—to assume some responsibilities, not all but some responsibilities, for highway projects.

Having said that, this amendment is far broader in scope and impact and lacks the numerous safeguards that are in place for the highway program. For example, this amendment establishes mandatory—mandatory, not discretionary—assignment of responsibilities to States. In doing that, it has no requirement for public notice. It does not require the Federal Agency to verify that the State has either the resources or the personnel available to carry out Federal responsibilities. Moreover, as best I can tell, this mandate includes no auditing or monitoring requirements. That should give all of us pause. That should give all of us pause and cause for concern.

Having said that, I am working with our colleagues on opportunities to improve environmental review procedures, but I just don't believe this is the right vehicle for the way to proceed on this particular provision. I look forward to discussing it further with our colleague from Utah in the days ahead, but for now I am going to urge our colleagues to vote no on this amendment.

Mr. LEE. Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. I will point to two things. First, on page 4 of the amendment, subdivision (D) Verification of Resources. This requires each State or Indian Tribe to go through a process to verify that they have got the resources to do it.

Turn to page 6. It is subject to full judicial review in the same way that they would be subject to judicial review if these actions were being undertaken by a Federal Agency. So the only difference is, these State and local governments, they have both the personnel, and they have the incentive to do it. Federal land managers can't and don't and won't ever be able to do this the same way State people, State officials, State governments, and local governments will be able to.

We either care about these communities or we don't. If we don't adopt this, we are effectively nullifying what Congress passed back in 2021, and we cannot do that.

Mr. President, I know of no further debate on this matter.

The PRESIDING OFFICER. Is there further debate?

Mr. CARPER. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am looking at the language of the amendment.

On page 4, subparagraph (D), which is entitled ''Verification of Resources,'' reads—I will read part of this. It says:

> As a condition on entering into an agreement under paragraph (1), the Secretary concerned may require a State or [may require] an Indian Tribe to verify that the State or an Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.

It doesn't say ''should.'' It doesn't say ''must.'' It says ''may require a State or . . . Indian tribe to verify that the State or Indian Tribe has the financial and personnel resources necessary to carry out the responsibilities described in that paragraph.''

I, again, have significant concerns here. I appreciate the intent of the author of the amendment, but I will just reiterate again the concerns that the more I look at this, the more concerned I am. I would rather be less concerned but more concerned I have become.

With that, I yield back my time.

Mr. LEE. Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. The distinction he is dwelling on is the distinction on page 4, the ''may-shall'' distinction. The only way he can be right on this, of course, is if he presupposes that the Secretary is just not going to care; that the Secretary is not going to exercise that authority. It is not going to happen. I am sure he is not impugning a lack of concern on the part of the Secretary of Agriculture to do that. He wouldn't do that.

Secondly, look, if that is what is holding this up, if you want to switch—if you would be willing to support it if I made the ''may'' and turned it to a ''shall,'' I will do that right now. I will offer up a second-degree amendment to my own amendment right now, and we will do that. If the gentleman from Delaware were to agree to that, I would be fine with it, and we could get this passed.

Mr. CARPER. I am not prepared to know whether or not there are other safeguards—I appreciate the good intent that the Senator from Utah is showing. But standing here on the fly, I am just reluctant to say that if you change this one place and this one word in this proposal, then I am OK with all of it. I will need a little bit of time to work on it and decide. It is hard to do it on the fly.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, this is how the western lands suffer—people from the Eastern United States, with neither the knowledge nor the concern about how they are managed and don't care. And so while they passed something in 2021 to make these firebreaks easier to put in place, as a practical reality, the regulatory hurdles are proving too much. This would fix that. This is reasonable. There is nothing that the Senator from Delaware has pointed to that makes this amendment to this bill objectionable in any way. I urge my colleagues to support it.

And if you do so—if you come from the west of Colorado, you know exactly what I am talking about. If you come from the Eastern United States, I beg you to imagine, for a moment, that you represent a Western State, where we have experienced, in some cases, decades of drought and where we are sitting ducks, where we are an island of private land amidst a vast overwhelming sea of Federal land that is chronically mismanaged just because it is physically impossible for them to manage it properly to avoid this kind of thing. I urge you to be sympathetic to this and support it.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. This is the last thing I would say with respect to this amendment. If this amendment is not adopted, I would say to the Senator from Utah, I welcome the opportunity for my staff and your staff to sit down and talk through it and to better understand our concerns and better understand where you are coming from.

Mr. LEE. I would be happy to.

Mr. CARPER. Yes. We will keep on it.

Mr. LEE. Thank you.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. I appreciate the magnanimous offer from my colleague. I will take him up on that. I am still hoping that it will pass. It is still my hope that it should pass today.

Mr. President, I know of no further debate.

VOTE ON AMENDMENT NO. 80

The PRESIDING OFFICER. Is there further debate?

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

Mr. LEE. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. FEINSTEIN) is necessarily absent.

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—49

Barrasso	Grassley	Ricketts
Blackburn	Hagerty	Risch
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Britt	Hyde-Smith	Rubio
Budd	Johnson	Schmitt
Capito	Kennedy	Scott (FL)
Cassidy	Lankford	Scott (SC)
Cornyn	Lee	Sullivan
Cotton	Lummis	Thune
Cramer	Manchin	Tillis
Crapo	Marshall	Tuberville
Cruz	McConnell	Vance
Daines	Moran	Wicker
Ernst	Mullin	Young
Fischer	Murkowski	
Graham	Paul	

NAYS—50

Baldwin	Heinrich	Rosen
Bennet	Hickenlooper	Sanders
Blumenthal	Hirono	Schatz
Booker	Kaine	Schumer
Brown	Kelly	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Luján	Stabenow
Casey	Markey	Tester
Collins	Menendez	Van Hollen
Coons	Merkley	Warner
Cortez Masto	Murphy	Warnock
Duckworth	Murray	Warren
Durbin	Ossoff	Welch
Fetterman	Padilla	Whitehouse
Gillibrand	Peters	Wyden
Hassan	Reed	

NOT VOTING—1

Feinstein

The PRESIDING OFFICER (Mr. MARKEY). On this vote, the yeas are 49, the nays are 50.

Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is not agreed to.

The amendment (No. 80) was rejected.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT REQUEST

Mr. SCHUMER. Mr. President, few have left their mark on this country like our dear friend Senator DIANNE FEINSTEIN. She is a legend in California, the first woman Senator from the State.

She is a legend here in the Senate—the longest serving woman Senator in U.S. history. She built a reputation as an expert legislator on so many issues—gun violence, VAWA, the environment, women's rights, and so much more.

But her impact doesn't end there. DIANNE is a legend throughout the country. She shattered enumerable glass ceilings, moved countless mountains, and molded millions of minds. Few have accomplished as much in office as Senator FEINSTEIN.

Our colleague and friend has made her wish clear, that another Senator temporarily serve on the Committee on the Judiciary until she returns. I thank Senator CARDIN for agreeing to step in.

So today, I am acting not just as leader, but as DIANNE'S friend in honoring her wishes until she returns to the Senate. Mr. President, when someone as dear and as accomplished as Senator FEINSTEIN asks us for something so important to her, we ought to respect it.

I ask unanimous consent that the Senate proceed to the consideration of my resolution which is at the desk; I further ask unanimous consent the resolution be agreed to, that the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. I will be very brief. To my colleague and good friend Senator SCHUMER, I want to let you know that 99 Senators agree with what you said about Senator FEINSTEIN. We all hope—I am the ranking member of the Judiciary. She is a dear friend, and we hope for her speedy recovery and return back to the Senate.

But with all due respect to my colleague Senator SCHUMER, this is about a handful of judges that you can't get the votes for. I have been a pretty consistent vote in the Committee on the Judiciary in a bipartisan fashion. I understand you won the election and we lost. I want to make sure we process judges fairly.

The reason this is being made is to try to change the numbers on the committee in a way that I think would be harmful to the Senate and to pass out a handful of judges that I think should never be on the bench.

With that in mind and with all due respect to Senator FEINSTEIN, I object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Senator from Rhode Island.

U.S. SUPREME COURT

Mr. WHITEHOUSE. Mr. President, I am here for now the 21st in my series of speeches about the scheme to capture and control our Supreme Court, a scheme to which rightwing special interests have devoted hundreds of millions of dark money dollars. The ingredients in this noxious cocktail are creepy rightwing billionaires, phony front groups, amenable justices, large sums of money, and secrecy.

This month, we have gotten a whole new look at how these ingredients mix.

According to extraordinary reporting by ProPublica, for more than 20 years, Justice Clarence Thomas has accepted luxury trips, virtually every year, from billionaire Harlan Crow without disclosing them. Here is how ProPublica described it:

[Thomas] has vacationed on Crow's superyacht around the globe. He flies on Crow's Bombardier Global 5000 jet. He has gone with Crow to the Bohemian Grove, the exclusive California all-male retreat, and to

Crow's sprawling ranch in East Texas. And Thomas typically spends about a week every summer at Crow's private resort in the Adirondacks.

One of those trips has been valued at more than $500,000.

We have heard from civil servants who have to report a gift of $5. This Justice received a gift of a trip that they valued at $500,000. It was a trip to Indonesia on Crow's private jet, followed by, and I quote here, ''nine days of island-hopping . . . on a superyacht staffed by a coterie of attendants, and a private chef.'' And that is just one excursion. No telling how many others there were.

None of this was disclosed. The supposed rationale was that it was all ''personal hospitality.'' So let's set aside for one second the question of whether this actually was personal hospitality. Let's presume that there was personal hospitality here somewhere. What that overlooks is the problem of the personal hospitality exemption, which covers exemption from disclosure of ''food, lodging, or entertainment received as personal hospitality of an individual.'' Food, lodging, or entertainment—not transportation, not travel, not trips on Harlan Crow's private jet.

ProPublica was able to identify multiple trips that Thomas took on Crow's jet, and each one of those trips seems to be a slam dunk violation of this provision—not food, not lodging, not entertainment. Transportation.

It does not stop there. Additional reporting by ProPublica revealed more of Crow's undisclosed generosity. In 2014, Crow purchased from Thomas and his relatives three properties in Georgia, including the home where Thomas's mother lives. There seemed to be more collateral gifts in the form of renovations and an agreement that Thomas's mother would live there rent-free for the rest of her life.

There is much more to learn about this transaction, but back to the disclosure, here is what the law requires for property disclosures. It requires the disclosure of any purchase, sale, or exchange during the preceding calendar year which exceeds $1,000 in real property, other than property used solely as a personal residence of the reporting individual. If it is not your home, if it is any other real property, and if it is worth more than $1,000, the law requires that it be reported. Thomas disclosed none of this on the annual disclosure forms required by law.

This law applies across the government. This isn't something special for the Supreme Court. But transparency is especially important for judges, who must recuse themselves from cases if there is even an appearance of impropriety.

Purchasing Thomas's property and offering him free international vacations weren't the only favors bestowed by the billionaire. In 2011, the New York Times reported on him having ''done many favors for the justice and his wife,'' including using his company to finance what the Times called ''the multimillion-dollar purchase and restoration'' of a property where Justice Thomas's mother used to work; donating $175,000 to a Savannah library project dedicated to Justice Thomas; giving Justice Thomas a $19,000 Bible that belonged to Frederick Douglass; and ''providing $500,000 for Ginni Thomas [his spouse] to start a Tea Party-related group.''

Well, could any of that raise an appearance of impropriety or was it purely ''personal,'' nothing to do with the Court? Well, let's have a look at a picture that shows us a little illumination of that.

This is a painting that Harlan Crow commissioned during one of Thomas's visits to Crow's private, lakeside, Adirondack retreat. On the right here is Crow himself. Next to him is Justice Thomas.

Crow sits on the board of two conservative organizations that file briefs before the Supreme Court. Crow is also a donor to the Federalist Society, from which Trump's infamous Supreme Court list emerged. By the way, dark money surged into the Federalist Society during that period. Crow is also a political donor to Republican politicians.

Investigation would show whether all this amounted to enough business before the Court to create a conflict of interest, but the Supreme Court won't permit any investigation of its members.

Here on the left is the infamous Leonard Leo, the man behind that Trump Supreme Court list, whose three new Justices created the far-right supermajority that Justice Thomas now enjoys. Leo's front group, the Judicial Crisis Network, bought the campaign ads for the three Justices, paid for with dark money.

Here is a graphic I have used before showing Leonard Leo's flotilla of front groups that he uses. He has more. This is just one assortment of his front groups.

Here is the Judicial Crisis Network, which took checks as big as $17 million from anonymous donors and used that money to spend on ads for the confirmation of the three new Justices.

Leo is the one who helped the rightwing billionaires knock out Harriet Miers. Do you remember when she was a nominee for the Supreme Court by a Republican President? Knocked her out to make room for none other than Sam Alito to get onto the Court.

The campaign Leo oversaw by the billionaires to capture the Court has been tallied at more than $580 million—$580 million—much of it dark money. And he recently received from another creepy rightwing billionaire a $1.6 billion slush fund into yet another 501(c)(4) front group.

So it is deeply misleading to claim that Justice Thomas never vacationed with people who had business before the Court. Leonard Leo's business is the Court. The creepy billionaire's campaign was to capture the Court. Leo was the billionaire's contractor for construction of the Court that dark money built.

Personal hospitality. After Thomas gets on the Court, a major Republican donor befriends him, with half a million dollars for his spouse's activist group, a renovated home for his mother, and lavish undisclosed vacations, at which Thomas was sometimes accompanied by rightwing activists at the center of the scheme to capture the Court. And we are supposed to believe this is all legit? I don't think so.

Guess who else doesn't think so. Justice Thomas, who knew this smelled enough that he broke the disclosure law repeatedly to keep it secret.

Guess who else doesn't think so. Ask other Federal judges. They can't get away with this personal hospitality nonsense. They know that this is wrong and that it is embarrassing to the judiciary. That is why the Judicial Conference just cracked down on the personal hospitality shenanigans of their supreme court colleagues.

Thomas is feeling enough heat that he even released a public statement. ''Early in my tenure at the Court,'' he said, ''I sought guidance from my colleagues and others in the judiciary, and was advised that this sort of personal hospitality . . . was not reportable'' and that he has ''always sought to comply with disclosure guidelines.''

Wow, where to begin. First, who ''advised'' Thomas that this ''personal hospitality . . . was not reportable''? Whoever it was, they were wrong. I have spoken before about this personal hospitality issue. The reporting exemption for personal hospitality covers ordinary gifts of ''food, lodging, and entertainment'' from friends and family. There is not an exemption for transportation, for all that flying around the world in private jets. It just isn't there.

We don't know who advised him, but I can pretty surely tell you who didn't advise him; that is, the formal committees of the Judicial Conference that advise on ethics and financial disclosure issues. They have committees for this. That would be the obvious place to go for real advice. Yet all indications are that he did not. I suspect that Thomas knew they would not like the facts that he would have to disclose if he were to ask them in candor to offer an opinion on his situation. He also, I suspect, knew that he would not like the answer he would get. So he just didn't file.

The recent definition of ''personal hospitality'' that the Judicial Conference announced in response to 2 years of urging from me was intended to clarify what was already prohibited—a clarification that every other branch had already issued. And the reporting law never exempted private jet travel.

Thomas actually knew this because he had reported flying on Crow's private jet before, back in 1997. What changed?

Federal law is crystal clear on the need to report real estate transactions worth over $1,000. The law is so clear that CNN reported yesterday that Thomas will amend his disclosure report to include that sale.

According to what CNN called ''a source close to Thomas,'' Thomas ''has always filled out his forms with the help of his aides,'' and he didn't think he needed to report the sale because he didn't make any money off it. Well, that excuse might be believable if the statutory language weren't so clear—crystal clear—and if Thomas weren't what one commentator has called a ''repeat offender'' at disclosure.

In 2011, Thomas had to amend 13 years' worth of financial disclosure reports to add his wife's income from the Heritage Foundation, a dark money, conservative outfit which also files amicus briefs at the Supreme Court. He said it was a ''misunderstanding.''

Here is what he misunderstood: Financial Disclosure Report form; B, spouse's noninvestment income. ''If you were married during any portion of the reporting year, complete this section.'' Income: None or date and source. That is not complicated. Those instructions are simple. And, like his private jet travel, Justice Thomas had reported his wife's income before, back in 1996. What changed?

Congressman HANK JOHNSON and I sent a bicameral letter to Chief Justice Roberts urging him to get his courthouse in order and set up a means to investigate these and other serious allegations of misconduct. We also sent a letter to the Judicial Conference calling for the Conference to refer Justice Thomas to the Attorney General for failure to report his real estate transaction with Crow.

Here is how that works under the ethics law:

> The head of each Agency, or the Judicial Conference, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.
>
> The Attorney General [in turn] may bring a Civil Action against any individual . . . who knowingly or willfully fails to file or report any information that such individual is required to report.

That is not complicated.

And the Supreme Court is completely alone here in this peculiar approach to these issues. Wherever else you go in government, you will find an ethics code, and you will find a process for investigating and enforcing the ethics rules.

Congress has Ethics Committees. The executive branch has an ethics office and inspectors general. Federal courts have their own ethics process. Only the Supreme Court has none of that. No designated place to submit complaints. No investigative mechanism to review complaints. No impartial panel to decide complaints. No transparency.

All of that needs to change if we are to rebuild confidence in our highest Court.

Without investigation, it is impossible to determine if Justice Thomas violated still another Federal law by participating in cases implicating his wife's political activities. We need investigation to find out whether he broke that law.

Without investigation, there is no way to evaluate the ethics of the 20-year, $30 million private judicial lobbying campaign run by rightwing political activists who wined and dined Justices Thomas, Alito, and Scalia—the three Justices who, as the New York Times described it, ''proved amenable.'' Amenable.

Without any prospect of investigation, there is little reason for a Justice to comply with the ethics standards. When there is no ref, there is ultimately no rules. The rule that clearly pertains is that it is not OK to judge one's own case. That rule is so obvious, I hardly need to state it, and that rule is so old it is in Latin: ''Nemo judex in sua causa.'' No one should be judged in their own case. We know that Justice Thomas is familiar with this rule because he cited it in an opinion he wrote just a few years ago when he noted that ''At common law, a fair tribunal meant that 'no man shall be a judge in his own case.' ''

This good old rule, grounded in history and tradition, the present Supreme Court constantly and flagrantly flouts. That must stop. The Justices have lost the benefit of the doubt—240 years the Court went without needing this, but this Roberts Court has squandered the public's confidence with its behavior, and now there must be rules and process.

The Senate Judiciary Committee, along with my subcommittee, will hold a hearing to consider these issues. I hope our colleagues will take it seriously. Congressman HANK JOHNSON and I have introduced the Supreme Court Ethics, Recusal, and Transparency Act, which would solve a lot of this mess—this big, tragic, unnecessary, self-inflicted mess.

Let me conclude where I began, with that noxious cocktail of creepy rightwing billionaires, phony front groups, amenable Justices, large sums of money, and secrecy. It is a toxic brew. The ethics failures at the Court are just one part of that stinking cocktail. We have Justices picked in some backroom at the Federalist Society by creepy billionaires to put on a list for Donald Trump. We have Justices who came through a confirmation process so tainted with influence that the FBI was breaking its own procedures in background investigations and Senators were pulling screeching 180s on confirming Supreme Court Justices in an election year. Flotillas of front group amici—amici curiae—who won't tell who orchestrates and funds them appear in Court to tell those Justices what to do. And the Justices, with astonishing statistical reliability, do as they are told.

To get the results they want, the Justices smash through precedent, violate so-called conservative judicial principles, make up false facts, and change the applicable legal standards. All of this mess—all of it—is the product of that toxic brew of creepy rightwing billionaires, phony front groups, amenable Justices, large sums of money, and secrecy.

For now, let's at least fix the ethics mess and bring the Supreme Court into alignment with the rest of the Federal courts. The highest Court should not have the lowest standards.

To be continued.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. If I may interrupt the distinguished Senator from Alaska for 1 minute to do some closing business and then leave her the floor.

RESOLUTIONS SUBMITTED TODAY

Mr. WHITEHOUSE. On behalf of the majority leader, I ask unanimous consent that the Senate now proceed to the en bloc consideration of the following Senate resolutions introduced earlier today: S. Res. 160, 161, and 162.

There being no objection, the Senate proceeded to consider the resolutions en bloc.

Mr. WHITEHOUSE. I ask unanimous consent that the resolutions be agreed to, the preambles be agreed to, and the motions to reconsider be considered made and laid upon the table, all en bloc.

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

The resolutions were agreed to.

The preambles were agreed to.

(The resolutions, with their preambles, are printed in today's RECORD under ''Submitted Resolutions.'')

MORNING BUSINESS

NOTICE OF ADOPTION OF REGULATIONS FROM THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the notice of adoption of regulations from the Office of Congressional Workplace Rights be printed in the RECORD.

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

AMENDED NOTICE OF ADOPTION OF SUBSTANTIVE REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, April 18, 2023.

Hon. PATTY MURRAY,
President Pro Tempore of the U.S. Senate,
The United States Capitol,
Washington, DC.

DEAR MADAM PRESIDENT: Section 304(b)(3) of the Congressional Accountability Act

(CAA), 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board of Directors of the Office of Congressional Workplace Rights (Board) has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments pursuant to subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the *Congressional Record* on the first day on which both Houses are in session following such transmittal.'' On February 2, 2009, the Board adopted regulations implementing section 206 of the CAA, which extends the rights and protections of the Uniformed Services Employment and Reemployment Act (USERRA) to covered employees in the legislative branch, and the Chair of the Board transmitted to the Office of the President Pro Tempore notice of such action together with copies of separate USERRA regulations adopted for the Senate, the House of Representatives, and the other covered entities and facilities.

The Board has since made additional minor amendments to its adopted USERRA regulations, as detailed in the *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval*, which accompanies this letter. The Board requests that the accompanying *Amended Notice* and amended regulations for the Senate, the House of Representatives, and the other covered entities, be published in the Senate version of the *Congressional Record* on the first day on which both Houses are in session following receipt of this transmittal, and that Congress approve the amended regulations.

Any inquiries regarding this notice should be addressed to Patrick N. Findlay, Executive Director of the Office of Congressional Workplace Rights, Room LA–200, 110 2nd Street, S.E., Washington, D.C. 20540; 202–724–9250.

Sincerely,

BARBARA CHILDS WALLACE,

Chair of the Board of Directors, Office of Congressional Workplace Rights.

Attachment.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

AMENDED NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

Substantive Regulations Adopted by the Board of Directors of the Office of Congressional Workplace Rights (Board) Extending Rights and Protections under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as required by 2 U.S.C. §1384, Congressional Accountability Act of 1995, as amended (CAA).

Background:

Section 304(b)(3) of the CAA, 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the *Congressional Record* on the first day on which both Houses are in session following such transmittal.''

Section 206 of the CAA, 2 U.S.C. §1316, applies the rights and protections of USERRA, chapter 43 of title 38, to covered employees in the legislative branch. On April 21, 2008, and May 8, 2008, the Office of Congressional Workplace Rights (OCWR), then known as the Office of Compliance (OOC), published a Notice of Proposed Rulemaking (NPR) in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)). After notice and comment per section 304(b), on February 2, 2009, the Board adopted and submitted for publication in the *Congressional Record* its adopted substantive regulations regarding USERRA. 155 Cong. Rec. H783–H873, S1280–S1368 (daily ed. February 2, 2009). Congress has not yet acted on the Board's request for approval of these substantive regulations.

The purpose of this *Amended Notice of Adoption of Regulations and Transmittal for Congressional Approval* is to incorporate minor amendments to the Board's previously-adopted USERRA substantive regulations. These amendments are necessary in order to bring the regulations in line with recent changes to the CAA and the OCWR Procedural Rules. Specifically, on December 21, 2018, Congress passed the Congressional Accountability Act of 1995 Reform Act, Pub. L. 115–397. The CAA Reform Act changed the name of the Office of Compliance to the Office of Congressional Workplace Rights. In addition, the Board, consistent with Section 303 of the CAA, amended its Procedural Rules and submitted them for publication in the *Congressional Record* on June 19, 2019. 165 Cong. Rec. H4896–H4916, S4105–S4125 (daily ed. June 19, 2019). Amendments to the Board's adopted USERRA regulations are necessary in order to bring them in line with these recent changes.

Because the amendments to the Board's adopted USERRA regulations are minor, they do not require an additional general notice of proposed rulemaking or period for comments. *See* 2 U.S.C. §1384(e). Moreover, there have been no additional changes since 2009 to the relevant substantive regulations promulgated by the Secretary of Labor upon which the Board's USERRA regulations are based that would necessitate reopening the notice and comment period.

Because the USERRA substantive regulations previously adopted by the OCWR in 2009 have not yet been approved by Congress—and thus have not yet been formally issued or put into effect—this *Amended Notice of Adoption* incorporates the OCWR Board's prior discussion of the public comments it received in 2008, and those changes made by the OCWR in response, as reflected in the USERRA regulations adopted in 2009. This prior discussion is included herein for purposes of clarity and completeness, as the OCWR again requests that Congress approve its adopted USERRA regulations.

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking:

On April 21, 2008 and May 8, 2008, the Board published an NPR in the *Congressional Record* (154 Cong. Rec. S3188 (daily ed. April 21, 2008) H3338 (daily ed. May 8, 2008)).

Why did the Board propose these new Regulations?

Section 206 of the Congressional Accountability Act (''CAA''), 2 U.S.C. §1316, applies certain provisions of USERRA to the legislative branch. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits. Subsection 1316(c) requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may only modify the Department of Labor regulations if it can establish good cause as to why a modification would be more effective for the application of the protections to the legislative branch. In addition, section 304 of the CAA, 2 U.S.C. 1384, provides procedures for the rulemaking process in general.

What procedure followed the Board's Notice of Proposed Rulemaking?

The Board's Notice of Proposed Rulemaking included a 30-day comment period. A number of comments to the proposed substantive regulations were received from interested parties. The Board reviewed the comments from interested parties, made a number of changes to the proposed substantive regulations in response to comments, and on December 3, 2008, adopted the amended regulations.

What is the effect of the Board's ''adoption'' of these proposed substantive regulations?

Adoption of these substantive regulations by the Board does not complete the promulgation process. Pursuant to section 304 of the CAA, the procedure for promulgating such substantive regulations requires that:

(1) the Board issue proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; and

(3) after consideration of comments by the Board, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President Pro Tempore of the Senate for publication in the *Congressional Record*.

This *Amended Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval* completes the third step described above.

What are the next steps in the process of promulgation of these regulations?

Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. §1384(b)(4), the Board is required to ''include a recommendation in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.'' The Board recommends that the House of Representatives approve the ''H'' version of the regulations by resolution; that the Senate approve the ''S'' version of the regulations by resolution; and that the House and Senate approve the ''C'' version of the regulations applied to the other employing offices by a concurrent resolution. Alternatively, the House and the Senate could approve all three versions of the regulations by a single concurrent resolution.

Which employment and reemployment protections are applied to eligible employees in 2 U.S.C. §1316?

USERRA was enacted in December 1994, and the Department of Labor final regulations for the executive branch became effective in 2006. USERRA's provisions ensure that entry and re-entry into the civilian workforce are not hindered by participation in military service. USERRA provides certain reemployment rights; protection from discrimination based on military service, denial of an employment benefit as a result of military service; and protection from retaliation for enforcing USERRA protections.

The selected statutory provisions that Congress incorporated into the CAA and determined ''shall apply'' to eligible employees

in the legislative branch include nine sections: sections 4303(13), 4304, 4311(a) and (b), 4312, 4313, 4316, 4317, 4318, and paragraphs (1), (2)(A), and (3) of 4323(d) of title 38.

The first section, section 4303(13), provides a definition for ''service in the uniformed services.''

This is the only definition in USERRA that Congress made applicable to the legislative branch. Section 4303(13) references section 4304, which describes the ''character of service'' and illustrates situations that would terminate eligible employees' rights to USERRA benefits.

Congress applied section 4311 to the legislative branch in order to provide discrimination and retaliation protections, respectively to eligible and covered employees. Interestingly, although Congress adopted these protections, it did not adopt the legal standard by which to establish a violation of this section of the statute.

Sections 4312 and 4313 outline the reemployment rights that are provided to eligible employees. These rights are automatic under the statute, and if an employee meets the eligibility requirements, he or she is entitled to the rights provided therein.

Sections 4316, 4317, and 4318 provide language on the benefits given to eligible employees.

Are there veterans' employment regulations already in force under the CAA?

Yes. The Board has adopted and Congress has approved substantive regulations implementing the Veterans Employment Opportunities Act (VEOA) in the legislative branch. The Board has also submitted for congressional approval its amended substantive regulations implementing the Family and Medical Leave Act (FMLA) in the legislative branch, which, among other things, includes enhanced protections for servicemembers and veterans.

Why are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?

As the Board has identified ''good cause'' to modify the executive branch regulations to implement more effectively the rights and protections for veterans, there are some differences in other parts of the proposed regulations applicable to the Senate, the House of Representatives, and the other employing offices. Therefore, the Board is submitting three separate sets of regulations: an ''H'' version, an ''S'' version, and a ''C'' version, each denoting those provisions in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Are these adopted regulations also recommended by the Office of Congressional Workplace Rights' Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), these regulations have also been recommended by the Executive Director and Deputy Executive Directors of the Office of Congressional Workplace Rights.

Are these adopted CAA regulations available to persons with disabilities in an alternate format?

This Notice of Adoption of Substantive Regulations, and Submission for Congressional Approval is available on the Office of Congressional Workplace Rights website, www.ocwr.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print, Braille, or other alternative format. Requests for this Notice in an alternative format should be made to: the Office of Congressional Workplace Rights, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202–724–9250 (voice); 202–426–1913 (fax); or ocwrinfo@ocwr.gov.

Supplementary Information:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, became law on January 23, 1995, and was amended by the Congressional Accountability Act of 1995 Reform Act, PL 115–397, which was enacted on December 21, 2018. The CAA applies the rights and protections of 14 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. §1381) establishes the Office of Congressional Workplace Rights as an independent office within the Legislative Branch.

The Board's Responses to Comments
General Comments

The Board noted in the Notice of Proposed Regulations (NPR) that it had not identified any good cause for issuing three separate sets of regulations and that if the regulations were approved as proposed, there would be one text applicable to all employing offices and covered employees. During the notice and comment period, the Board received comments from the Committee on House Administration (CHA), Senate Employment Counsel (Counsel), and the United States Capitol Police (Capitol Police). All of the commenters noted, in different places throughout the regulations, the need for modifications that would apply specifically to the House, Senate or other employing offices. Although the Board has not found good cause to vary the Department of Labor (DOL) regulations in all instances where requested, there are a number of places where such variances are warranted. In light of that and the comment by the CHA that the Congressional Accountability Act (CAA) requires the publication of separate regulations for the Senate, House and other covered employees and employing offices, the Board has made that change and put forward three separate sets of regulations, an ''H'' version, an ''S'' version, and a ''C'' version, each denoting the provisions that are included in the regulations that are applicable to the House, Senate, and other employing offices, respectively.

Eligible Employees

In its comments, CHA maintained that the definition of ''eligible employee'' in the regulations is overly broad. Pointing to section 206(a)(2)(A) of the CAA, which defines an ''eligible employee'' as ''a covered employee performing service in the uniformed service, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon occurrence of any of the events enumerated in section 4304 of title 38,'' the CHA notes that the definition references only the present tense of the verb ''performing'' and makes no mention of the past tense. CHA also noted that section 206 does not define ''eligible employee'' to include an individual who was previously a member of the uniformed services or one who applies or has applied to perform service in the uniformed services. CHA acknowledged that this ''stands in marked contrast to the general USERRA statute's protection of individuals who currently serve as well as to those who have previously served, to those who have an obligation to serve, and to those who have applied to serve in the uniformed services (regardless of whether they actually served).'' CHA further recognized ''that USERRA's intent is to provide broad protections for those who serve and have served in the uniformed services . . .'' CHA commented that the regulations are inappropriately broad, notwithstanding language in section 206(a)(2)(A) that strongly suggests inclusion of an individual who has been honorably discharged and is therefore not currently serving, but who has served in the past.

The Board acknowledges the tension in the language in section 206(a)(2)(A), but does not agree with the conclusions reached by the CHA, that, absent a statutory amendment revising the definition in section 206(a)(2)(A), the proposed regulations should be revised to reflect that, ''as applied by the CAA, USERRA only protects employees who are currently 'performing service in the uniformed services.' ''

The Board's authority to promulgate substantive regulations is found in section 206 of the CAA, 2 U.S.C. §1316, which applies certain provisions of USERRA. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits.

Subsection 1316(c) of the CAA requires the Board not only to issue regulations to implement these protections, but to issue regulations that are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may modify the Department of Labor regulations only if it can establish good cause as to why a modification would be more effective for application of the protections to the legislative branch. The Board chooses to apply a broad definition of ''eligible employee.''

The Board does not read the ''performing service'' language in section 206(a)(2)(A) as limiting the discrimination protection of USERRA to only those employees who are currently serving in the uniformed services. Rather, we interpret the phrase ''performing service'' in this context to refer to covered employees who have some form of military status (i.e., those who have performed service or who have applied or have an obligation to perform military service, as well as those who are currently members of or who are serving in the uniformed services) as distinguished from covered employees who do not have this military status.

This application of the phrase ''performing service'' is supported by several indicia of Congressional intent. First, section 206(a)(2)(A) prohibits discrimination against eligible employees ''within the meaning of'' subsection (a) of section 4311 of title 38, which states:

> A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

Most, if not all, of these protections would be lost if the phrase ''performing service'' were applied to exclude covered employees who are not currently performing service at the moment of the alleged violation. It would vitiate the reemployment rights under USERRA because employees would lose their statutory rights at the moment of discharge, whether honorable or not. Similarly, had Congress intended to so limit the coverage of USERRA, it could have said that ''any'' discharge was a disqualifying condition, not those that are other than honorable.

Congressional intent is also reflected in the USERRA statute itself, passed in 1994,

which states, ''It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.'' 38 USC §4301(b). A narrow application of the phrase ''performing service'' would be directly contrary to this statement of the sense of Congress.

Finally, we note that after the CAA was enacted, Congress enacted the VEOA and thereby granted certain preferences in hiring and retention during layoffs to *all* covered employees who are ''veterans'' as defined in 5 U.S.C. §2108, or any superseding legislation. We conclude that Congress intended a broad application of the phrase ''performing service'' so that covered employees who will perform or have performed service are also protected against discrimination and the improper denial of reemployment or benefits.

In light of the above, the Board has found good cause to modify the Department of Labor's definition of ''eligible employee.'' Further, in order to avoid any confusion as to the application of the regulations to ''eligible'' employees, the Board has made the appropriate editorial changes throughout the adopted regulations.

Other Definitions

Section 1002.5 contains the definitions used in the regulations. Several commenters recommended that some of the definitions in this section be edited to be consistent with the CAA. Where appropriate, the Board has made those changes. One specific change was the substitution of ''Capitol Guide Service and Capitol Guide Board'' with ''Office of Congressional Accessibility Services,'' in light of Congress adopting PL 100–437 on October 20, 2008. The Board has modified its regulations to reflect this change in §1002.5(e)(3) in all versions and in §1002.5(k)(1) in the ''C'' version.

Section 1002.5(i) defines an employee of the House of Representatives. CHA noted that because there may be some joint employees of the House and Senate, the definition of an employee of the House of Representatives should also include individuals employed by the Senate. We agree and have made the necessary revisions.

Section 1002.5(k) defines employing office. CHA commented that the definition in §1002.5(k)(4) was broader than the definition of ''employing office'' in section 101(9) of the CAA. We note that during the rulemaking procedures for VEOA, the Board determined that in view of the selection process for certain Senate employees, the words ''or directed'' would be added to the definition of ''covered employee'' to include any employee who is hired at the direction of a Senator, but whose appointment form is signed by an officer of either House of Congress. Although we included such language in the proposed rules on USERRA, it appears that this language would be overreaching for the House and other employing offices. As the House has different methods of making appointments and selections, this language is unnecessary and may create confusion given the practices of the House. Accordingly, the Board has deleted this provision from the House and other employing offices version, but will include it in the Senate version.

Section 1002.5(l) defines health plan. The Capitol Police recommended that the language in the definition of health care plans be limited to the Federal Employees Health Benefits (FEHB) program. As discussed more fully below, the Board is mandated to follow, as closely as possible, the regulations applied to the executive branch. In view of the fact that the DOL regulations apply to federal employees in the executive branch who are also only covered under the FEHB Program, the Board finds that there is no good cause to limit the definition.

Section 1002.5(q) defines seniority. The Capitol Police also recommended that this definition of seniority be deleted because of potential conflict with definitions of seniority in various collective bargaining agreements. The Board has determined that there is no good cause for such a change. The definition in the adopted regulations is not limiting and is consistent with section 4316 of USERRA. Further, as DOL indicated in its notice to the final USERRA regulations, section 4316(a) of USERRA is not a statutory mandate to impose seniority systems on employers. Rather, USERRA requires only that those employers who provide benefits based on seniority restore the returning service member to his or her proper place on the seniority ladder. Because each employing office defines and determines how seniority is to be applied, the definition of seniority in the adopted regulations should not conflict with collective bargaining agreements.

Section 1002.5(s) defines undue hardship. The CHA has noted that in setting out the standards for considering when an action might require significant difficulty or expense, the proposed regulations did not include the language from §1002.5(n)(2) of the DOL's regulations. In the DOL's regulations, section 1002.5(n)(2) provides that an action may be considered to be an undue hardship if it requires significant difficulty or expense when considered in light of: the overall financial resources of the *facility or facilities* involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility. Section 1002.5(s)(2) of the proposed regulations similarly referred to the overall financial resources of the *employing office*. However, in view of the fact that employing offices also may have multiple facilities, the Board agrees with the CHA comments and finds that there is no good cause to delete what was §1002.5(n)(2) of the DOL regulations. Therefore, what was section 1002.5(n)(2) of the DOL regulations has been included in the adopted regulations as section 1002.5(s)(2) and subsequent sections have been renumbered accordingly.

The Relationship between USERRA and Other Laws, Contracts and Practices

Section 1002.7 states that USERRA supersedes any state and local law, contract, or policy that reduces or limits any rights or benefits provided by USERRA, but does not supersede those provisions that are more beneficial. Senate Employment Counsel commented that reference to the fact that USERRA supersedes any state and local laws is superfluous and does not apply to legislative offices. Further, Counsel recommended that the section referring to the fact that USERRA does not supersede more beneficial state or local laws be omitted. The Board acknowledges that state and local laws do not apply to federal employees or the employing offices covered under the CAA. Therefore, in order to avoid any confusion, the Board has made the appropriate changes.

Anti-Discrimination and Anti-Retaliation Provisions

As a general comment, the Capitol Police raised questions about the Board's reference in the notice to *Britton v. Office of the Architect of the Capitol*. The Capitol Police maintains that *Britton* is not applicable to section 4311(a) or (b) and that the USERRA regulations should not be changed to include substantive regulations under the CAA. The Board notes that the reference to the *Britton* case and retaliation under section 208 of the CAA is merely explanatory and not a part of the substantive regulations. In the NPR, there was a typographical error. The correct statement is that the Board does not propose a particular standard for claims of discrimination or retaliation brought by eligible employees under section 206. Any discussion referring to Section 206 retaliation is for explicative purposes only.

Section 1002.20, as set out in the proposed regulations, discussed the extent of the coverage of USERRA's prohibitions against discrimination and retaliation. Several commenters noted that section 1002.20 and 1002.21 were confusing and did not clearly differentiate discrimination and retaliation protections as applied by section 206 and section 208 of the CAA. The Board agrees and has modified section 1002.20 and replaced section 1002.21 with a new section to reflect that USERRA protects eligible employees in all positions with covered employing offices. Thus, because section 206 of the CAA only covers ''eligible employees'' as defined in section 1002.5(f), ''covered employees'' would only be protected by the anti-retaliation provisions under section 208 of the CAA.

Additionally, in its comments, the Capitol Police asked why the numbering of section 1002.20 and 1002.21 was reversed and why section 1002.22 covering the burden of proving discrimination or retaliation was excluded. The Board notes that it had good cause to delete section 1002.22 as Congress specifically did not adopt the ''but for'' test (38 U.S.C §4311 (c)(1) and (2)) and therefore it was confusing and unnecessary to include this provision. In view of the revisions to section 1002.20 and 1002.21 noted above, the Board has kept the order as it was in the proposed regulations to be more consistent with these edits.

Eligibility for Reemployment

As a general comment, the CHA noted that with respect to employees in the House, the statement in the NPR that ''it is not permitted for an employee to work for a Member office and a Committee at the same time'' is incorrect. Although this statement is not part of the substantive regulations, where there are variations in the employment requirements of different employing offices, the Board has made the necessary changes to each of the versions of the adopted regulations.

Section 1002.32 sets out the criteria that an employee must meet to be eligible under USERRA for reemployment after service in the uniformed services. The CHA recommended that this section be changed to be consistent with the definition of eligible employee in section 206(a)(2)(A) of the CAA, and for clarity as applied to individual employing offices that may cease to exist while an eligible employee is performing service. The Board agrees and has changed the House and Senate versions to reflect that generally, if an eligible employee is absent from a position in an employing office by reason of service in the uniformed services, he or she will be eligible for employment in the same employing office if that employing office continues to exist at such time.

Section 1002.34 of the proposed regulations established that USERRA applies to all covered employing offices of the legislative branch as defined in Subpart A, §1002.5(e). Both the Capitol Police and Senate Employment Counsel commented that the definition of ''employing office'' should be changed to track the CAA, rather than the definition in the proposed regulations. Thus, Counsel notes that any regulation the OCWR issues for an ''employing office'' should track 2 U.S.C. §1301(a)(9), and include the General Accounting Office and Library of Congress, as required under 2 U.S.C. §1316(a)(2)(C). The Board agrees and has changed the definition to more closely follow the CAA.

Section 1002.40 states that in protecting against discrimination in initial hiring decisions, an employing office need not actually

employ an individual to be his or her employer. The CHA commented that it is not correct to say that ''[a]n employing office need not actually employ an individual to be his or her 'employer.' '' The CHA noted that while the result is the same—an applicant who is otherwise an eligible employee cannot be discriminated against in initial employment based on his or her performing service in the uniformed service—to say that the employing office is his or her employer is incorrect. The Board agrees and has made the change to reflect that while an employing office may not technically be the ''employer'' of an applicant, the result is the same—the employing office is *liable* under the Act if it engages in discrimination against an applicant based on his or her performing service in the uniformed service.

Section 1002.120 allows an employee to seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. The proposed regulations stated that such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. The CHA has noted that because employees of the House are ''at-will,'' reference to termination and/or discipline for ''cause'' in this section is inapplicable and could be confusing. While the Board recognizes that employees of the House are ''at-will,'' the same issues raised by the CHA can apply to many executive branch and private sector employees, as well. In view of the fact that the DOL regulations contain the same provision, notwithstanding the different employment arrangements in the private sector and executive branch agencies, the Board finds no good cause to make the change.

Health and Pension Plan Coverage

USERRA ensures that eligible employees are provided with health and pension plan coverage on a continuing basis in certain circumstances and reinstatement of coverage upon reemployment. All of the commenters raised concerns over the inclusion of provisions concerning health and pension plan benefits and asked that these provisions be withdrawn or limited specifically to the specific health and pension plans covering federal employees. For example, the CHA notes that House employing offices do not provide health or retirement benefits to their employees and do not pay or administer contributions and/or premiums for such plans. Similarly, Senate Employment Counsel explained that while employees of Senate employing offices are entitled to health plan coverage and pension benefits under the FEHB and Civil Service Retirement System (CSRS) or the Federal Employment Retirement System (FERS), their respective employing offices do not provide the ''employer contribution'' for such coverage and do not determine when such coverage starts or is reinstated or any terms or conditions of the coverage. Moreover, while the Senate appropriates monies for any agency contribution to such plans, these contributions do not come from the monies appropriated to individual employing offices.

The Board recognizes that the role of the Senate and House employing offices in administering health and pension plans is somewhat attenuated. With the caveat in mind that it is the U.S. Office of Personnel Management that controls not only federal employee health plans, but pension plans as well, the Board nonetheless does not find good cause to exclude these provisions from the adopted regulations. In support of this, the Board notes that the DOL regulations cover federal employees in the executive branch who are also covered under the FEHB, CSRS and FERS. Moreover, USERRA itself states in section 4318 that a right provided under any Federal or State law governing pension benefits for governmental employees (except for benefits under the Thrift Savings Plan) is covered. The Board is not aware of every employment relationship in the legislative branch and there is always the possibility that there may be situations where employees are not covered under the FEHB or CSRS/FERS, or may be covered under craft union or multi-employer plans. The Board further notes that to the extent that an employing office does not control nor is responsible for assuring that eligible employees are properly covered under health and pension plans, these provisions would not apply. Although employing offices may not have direct control over health and pension plans, they are responsible for ensuring that eligible employees are covered by facilitating or requesting that the necessary contribution or funding is made. Rather than deleting sections of the regulations, the Board has revised the regulations to reflect the responsibility of the employing offices and where appropriate, has made changes to reflect that while employing agencies may not have control over the plans, they do have some responsibility in assuring that eligible employees are covered as required under USERRA.

Protection Against Discharge

Section 1002.247 protects an employee against discharge. Rather than state that a discharge except for cause is prohibited if an employee's most recent period of service was for more than 30 days, the proposed regulations stated that, because legislative employees are at will, a discharge without cause could create a rebuttable presumption of a violation. In its comments, the CHA notes that in modifying this section, the explanation regarding the discharge of a returning employee was unclear. The Board agrees that there is no ''good cause'' for making the revisions originally contained in the proposed regulations and has changed this section to be consistent with DOL regulations.

Enforcement of Rights and Benefits Against an Employing Office

Section 1002.303 requires that employees file a claim form with OCWR before making an election between requesting an administrative hearing or filing a civil action in Federal district court. The proposed regulations contained language that provided for ''covered'' rather than ''eligible'' employees to bring claims under USERRA to the OCWR.

The CHA commented that to be consistent with section 206(a)(2)(A) of the CAA, this provision should be modified to make clear that only ''eligible employees'' may bring claims under section 206. The Board agrees and because only eligible employees are covered under section 206 discrimination and retaliation provisions, this section has been modified.

Section 1002.312 provides for the various remedies that may be awarded for violations of USERRA, including liquidated damages. The CHA commented that because of a technical error in the CAA (a reference to section ''4323(c)'' rather than ''4323(d)''), there is no statutory authority to provide for liquidated damages remedies under USERRA. In its notice of rulemaking, the Board noted the same error. Congress subsequently corrected this typographical error by way of the adoption of the CAA Reform Act, making clear its intent that the liquidated damages provision of USERRA be applied under the CAA.

Under section 1002.310 and 1002.314 of the proposed regulations, respectively, fees and court costs may not be charged against individuals claiming rights under the CAA and courts and/or hearing officers may use their equity powers in actions or proceedings under the Act. The CHA commented that because section 1002.314 and the first sentence of section 1002.310 are based on sections of USERRA that are not incorporated by the CAA (sections 4323(e) and 4323(h) respectively), these provisions should be deleted from the adopted regulations. The Board has reviewed these comments and while we would find that, notwithstanding any ''technical'' error, the CAA does incorporate the remedies set out in section 1002.314 (a)–(c), we agree that the CAA does not include the remedies articulated in sections 4323(e) and 4323(h) of USERRA. As the first sentence in section 1002.310 of the proposed regulations does appear to mirror section 4323(h) of USERRA and section 002.314 of the proposed regulations similarly mirrors section 4323(e), in order to avoid any confusion, the Board has found good cause to delete these provisions. The Board has retained the part of section 1002.310 pertaining to the awarding of fees and costs. As discussed in the NPR, the Board found that the DOL regulations permitting an award of fees and court costs for an individual who has obtained counsel and prevailed in his or her claim against the employer was consistent with section 225(a) of the CAA, permitting a prevailing covered employee to be awarded reasonable fees and costs. To be more fully consistent with the CAA, the Board has kept its modification of the language removing the requirement that the individual retain private counsel as a condition of such an award.

Text of USERRA Regulations "H" Version

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix ''H.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan

coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former employee, of (1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Member of the House of Representatives; (2) a committee of the House of Representatives or a joint committee of the House of Representatives and the Senate (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military

training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

COVERAGE OF EMPLOYERS AND POSITIONS

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

PERIOD OF SERVICE

APPLICATION FOR EMPLOYMENT

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and

such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his

or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at § 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as

characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in §1002.5(s) and discussed in §1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during,

the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in §1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in §1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to §1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by §1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in §1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay

that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in §§ 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in § 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in §§ 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period

of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in § 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated,

or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See § 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Make-up contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or

she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(a) The Procedural Rules of the Office of Congressional Workplace Rights set forth the procedures for considering and resolving alleged violations of the laws made applicable by the CAA, including USERRA. The Rules include procedures for filing claims and participating in administrative dispute resolution proceedings at the Office of Congressional Workplace Rights, including procedures for the conduct of hearings and for appeals to the Board of Directors. The Procedural Rules also address other matters of general applicability to the dispute resolution process and to the operations of the Office.

(b) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5(e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"S" Version

When approved by the Senate for the Senate, these regulations will have the prefix ''S.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?

§ 1002.2 Is USERRA a new law?

§ 1002.3 When did USERRA become effective?

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

§ 1002.5 What definitions apply to these USERRA regulations?

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's antidiscrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years

had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) *Act or USERRA* means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former employee, of (1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(i) *Employee of the House of Representatives* includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the personal office of a Senator; (2) a committee of the Senate or a joint committee of the House of Representatives and the Senate; (3) any other office headed by a person with the final authority to appoint, or be directed by a Member of Congress to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the Senate.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice,* when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified,* with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts,* in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship,* in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office

can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C—Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

COVERAGE OF EMPLOYERS AND POSITIONS

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

PERIOD OF SERVICE

APPLICATION FOR EMPLOYMENT

GENERAL ELIGIBILITY FOR REEMPLOYMENT

§ 1002.32 What criteria must an employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office, if that employing office continues to exist at such time, by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status.

It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(A) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later

than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employing office is excused from its obligation to reemploy the eligible employee following a period of uniformed service? What statutory defenses are available to the employing office in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D: Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employing office require the eligible employee to use accrued leave during a period of service?

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the eligible employee's status with the employing office while performing service in the uniformed services?

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the eligible employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

§ 1002.151 If the employing office provides full or partial pay to the eligible employee while he or she is on military leave, is the employing office required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the eligible employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the eligible employee permitted upon request to use accrued vacation, annual or similar leave with pay during the

service? Can the employing office require the eligible employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of

service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more nonessential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together

with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a

pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Makeup contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b) (1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(a) The Procedural Rules of the Office of Congressional Workplace Rights set forth the procedures for considering and resolving alleged violations of the laws made applicable by the CAA, including USERRA. The Rules include procedures for filing claims and participating in administrative dispute resolution proceedings at the Office of Congressional Workplace Rights, including procedures for the conduct of hearings and for appeals to the Board of Directors. The Procedural Rules also address other matters of general applicability to the dispute resolution process and to the operations of the Office.

(b) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

Text of USERRA Regulations
"C" Version

When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix ''C.''

Subpart A: Introduction to the Regulations

§ 1002.1 What is the purpose of this part?

This part implements certain provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''), as applied by the Congressional Accountability Act (''CAA''). 2 U.S.C. 1316. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Office of Congressional Workplace Rights in administering USERRA as applied by the CAA.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies, with the exception of certain Federal intelligence agencies. For those Federal intelligence agencies, USERRA established a separate program for employees. Section 206 of the CAA, 2 U.S.C. 1316, requires the Board of Directors of the Office of Congressional Workplace Rights to issue regulations to implement the statutory

provisions relating to employment and reemployment rights of members of the uniformed services. The regulations are required to be the same as substantive regulations promulgated by the Secretary of Labor, except where a modification of such regulations would be more effective for the implementation of the rights and protections of the Act. The Department of Labor issued its regulations, effective January 18, 2006. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated for the legislative branch, for the implementation of the USERRA provisions of the CAA. All references to USERRA in these regulations, means USERRA, as applied by the CAA.

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996.

§ 1002.4 What is the role of the Executive Director of the Office of Congressional Workplace Rights under the USERRA provisions of the CAA?

(a) As applied by the CAA, the Executive Director of the Office of Congressional Workplace Rights is responsible for providing education and information to any covered employing office or employee with respect to their rights, benefits, and obligations under the USERRA provisions of the CAA.

(b) The Office of Congressional Workplace Rights, under the direction of the Executive Director, is responsible for the processing of claims filed pursuant to these regulations. More information about the Office of Congressional Workplace Rights' role is contained in Subpart F.

§ 1002.5 What definitions apply to these USERRA regulations?

(a) Act or USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as applied by the CAA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employing office policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and, where applicable, the opportunity to select work hours or the location of employment.

(c) *Board* means Board of Directors of the Office of Congressional Workplace Rights.

(d) *CAA* means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1301–1438).

(e) *Covered employee* means any employee, including an applicant for employment and a former employee, of (1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Government Accountability Office; (9) the Library of Congress; and (10) the Office of Congressional Workplace Rights.

(f) *Eligible employee* means a covered employee performing service in the uniformed services, as defined in 1002.5(t) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations. For the purpose of defining who is covered under the discrimination section of these regulations, ''performing service'' means an eligible employee who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services.

(g) *Employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(h) Employee of the Capitol Police includes any member or officer of the Capitol Police.

(i) Employee of the House of Representatives includes an individual occupying a position for which the pay is disbursed by the Chief Administrative Officer of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(j) *Employee of the Senate* includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (10) of paragraph (e) above.

(k) *Employing office* means (1) the Office of Congressional Accessibility Services; (2) the Capitol Police Board; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Government Accountability Office; (7) the Library of Congress; or (8) the Office of Congressional Workplace Rights.

(l) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(m) *Notice*, when the eligible employee is required to give advance notice of service, means any written or oral notification of an obligation or intention to perform service in the uniformed services provided to an employing office by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(n) *Office* means the Office of Congressional Workplace Rights.

(o) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(p) *Reasonable efforts*, in the case of actions required of an employing office, means actions, including training provided by an employing office that do not place an undue hardship on the employing office.

(q) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(r) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(d)(3).

(s) *Undue hardship*, in the case of actions taken by an employing office, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employing office; the overall size of the business of an employing office with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employing office, including the composition, structure, and functions of the work force of such employing office; the geographic separateness, administrative, or fiscal relationship of the State, District, or satellite office in question to the employing office.

(t) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the National Disaster Medical System (NDMS) when federally activated or attending authorized training in support of their Federal mission is deemed ''service in the uniformed services,'' although such appointee is not a member of the ''uniformed services'' as defined by USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA, as applied by the Congressional Accountability Act, relate to other laws, public and private contracts, and employing office practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employing office may provide greater rights and benefits than USERRA requires, but no employing office can refuse to provide any right or benefit guaranteed by USERRA, as applied by the CAA.

(b) USERRA supersedes any contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an office policy that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal law, contract, agreement, policy, plan, practice, or other matter

that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employing office to pay an eligible employee for time away from work performing service, an employing office policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employing office provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employing office may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employing office to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B: Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employing office must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employing office must not retaliate against an eligible employee by taking any adverse employment action against him or her because the eligible employee has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; or exercised a right provided for by USERRA.

§ 1002.20 Do USERRA's prohibitions against discrimination and retaliation apply to all employment positions?

Under USERRA, as applied by the CAA, the prohibitions against discrimination and retaliation apply to eligible employees in all positions within covered employing offices, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, non-recurrent positions of employment.

§ 1002.21 Does USERRA protect a covered employee who has not actually performed service in the uniformed services?

USERRA's provisions, as applied by section 206 of the CAA, prohibit discrimination and retaliation only against eligible employees. Section 208(a) of the CAA, 2 U.S.C. 1317(a), however, prohibits retaliation against all covered employees because the employee has opposed any practice made unlawful under the CAA, including a violation of USERRA's provisions, as applied by the CAA; or testified; assisted; or participated in any manner in a hearing or proceeding under the CAA.

Subpart C: Eligibility for Reemployment

GENERAL ELIGIBILITY FOR REEMPLOYMENT

COVERAGE OF EMPLOYERS AND POSITIONS

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

PERIOD OF SERVICE

APPLICATION FOR EMPLOYMENT

(a) In general, if an eligible employee has been absent from a position of employment in an employing office by reason of service in the uniformed services, he or she will be eligible for reemployment in that same employing office by meeting the following criteria:

(1) The employing office had advance notice of the eligible employee's service;

(2) The eligible employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employing office;

(3) The eligible employee timely returns to work or applies for reemployment; and,

(4) The eligible employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in sections 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employing office establishes one of the defenses described in section 1002.139. The employment position to which the eligible employee is entitled is described in sections 1002.191 through 1002.199.

§ 1002.33 Does the eligible employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The eligible employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

USERRA applies to all covered employing offices of the legislative branch as defined in 2 U.S.C. 1301(9) and 2 U.S.C. 1316(a)(2)(C).

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be liable under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is liable under USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is also liable under USERRA.

§ 1002.41 Does an eligible employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an eligible employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an eligible employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an eligible employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an eligible employee is laid off with recall rights, or on a leave of absence, he or she is protected under USERRA. If the eligible employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the eligible employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the eligible employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an eligible employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the eligible employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is an eligible employee. Reemployment rights under USERRA cannot put the eligible employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all eligible employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an eligible employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an eligible employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(d)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the eligible employee is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

No. Only Federal National Guard Service is considered ''service in the uniformed services.'' The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for

training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency, the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

ABSENCE FROM A POSITION OF EMPLOYMENT NECESSITATED BY REASON OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.73 Does service in the uniformed services have to be an eligible employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the eligible employee uses the absence for other purposes as well. An eligible employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services, although such uniformed service must be the main reason for departure from employment. For example, if the eligible employee is required to report to an out of state location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the eligible employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an eligible employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the eligible employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an eligible employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning service in the uniformed services:

(a) If the eligible employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the eligible employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the eligible employee can report for uniformed service fit for duty.

(b) If the eligible employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the eligible employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

§ 1002.85 Must the eligible employee give advance notice to the employing office of his or her service in the uniformed services?

(a) Yes. The eligible employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an eligible employee is employed by more than one employing office, the employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify each employing office that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the eligible employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(c) The eligible employee's notice to the employing office may be either oral or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employing office, an eligible employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the eligible employee excused from giving advance notice of service in the uniformed services?

The eligible employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(d)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the eligible employee's employing office or the employing office's representative, or a requirement that the eligible employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the eligible employee required to get permission from his or her employing office before leaving to perform service in the uniformed services?

No. The eligible employee is not required to ask for or get the employing office's permission to leave to perform service in the

uniformed services. The eligible employee is only required to give the employing office notice of pending service.

§ 1002.88 Is the eligible employee required to tell the employing office that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the eligible employee leaves the employment position to begin a period of service, he or she is not required to tell the employing office that he or she intends to seek reemployment after completing uniformed service. Even if the eligible employee tells the employing office before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The eligible employee is not required to decide in advance of leaving the position with the employing office, whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an eligible employee may perform and still retain reemployment rights with the employing office?

Yes. In general, the eligible employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employing office. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the eligible employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the eligible employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the eligible employee performed when he or she worked for a previous employing office?

No. An eligible employee is entitled to a leave of absence for uniformed service for up to five years with each employing office for whom he or she works or has worked. When the eligible employee takes a position with a new employing office, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an eligible employee is employed by more than one employing office, a separate five-year period runs as to each employing office independently, even if those employing offices share or co-determine the employee's terms and conditions of employment. For example, an eligible employee of the legislative branch may work part-time for two employing offices. In this case, a separate five-year period would run as to the eligible employee's employment with each respective employing office.

§ 1002.102 Does the five-year service limit include periods of service that the eligible employee performed before USERRA was enacted?

It depends. Under the CAA, USERRA provides reemployment rights to which an eligible employee may become entitled beginning on or after January 23, 1996, but any uniformed service performed before January 23, 1996, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an eligible employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the eligible employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the eligible employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the eligible employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters)

(5) Service performed in a uniformed service if the eligible employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(6) Service performed in a uniformed service if the eligible employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the eligible employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the eligible employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed in a uniformed service to mitigate economic harm where the eligible employee's employing office is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the eligible employee required to accommodate his or her employing office's needs as to the timing, frequency or duration of service?

No. The eligible employee is not required to accommodate his or her employing office's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employing office cannot refuse to reemploy the eligible employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employing office is permitted to bring its concerns over the timing, frequency, or duration of the eligible employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

APPLICATION FOR EMPLOYMENT

§ 1002.115 Is the eligible employee required to report to or submit a timely application for reemployment to his or her pre-service employing office upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the eligible employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the eligible employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) Period of service less than 31 days or for a period of any length for the purpose of a fitness examination. If the period of service in the uniformed services was less than 31 days, or the eligible employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the eligible employee must report back to the employing office not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the eligible employee's residence. For example, if the eligible employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employing office until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If

it is impossible or unreasonable for the eligible employee to report within such time period through no fault of his or her own, he or she must report to the employing office as soon as possible after the expiration of the eight-hour period.

(b) Period of service more than 30 days but less than 181 days. If the eligible employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she must submit an application for reemployment (written or oral) with the employing office not later than 14 days after completing service. If it is impossible or unreasonable for the eligible employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) Period of service more than 180 days. If the eligible employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or oral) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employing office extended if the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing office at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the eligible employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employing office, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the eligible employee fails to report for or submit a timely application for reemployment?

(a) If the eligible employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. However, the eligible employee does become subject to any conduct rules, established policy, and general practices of the employing office pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employing office is impossible or unreasonable through no fault of the eligible employee, he or she may report to the employing office as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employing office by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the eligible employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The eligible employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employing office. The eligible employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the eligible employee submit the application for reemployment?

The application must be submitted to the pre-service employing office or to an agent or representative of the employing office who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor.

§ 1002.120 If the eligible employee seeks or obtains employment with an employer other than the pre-service employing office before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employing office?

No. The eligible employee has reemployment rights with the pre-service employing office provided that he or she makes a timely reemployment application to that employing office. The eligible employee may seek or obtain employment with an employer other than the pre-service employing office during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employing office. However, such alternative employment during the application period should not be of a type that would constitute a cause for the employing office to discipline or terminate the employee following reemployment. For instance, if the employing office forbids outside employment, violation of such a policy may constitute a cause for discipline or even termination.

§ 1002.121 Is the eligible employee required to submit documentation to the employing office in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employing office to do so. If the eligible employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employing office, provide documentation to establish that:

(a) The reemployment application is timely;

(b) The eligible employee has not exceeded the five-year limit on the duration of service (subject to the exceptions listed at section 1002.103); and,

(c) The eligible employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employing office required to reemploy the eligible employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employing office is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The eligible employee is not liable for administrative delays in the issuance of military documentation. If the eligible employee is re-employed after an absence from employment for more than 90 days, the employing office may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the eligible employee is not entitled to reemployment, the employing office may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from NDMS Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an eligible employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employing office, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employing office in this situation.

(a) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if the employing office establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employing office may be excused from re-employing the eligible employee where there has been an intervening reduction in force that would have included that employee. The employing office may not, however, refuse to reemploy the eligible employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that assisting the eligible employee in becoming qualified for reemployment would impose an undue hardship, as defined in section 1002.5(s) and discussed in section 1002.198, on the employing office; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employing office is not required to reemploy him or her if it establishes that the employment position vacated by the eligible employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employing office defenses included in this section are affirmative ones, and the employing office carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

During a period of service in the uniformed services, the eligible employee is deemed to be on leave of absence from the employing office. In this status, the eligible employee is entitled to the non-seniority rights and benefits generally provided by the employing office to other employees with similar seniority, status, and pay that are on leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employing office characterizes the eligible employee's status during a period of service. For example, if the employing office characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on leave of absence, and therefore, entitled to the non-seniority rights and benefits generally provided to employees on leave of absence.

(a) The non-seniority rights and benefits to which an eligible employee is entitled during a period of service are those that the employing office provides to similarly situated employees by an agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the eligible employee's employment and those established after employment began. They also include those rights and benefits that become effective during the eligible employee's period of service and that are provided to similarly situated employees on leave of absence.

(b) If the non-seniority benefits to which employees on leave of absence are entitled vary according to the type of leave, the eligible employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employing office to an eligible employee on a military leave of absence only if the employing office provides that benefit to similarly situated employees on comparable leaves of absence.

(d) Nothing in this section gives the eligible employee rights or benefits to which the employee otherwise would not be entitled if the employee had remained continuously employed with the employing office.

Yes. If the employing office provides additional benefits such as full or partial pay when the eligible employee performs service, the employing office is not excused from providing other rights and benefits to which the employee is entitled under the Act.

If employment is interrupted by a period of service in the uniformed services and the eligible employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The eligible employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

(a) If employment is interrupted by a period of service, the eligible employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the eligible employee is not entitled to use sick leave that accrued with the employing office

during a period of service in the uniformed services, unless the employing office allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employing office may not require the eligible employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by the Federal Government.

(c) USERRA covers multi-employer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multi-employer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multi-employer plans in certain situations.

§ 1002.164 What health plan coverage must the employing office provide for the eligible employee under USERRA?

If the eligible employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the eligible employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the eligible employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the eligible employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the eligible employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employing office to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employing office to permit the eligible employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the eligible employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the eligible employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the eligible employee pay in order to continue health plan coverage?

(a) If the eligible employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the eligible employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employing office's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the eligible employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an eligible employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) No notice of service and no election of continuation coverage: If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an eligible employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an eligible employee must first be excused from giving notice of service under the statute.

(b) Notice of service but no election of continuing coverage: Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an eligible employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the eligible employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the eligible employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) Election of continuation coverage without timely payment: Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the eligible employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the eligible employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the eligible employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employing office to reinstate or direct the reinstatement of health plan coverage upon request at reemployment. USERRA permits but does not require the employing office to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multi-employer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan

sponsor provides, or, if the sponsor does not provide, to the eligible employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multi-employer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multi-employer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The eligible employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in section 1002.166. If an eligible employee's health account balance becomes depleted during the applicable period provided for in section 1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to section 1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the eligible employee as required by section 1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The eligible employee may pay for continuation coverage as set out in section 1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the eligible employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E: Reemployment Rights and Benefits

PROMPT REEMPLOYMENT

REEMPLOYMENT POSITION

SENIORITY RIGHTS AND BENEFITS

DISABLED EMPLOYEES

RATE OF PAY

PROTECTION AGAINST DISCHARGE

PENSION PLAN BENEFITS

PROMPT REEMPLOYMENT

§ 1002.180 When is an eligible employee entitled to be reemployed by the employing office?

The employing office must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the eligible employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employing office may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the eligible employee entitled to upon reemployment?

As a general rule, the eligible employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the eligible employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the eligible employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employing office may have the option, or be required, to reemploy the eligible employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the eligible employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employing office may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the eligible employee's length of service, qualifications, and disability, if any. The actual reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an eligible employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employing office must determine the seniority rights, status, and rate of pay as though the eligible employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the eligible employee's service, and any changes that may have occurred during the period of service. In particular, the eligible employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the eligible employee missed during service is based on a

skills test or examination, then the employing office should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the eligible employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the eligible employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the eligible employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an eligible employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an eligible employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the eligible employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the eligible employee's escalator position is determined, other factors may allow, or require, the employing office to reemploy the employee in a position other than the escalator position. These factors, which are explained in sections 1002.196 through 1002.199, are:

(a) The length of the eligible employee's most recent period of uniformed service;

(b) The eligible employee's qualifications; and,

(c) Whether the eligible employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the eligible employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the eligible employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the eligible employee must be reemployed according to the following priority:

(a) The eligible employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(b) If the eligible employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employing office, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

(c) If the eligible employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employing office, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The eligible employee must be qualified to perform the duties of this position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employing office make to help the eligible employee become qualified for the reemployment position?

The eligible employee must be qualified for the reemployment position. The employing office must make reasonable efforts to help the eligible employee become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more non-essential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employing office's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employing office makes reasonable efforts, as defined in section 1002.5(p), may it determine that the otherwise eligible employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employing office follow if two or more returning employees are entitled to reemployment in the same position?

If two or more eligible employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been re-employed according to the rules that normally determine a reemployment position, as set out in sections 1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an eligible employee have when reemployed following a period of uniformed service?

The eligible employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The eligible employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

For example, under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the employing office, together with the number of months and the number of hours of work for which the service member would have been employed by the employing office during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employing office to use a seniority system?

No. USERRA does not require the employing office to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the eligible employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the eligible employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the eligible employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the eligible employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The eligible employee does not have to establish that he or she would have received the benefit as an absolute certainty. The eligible employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employing office cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the eligible employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the eligible employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the eligible employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employing office must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the eligible employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employing office to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employing office must make reasonable efforts to accommodate the eligible employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the eligible employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the eligible employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employing office make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the eligible employee be qualified for the reemployment position regardless of any disability. The employing office must make reasonable efforts to help the eligible employee to become qualified to perform the duties of this position. The employing office is not required to reemploy the eligible employee on his or her return from service if he or she cannot, after reasonable efforts by the employing office, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in section 1002.198.

RATE OF PAY

§ 1002.236 How is the eligible employee's rate of pay determined when he or she returns from a period of service?

The eligible employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the eligible employee is reemployed in the escalator position, the employing office must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning eligible employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the eligible employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the eligible employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases.

However, in determining a reasonable amount of time to permit an eligible employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the eligible employee's employment not been interrupted by uniformed service.

(b) If the eligible employee is reemployed in the pre-service position or another position, the employing office must compensate him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the eligible employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the eligible employee with protection against discharge?

Yes. If the eligible employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause —

(a) For 180 days after the eligible employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the eligible employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The eligible employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employing office bears the burden of proving that it is reasonable to discharge the eligible employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the eligible employee's job position is eliminated, or the eligible employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the eligible employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an eligible employee's pension benefits?

On reemployment, the eligible employee is treated as not having a break in service with the employing office for purposes of participation, vesting and accrual of benefits in a pension plan, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the eligible employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work

or applying for reemployment (See section 1002.115). This period of time must be treated as continuous service with the employing office for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the eligible employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the eligible employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employing office for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by the Federal Government.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the eligible employee with pension benefits?

With the exception of multi-employer plans, which have separate rules discussed below, the employing office is required to ensure the funding of any obligation of the plan to provide benefits that are attributable to the eligible employee's period of service. In the case of a defined contribution plan, once the eligible employee is reemployed, the employing office must ensure that the amount of the make-up contribution for the employee, if any; the employee's make-up contributions, if any; and the employee's elective deferrals, if any; in the same manner and to the same extent that the amounts are allocated for other employees during the period of service. In the case of a defined benefit plan, the eligible employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When must the plan contribution that is attributable to the employee's period of uniformed service be made?

(a) Employer contributions are not required until the eligible employee is reemployed. For employer contributions to a plan in which the eligible employee is not required or permitted to contribute, the contribution attributable to the employee's period of service must be made no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the contribution to be made within this time period, the contribution must be made as soon as practicable.

(b) If the eligible employee is enrolled in a contributory plan, he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions, or elective deferrals, must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the eligible employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Make-up contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employing office.

(c) If the eligible employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution. This is true because employer contributions are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the eligible employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The eligible employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the eligible employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the eligible employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals that the eligible employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the eligible employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The eligible employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the eligible employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the eligible employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the eligible employee must repay includes any interest that would have accrued had the monies not been withdrawn. The eligible employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employing office and the employee), provided the employee is employed with the post-service employing office during this period.

§ 1002.265 If the eligible employee is reemployed with his or her pre-service employing office, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the eligible employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the eligible employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the eligible employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multi-employer pension benefit plan under USERRA?

A multi-employer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multi-employer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multi-employer plans, as follows:

(a) The last employer that employed the eligible employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the eligible employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the eligible employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the eligible employee was re-employed pursuant to USERRA.

(c) The eligible employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the eligible employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the eligible employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the eligible employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the

employee would have received but for the period of uniformed service.

(b)(1) Where the rate of pay the eligible employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the eligible employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F: Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

§ 1002.309 Who is a necessary party in an action under USERRA?

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

§ 1002.311 Is there a statute of limitations in an action under USERRA?

§ 1002.312 What remedies may be awarded for a violation of USERRA?

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Congressional Workplace Rights provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Congressional Workplace Rights provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an eligible employee initiate a claim alleging a violation of USERRA under the CAA?

(a) The Procedural Rules of the Office of Congressional Workplace Rights set forth the procedures for considering and resolving alleged violations of the laws made applicable by the CAA, including USERRA. The Rules include procedures for filing claims and participating in administrative dispute resolution proceedings at the Office of Congressional Workplace Rights, including procedures for the conduct of hearings and for appeals to the Board of Directors. The Procedural Rules also address other matters of general applicability to the dispute resolution process and to the operations of the Office.

(b) The Procedural Rules of the Office of Congressional Workplace Rights can be found on the Office's website at www.ocwr.gov.

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is an eligible employee required to bring his or her USERRA claim to the Office of Congressional Workplace Rights?

Yes. Eligible employees must first file a claim form with the Office of Congressional Workplace Rights before making an election between requesting an administrative hearing or filing a civil action in Federal district court.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under section 206 of the CAA may be brought by an eligible employee, as defined by section 1002.5(f) of Subpart A of these regulations. An action under section 208(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Congressional Workplace Rights Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs awarded in an action under USERRA?

If an eligible employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, section 402 of the CAA, 2 U.S.C. 1402, requires a covered employee to file a claim with the Office of Congressional Workplace Rights alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim by an eligible employee alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the eligible employee for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the eligible employee an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

FIRE GRANTS AND SAFETY ACT

Mr. DURBIN. Mr. President, this week, the Senate will consider legislation to protect and support firefighters across the country: the Fire Grants and Safety Act.

Every day, our Nation's bravest run headfirst toward danger to extinguish fires and defend our communities. And they do it without a moment's hesitation—no matter the risks they face. We saw that last week, when a 2-day chemical fire raged at a plastics recycling plant in Richmond, IN, forcing thousands of people to evacuate. Firefighters worked around the clock, while inhaling toxic plumes, to battle the flames and protect families. This was just weeks after firefighters in East Palestine, OH, responded to a similar crisis, when a train carrying toxic chemicals derailed and exploded into a raging ball of fire.

But it is not only huge, headline-making fires that expose firefighters to dangerous pollutants; it is nearly every household fire, as well. The No. 1 line-of-duty cause of death for firefighters is occupational cancer from toxic exposure. And yet fire departments still lack critical equipment—like self-contained breathing apparatuses—that protect firefighters from toxic gases. Even when departments do have this gear on-hand, it can be dangerously outdated. In many cases, this equipment is nearing—or past—its expiration date, oftentimes by 10 years or more.

Before the recess, the Senate voted 96–0 to advance the Fire Grants and Safety Act, which would help fire departments obtain updated, lifesaving equipment. It would reauthorize two grant programs through 2030: the AFG Program and the SAFER Program.

Whether career, volunteer, or combination fire departments, AFG helps ensure that they have the resources they need to train and equip personnel. And SAFER helps with hiring and staffing to ensure 24/7 community protection. In the history of these programs, AFG has provided $8.1 billion to fire departments, and SAFER has provided $5.2 billion. We need to pass this bill before these programs expire on September 30, so our fire departments have the resources and personnel they need to keep our communities safe.

150TH ANNIVERSARY OF REID'S ORCHARD

Mr. MCCONNELL. Mr. President, I would like to recognize a beloved family business, native to Kentucky, that celebrates its 150th anniversary this year. Reid's Orchard started in a similar fashion to most entrepreneurial success stories in this country: an immigrant who journeyed to America in search of a better life for himself and his family. Allan Reid left his little village in Scotland in 1873, setting up shop in New York City with his two brothers in the tobacco industry. Allan started out bookkeeping, but the young and ambitious Scot quickly realized that it wasn't bookkeeping or tobacco that interested him, it was

peaches, which he found wildly outpaced the quality of fruit available back in Europe.

Allan soon left New York City to set up a peach and apple orchard in Daviess County, KY—where the business is still run today. His orchard quickly became a well-run enterprise and a leader in agricultural production and technology. In admirable fashion, Allan gave back to his community in more ways than just his delicious fruit. This peach pioneer would go on to serve two terms as a Kentucky State Representative and play an instrumental role in the construction and expansion of roads throughout this region of the Commonwealth. Allan's sons, Robert Reid, Jr., and John, would later join the family business with this same sense of community until Allan's great-grandson, Billy, would enter the business and form Reid's Orchard, as it is known today.

Since taking the helm, Billy has brought the orchard to new heights, expanding his family's business into a successful year-round operation, a popular community-gathering point, and a local staple of Owensboro. Today, Reid's Orchard caters to Kentuckians across the Commonwealth, offering a wide array of delicious produce and seasonal favorites that include apples, cider, strawberries, flowers, pies, pumpkins, and my personal favorite, peaches. My staff will tell you, amusingly, that peach-picking season is a highly anticipated event for me. Every August, I look forward to sampling Billy's peaches.

To the delight of many, the orchard's success has allowed the family to expand beyond its farm business. Each year, the orchard puts on an annual summer festival, hosting some of country music's biggest names—an impressive feat for a family-run business in Western Kentucky and a further testament to Reid's widespread popularity. For 37 years straight, the orchard would also host its popular Apple Festival. In fact, this festival is so popular locally that the Owensboro community plans to carry on the tradition each fall.

When it is not hosting popular community events, Reid's Orchard regularly welcomes families who have traveled far and wide to pick produce in the orchard, learn about farm life, and let their kids roam free across its 250 acres.

Billy's impressive stewardship of the family business and commitment to his local community have earned him the admiration of Owensboro locals, as well as Kentuckians across the Commonwealth. I am proud to call Billy a longtime friend, a friendship that extends beyond his delicious peach deliveries and spans over 20 years.

From Allan Reid's early love for peaches to Billy's thoughtful expansion of his great-grandfather's legacy, the story of Reid's Orchard has been defined by hard work and ingenuity. It is an American story, a story that renews our gratitude for this Nation, its opportunity, and its promise.

On behalf of the Senate, I would like to recognize the Reid family for their countless contributions to the Bluegrass, and congratulate Reid's Orchard for 150 years in operation of the American Dream.

VOTE EXPLANATION

Mr. HEINRICH. Mr. President, on April 17, 2023, I was unavoidably absent for rollcall vote No. 83. My absence was due to a family commitment that could not be moved. Had I been present, I would have voted yea on vote No. 83.

RECOGNIZING THE BOYS AND GIRLS CLUB OF DOUGLAS

Mr. BARRASSO. Mr. President, I rise today to celebrate the tremendous service provided by the Boys and Girls Club of Douglas, WY.

On April 22, 2023, the Boys and Girls Club of Douglas will host its ninth annual Commit to Kids fundraising event. Douglas Mayor Kim Pexton will be the emcee. Former Police Chief Ron Casalenda is the live auctioneer. Esther Martin of Cheyenne, the Wyoming Boys and Girls Club 2023 State Youth of the Year, will also speak.

For over 20 years, the Boys and Girls Club of Douglas has made a positive difference in the lives of children in Converse County. Every day, the Club fulfills its mission ''to inspire all youth, especially those who need us the most.'' The Club strives to help young people reach their full potential as productive, responsible, and caring citizens.

In September 2002, the Boys and Girls Club started meeting at a local primary school. With an increase in membership, they then relocated to the Douglas Roller Skating Rink. The need for a dedicated facility became clear. In 2020, the dream of their own building was realized.

The Club's new facility, located at 802 Riverbend Drive, has over 13,000 square feet. The Club successfully funded the innovative new space primarily with donations and private partnership funds. Designed with the local youth in mind, the building provides a safe, nurturing, and inspiring space to develop and learn. There is also administrative space, a teen center, an arts and crafts area, tech room, game area, a kitchen, and a gymnasium with climbing wall.

The Club serves 300 youth, ages 5–18, by focusing on three priority outcomes: academic success, good character and citizenship, and healthy lifestyles. Club members participate in afterschool, summer, and teen programs with academic, career development, character and leadership, sports and recreation, and homeschool curricula. Meals are provided for all members who need them. During the Covid-19 pandemic, many kids fell behind in their schoolwork. With the Club's reading program, students were able to get back on track. Every August, there is no better place to be than the Wyoming State Fair Parade in Douglas. I look forward to seeing the Boys and Girls Club float, along with the bright and engaged faces of its members.

Never losing sight of its values, volunteers, staff, and board members remain dedicated to meeting the needs of children as they grow into young adults. Today, the Club staff and board members include:

Jay Butler, Board Chairman
Travis Wells, Board Vice-Chair
Lindsey Hanks, Board Secretary
Catherine Nicholas, Board Treasurer
Carl Kosters, Board Member
Joe Schell, Board Member
Paige Rider, Board Member
Shawn Wilde, Board Member
Todde Moore, Board Member
Joe Burke, Chief Executive Officer
Robert Ricks, Unit Director
Carrise Moon, Special Programs Coordinator
Amy Lolley, Grants Manager/Marketing Specialist
Amy Rudloff, Bookkeeper
Tania Malone, Office Administrator
Heidi Toone, Kitchen Manager
Brendon Amble, Health & Wellness Specialist
Addy Sexson, Life Skills Specialist
Holly Winters, STEM Specialist
Baylea Senger, Art Specialist
Whitney Tomlinson, Teen & Workforce Specialist
Taylor Ward, Youth Development Professional
Zoey Redfern, Youth Development Professional
Katelynn Hill, Youth Development Professional
Hesston Haskins, Youth Development Professional

A special thank you to board chairman Jay Butler, along with his wife Linda, who provided a matching gift of $100,000 in honor of this event. All funds raised will go to current Club operations.

It is an honor for me to rise in recognition of the great work done by the Boys and Girls Club of Douglas, WY. The Club demonstrates how important it is to invest our time, experience, and resources in the children of our communities. Bobbi joins me in extending our very best wishes.

ADDITIONAL STATEMENTS

REMEMBERING RALPH ''TEDDY'' BROWN, SR.

• Mr. BLUMENTHAL. Mr. President, I rise today with a heavy heart to pay tribute to Ralph ''Teddy'' Brown, Sr., a dedicated police officer, community leader, and friend to many. Sadly, Mr. Brown passed away on March 14, 2023, at the age of 82. He will be remembered for his commitment to his country and community of West Haven, CT, and his love for his family.

Born in Ansonia, CT, Teddy served in the U.S. Air Force and was stationed in Washington State. It was there he met Carroll, who would become his wife of

65 years. After Teddy's military service ended, the Browns moved to West Haven, CT, where they have been deeply enmeshed in the community for over six decades.

In 1977, at the age of 37, Teddy made history as one of the first three Black police officers in the city of West Haven. He ably served the department for 28 years, retiring as a detective sergeant. On the force, Teddy was known as a positive role model for all, particularly for West Haven's youngest residents.

After his retirement, Teddy continued his outstanding legacy of community service. He served as commissioner on West Haven's Parks and Recreation Board and president of the West Haven Library Board. He continued to elevate future generations by coaching youth basketball.

Teddy was also one of the strongest supporters of the West Haven Black Coalition, founded by his wife Carroll in 1986. This long-standing community organization has disbursed more than $200,000 in scholarships to students, in recognition of their academic achievements, leadership skills, and community service. For the past 37 years, Teddy was a strong advocate for the coalition, contributing financially to the scholarships and supporting Carroll's great work. The West Haven Black Coalition is a remarkable testament to the Browns' dedication to their community.

Through his decades of service as a law enforcement officer and a civic leader, Teddy left a lasting impact on everyone around him. But he will be remembered first and foremost as a man who loved his family. He led by example as a mentor and a role model to countless young people.

My wife Cynthia and I extend our deepest sympathies to Teddy's family during this difficult time, particularly to his wife Carroll, his three sons, and his grandchildren. May their many wonderful memories of Teddy be a blessing. I hope my colleagues will join me in honoring Teddy's life and legacy, both large and lasting.●

75TH ANNIVERSARY OF SKY TAVERN

● Ms. CORTEZ MASTO. Mr. President, I rise today to recognize the 75th anniversary of Sky Tavern. In 1948, determined to help young Nevadans learn how to ski, Marcelle ''Marce'' Herz filled her station wagon up with kids and drove up the Mt. Rose Highway, fit them with equipment and gear, and began teaching them about the sport and the environment around them. Ms. Herz's efforts eventually led to the creation of the Sky Tavern's Jr. Ski Program, which has taught over 100,000 Reno area youth how to ski and snowboard and continues to serve over 2,000 children each winter.

Today, Sky Tavern is a nonprofit organization that provides summer and winter outdoor sports training, competitions, recreation, and events that are open to all in the region. Sky Tavern's goal and mission is to give as many youth as possible the opportunity to engage in outdoor sports and recreation—no matter their financial or physical abilities—providing lifelong experiences that promote personal growth and responsibility. Operated by a volunteer workforce, Sky Tavern is a shining example of what is possible through strong community engagement. From the instructors down to the lift operators, nearly everyone helping Sky Tavern achieve its mission is taking time out of their personal lives to do so. At its core, Sky Tavern runs on the spirit of giving back, while also striving to fulfill founder Marce Herz's goal of helping any child learn to ski and have fun doing it.

There are many examples of how Sky Tavern has helped people grow through their love of the outdoors. Sky Tavern Ski Program alumni include Olympians such as three-time medalist David Wise, Lane Spina, and Tamara McKinney. Sky Tavern's promise to give opportunities to anyone, regardless of their physical or financial ability is the cornerstone that they operate on. The specially trained volunteer staff in their adaptive program are dedicated to helping children with disabilities learn how to ski and enjoy the outdoors. That dedication has yielded results; several Paralympians, including Gold-medalist Ricci Kilgore can trace their roots back to Sky Tavern.

Congratulations to Sky Tavern on its 75th anniversary. I look forward to seeing their continued impact on the lives of young people in Nevada.●

TRIBUTE TO COLONEL WILLIAM V. WENGER

● Mr. COTTON. Mr. President, it is my privilege to recognize the tremendous accomplishments of COL William V. Wenger on the occasion of his receipt of the Distinguished Eagle Scout Award from the Boy Scouts of America and the National Eagle Scout Association. Colonel Wenger has lived a life of honor, faith, and service. He is a patriot who has made America a safer and better nation.

Colonel Wenger served in the U.S. Army for more than 42 years, commanding American soldiers across the country and around the world. He served in the Gulf war, helped reestablish order in Los Angeles after the Rodney King riots, and provided military support to law enforcement after the 1994 Northridge earthquake.

In 2000, Colonel Wenger retired from the military, only to return to Active service after the September 11 terrorist attacks. He then volunteered for two tours of duty in both Iraq and Afghanistan, where he worked to bring stability, security, and the rule of law to lands haunted by terrorism. Among other contributions, he trained Iraqi and Afghan police and led counter-IED training efforts to save the lives of his fellow coalition soldiers and police.

Throughout his military career, Colonel Wenger demonstrated extraordinary tactical, strategic, combat advisory, and logistical leadership abilities. He consistently volunteered for difficult assignments, overcame daunting challenges, and relentlessly pursued excellence. He is precisely the kind of clear-eyed, tough minded, mission-oriented leader that every soldier should aspire to become.

In the civilian world, Colonel Wenger has earned distinction as a manager, trainer, author, business leader, and professor of business, history, and military science. He is husband to Robin D. Wenger and father to two sons, John Paul and Patrick.

He is also a committed philanthropist who participates in his local Kiwanis, Rotary Club, and Knights Templar, among other civic organizations. He is a U.S. Army Reserve ambassador and a leader of the Employer Support of the Guard and Reserve, which supports our Reserve servicemembers, their families, and their employers. The ESGR recently awarded Colonel Wenger its highest award, the prestigious James Roche Spirit of Volunteerism Award.

More than any other civic organization, however, Colonel Wenger has demonstrated an exceptional, lifelong commitment to the Boy Scouts of America. He joined the Boy Scouts in 1954 and earned his Eagle Scout Award in 1963. He has since served in senior positions in the organization, including being elected the chief of the Tribe of Tahquitz. While serving in Iraq and Afghanistan, he devoted much of his limited free time to support the development of the Boy Scouts and Girl Scouts in those nations. For his work, he will receive the highest honor bestowed by Scouting on April 23—an honor well earned.

A nation is only as good as its people. America is not made great by its geography or its founding documents alone. It is made great by the patriots who serve the Nation and make us proud when we look up and salute the American flag. It is made great by men who dedicate decades of their lives to protect this Nation in uniform, more than half a century to educating our youth to be ''physically strong, mentally awake, and morally straight,'' and who spend their later years teaching young adults about our Nation's history. In short, it is made great by men like Colonel Wenger.

On behalf of a grateful nation, I would like to thank Colonel Wenger for his contributions to our Republic.●

REMEMBERING IRMA CANTU ACOSTA

● Mr. PADILLA. Mr. President, I rise today to celebrate the life of Irma Cantu Acosta, a titan in Southern Californian real estate and a beloved wife, mother, and grandmother.

Irma grew up in Los Angeles after her parents, Tomasita Saenz Cantu and

Benjamin Cantu, moved their family from Texas to California in 1950. She graduated from Theodore Roosevelt High School and attended Stockton Bible College in Stockton, CA. But after only one semester, as her son Gary says, Irma and her high school sweetheart Ernie ''missed each other too much,'' and they chose to get married in 1962. Together, they had three children—Gary, Yvette and Daliah Lynn—before Irma started what would become a highly accomplished career in real estate.

Because of her intelligence and uncompromising drive, she quickly became an association executive for the Montebello Board of Realtors, where she would serve for 43 years. While there, she received numerous awards for both her personal and professional achievements, including Woman of the Year for her record in association management.

As a founding board member of the National Association of Hispanic Real Estate Professionals, she helped make the dream of homeownership possible for more Latinos. She served as a mentor to countless real estate professionals and business owners, providing guidance and care to the next generation of business leaders in Montebello.

Throughout our Nation's long and storied history, there have been leaders, allies, and advocates who have chosen not just to work hard and succeed in their chosen fields, but to turn around and help others achieve the American dream. Irma was one of those leaders. In the families she helped, the mentees she guided, and in her three strong, compassionate children, Irma kept that dream alive. What better gift to leave behind than hope for the next generation.

California's thoughts are with Irma's husband Ernie; her children Gary, Yvette, and Daliah Lynn; and all those who knew and loved her.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Kelly, one of his secretaries.

PRESIDENTIAL MESSAGE

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY THAT WAS ORIGINALLY DECLARED IN PROCLAMATION 10371 OF APRIL 21, 2022, WITH RESPECT TO THE RUSSIAN FEDERATION AND THE EMERGENCY AUTHORITY RELATING TO THE REGULATION OF THE ANCHORAGE AND MOVEMENT OF RUSSIAN-AFFILIATED VESSELS TO UNITED STATES PORTS—PM 8

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, within 90 days prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency declared in Proclamation 10371 of April 21, 2022, with respect to the Russian Federation and the emergency authority relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports, is to continue in effect beyond April 21, 2023.

The policies and actions of the Government of the Russian Federation to continue the premeditated, unjustified, unprovoked, and brutal war against Ukraine continue to constitute a national emergency by reason of a disturbance or threatened disturbance of international relations of the United States. Therefore, I have determined that it is necessary to continue the national emergency declared in Proclamation 10371.

JOSEPH R. BIDEN, Jr.
THE WHITE HOUSE, *April 18, 2023.*

MESSAGE FROM THE HOUSE

At 11:28 a.m., a message from the House of Representatives, delivered by Mrs. Alli, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1151. An act to hold the People's Republic of China accountable for the violation of United States airspace and sovereignty with its high-altitude surveillance balloon.

The message also announced that pursuant to section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a), and the order of the House of January 9, 2023, the Speaker appoints the following Member on the part of the House of Representatives to the Migratory Bird Conservation Commission: Mr. THOMPSON of California.

The message further announced that pursuant to 22 U.S.C. 3003, and the order of the House of January 9, 2023, the Speaker appoints the following Members on the part of the House of Representatives to the Commission on Security and Cooperation in Europe: Mr. COHEN of Tennessee, Mr. CLEAVER of Missouri, and Mr. VEASEY of Texas.

The message also announced that pursuant to 22 U.S.C. 1928a, and the order of the House of January 9, 2023, the Speaker appoints the following Members on the part of the House of Representatives to the United States Group of the NATO Parliamentary Assembly: Mr. CONNOLLY of Virginia, Ms. SÁNCHEZ of California, Mr. LARSEN of Washington, and Mr. BOYLE of Pennsylvania.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1151. An act to hold the People's Republic of China accountable for the violation of United States airspace and sovereignty with its high-altitude surveillance balloon; to the Committee on Foreign Relations.

MEASURES DISCHARGED PETITION

We, the undersigned Senators, in accordance with chapter 8 of title 5, United States Code, hereby direct that the Senate Committee on Veterans' Affairs be discharged from further consideration of S.J. Res. 10, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services'', and, further, that the joint resolution be immediately placed upon the Legislative Calendar under General Orders.

Tommy Tuberville, Roger F. Wicker, Mike Lee, Marsha Blackburn, Rick Scott, John Cornyn, Roger Marshall, Cynthia M. Lummis, Ted Cruz, Katie Boyd Britt, Kevin Cramer, Mike Crapo, Steve Daines, John Thune, Pete Ricketts, Joni K. Ernst, Rand Paul, Jerry Moran, Deb Fischer, John Kennedy, Mitch McConnell, James Lankford, Markwayne Mullin, Mike Rounds, Marco Rubio, James E. Risch, Todd Young, Tom Cotton, Eric Schmitt, Thom Tillis, Lindsey Graham.

MEASURES DISCHARGED

The following joint resolution was discharged from the Committee on Veterans' Affairs, by petition, pursuant to 5 U.S.C. 802(c), and placed on the calendar:

S.J. Res. 10. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services''.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–905. A communication from the Director, Naval Reactors, Naval Nuclear Propulsion Program, transmitting, pursuant to law, the Naval Nuclear Propulsion Program's reports on environmental monitoring and radioactive waste disposal, radiation exposure, and occupational safety and health; to the Committee on Armed Services.

EC–906. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Privacy Act of 1974; Implementation'' (RIN0790–AL11) received in the Office of the President of the Senate on

March 28, 2023; to the Committee on Armed Services.

EC–907. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Personal Protective Equipment and Certain Items from Non-Allied Foreign Nations (DFARS Case 2022–D009)'' (RIN0750–AL60) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–908. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Treatment of Incurred Independent Research and Development Costs (DFARS Case 2017–D018)'' (RIN0750–AJ27) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–909. A communication from the Alternate Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement: Revision of Definition of 'Commercial Item' (DFARS Case 2018–D066)'' (RIN0750–AL60) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Armed Services.

EC–910. A communication from the President of the United States, transmitting, pursuant to law, a report of the continuation of the national emergency with respect to specified harmful activities of the Government of the Russian Federation that was originally declared in Executive Order 14024 of April 15, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC–911. A communication from the President of the United States, transmitting, pursuant to law, a report on the continuation of the national emergency that was originally declared in Executive Order 13536 of April 12, 2010, with respect to Somalia; to the Committee on Banking, Housing, and Urban Affairs.

EC–912. A communication from the Chief of Staff of the Council of Economic Advisers, Executive Office of the President, transmitting, pursuant to law, a report relative to a vacancy in the position of Chair of the Council of Economic Advisers, Executive Office of the President, received during adjournment of the Senate in the Office of the President of the Senate on April 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–913. A communication from the Sanctions Regulations Advisor, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Belarus Sanctions Regulations'' received in the Office of the President of the Senate on April 17, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–914. A communication from the Associate General Counsel for Legislation and Regulations, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Reinstatement of HUD's Discriminatory Effects Standard'' (RIN2529–AB02) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–915. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13611 with respect to Yemen; to the Committee on Banking, Housing, and Urban Affairs.

EC–916. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13667 with respect to the Central African Republic; to the Committee on Banking, Housing, and Urban Affairs.

EC–917. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13338 with respect to Syria; to the Committee on Banking, Housing, and Urban Affairs .

EC–918. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13894 with respect to the situation in and in relation to Syria; to the Committee on Banking, Housing, and Urban Affairs.

EC–919. A communication from the Senior Congressional Liaison, Legal Division, Bureau of Consumer Financial Protection, transmitting, pursuant to law, a report entitled ''Agency Contact Information'' ; to the Committee on Banking, Housing, and Urban Affairs.

EC–920. A communication from the Acting Executive Director of Minority and Women Inclusion, Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the Office of the Comptroller's 2022 Office of Minority and Women Inclusion Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–921. A communication from the Chairman, Federal Financial Institutions Examination Council, transmitting, pursuant to law, the Council's 2022 Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–922. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 14046 with respect to Ethiopia; to the Committee on Banking, Housing, and Urban Affairs.

EC–923. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13224 with respect to persons who commit, threaten to commit, or support terrorism; to the Committee on Banking, Housing, and Urban Affairs.

EC–924. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 14024 with respect to specified harmful foreign activities of the Government of the Russian Federation; to the Committee on Banking, Housing, and Urban Affairs.

EC–925. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Increased Forty-Year Term for Loan Modifications'' (RIN2502–AJ59) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–926. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Adjustable Rate Mortgages: Transitioning from LIBOR to Alternate Indices'' (RIN2502–AJ51) received in the Office of the President of the Senate on March 20, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–927. A communication from the President and Chair of the Export-Import Bank, transmitting, pursuant to law, the Uniform Resource Locator (URL) for the Bank's Annual Performance Plan for fiscal year 2024, and the Annual Performance Report for fiscal year 2022; to the Committee on Banking, Housing, and Urban Affairs.

EC–928. A communication from the Acting Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Inflation Adjustment of Civil Monetary Penalties'' received in the Office of the President of the Senate on March 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–929. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency that was declared in Executive Order 13664 with respect to South Sudan; to the Committee on Banking, Housing, and Urban Affairs.

EC–930. A communication from the Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Increased Forty-Year Term for Loan Modifications'' (RIN2502–AJ59) received in the Office of the President of the Senate on March 14, 2023; to the Committee on Banking, Housing, and Urban Affairs.

EC–931. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Test Procedure for Consumer Boilers'' (RIN1904–AE83) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Energy and Natural Resources.

EC–932. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps'' (RIN1904–AE42) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Energy and Natural Resources.

EC–933. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program: Test Procedure for Television Sets'' (RIN1904–AD70) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Energy and Natural Resources.

EC–934. A communication from the Principal Deputy Assistant Secretary for Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, a report entitled ''Seventh Biennial Report to Congress: Estimates of Natural Gas and Oil Reserves, Reserves Growth, and Undiscovered Resources in Federal and State Waters off the Coasts of Texas, Louisiana, Mississippi, and Alabama''; to the Committee on Energy and Natural Resources.

EC–935. A communication from the Administrator of the Environmental Protection

Agency, transmitting, pursuant to law, a report entitled ''Great Lakes Restoration Initiative Report''; to the Committee on Environment and Public Works.

EC–936. A communication from the Supervisor, Human Resources Management Division, Environmental Protection Agency, transmitting, pursuant to law, seven (7) reports relative to vacancies in the Environmental Protection Agency, received in the Office of the President of the Senate on April 17, 2023; to the Committee on Environment and Public Works.

EC–937. A communication from the Biologist of the Branch of Recovery and Conservation Planning, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Guam Kingfisher, of Sihek, on Palmyra Atoll, USA'' (RIN1018–BF61) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Environment and Public Works.

EC–938. A communication from the Chair of the United States Nuclear Regulatory Commission, transmitting, a response relative to Executive Order 14074, 'Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety'; to the Committee on Environment and Public Works.

EC–939. A communication from the Biologist of the Branch of Domestic Listing, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bog Buck Moth'' (RIN1018–BF69) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Environment and Public Works.

EC–940. A communication from the Biologist of the Branch of Domestic Listing, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Longsolid and Round Hickorynut and Designation of Critical Habitat'' (RIN1018–BD32) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Environment and Public Works.

EC–941. A communication from the Attorney-Advisor, Office of General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy for the position of Administrator, Federal Highway Administration, Department of Transportation, received during adjournment of the Senate in the Office of the President of the Senate on March 02, 2023; to the Committee on Environment and Public Works.

EC–942. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards'' (FRL No. 8670–02–OAR) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Environment and Public Works.

EC–943. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Michigan; Interim Final Determination To Stay and Defer Sanctions in the Detroit Sulfur Dioxide Nonattainment Area'' (FRL No. 10788–03–R5) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Environment and Public Works.

EC–944. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Wood Preserving Area Sources Technology Review; Technical Correction for Surface Coating of Wood Building Products'' (FRL No. 8473–03–OAR) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–945. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; North Dakota; Revisions to Permitting Rules; and Correction'' (FRL No. 8683–02–R8) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–946. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Missouri; Restriction of Visible Air Containment Emissions'' (FRL No. 10184–02–R7) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–947. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards; Correction'' (FRL No. 10209–02–OAR) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–948. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program; Diesel Opacity Cutpoints'' (FRL No. 10210–02–R2) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–949. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; California; Ventura County Air Pollution Control District'' (FRL No. 10294–02–R9) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–950. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Designation of Areas for Air Quality Planning Purposes; California; Coachella Valley Ozone Nonattainment Area; Reclassification to Extreme'' (FRL No. 10502–02–R9) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–951. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Georgia; Macon Area Limited Maintenance Plan for the 1997 9-Hour Ozone NAAQS'' (FRL No. 10510–02–R4) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–952. A communication from the Associate Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Air Plan Approval; Tennessee; Eastman Chemical Company Nitrogen Oxides SIP Call Alternative Monitoring'' (FRL No. 10541–02–R4) received during adjournment of the Senate in the Office of the President of the Senate on March 20, 2023; to the Committee on Environment and Public Works.

EC–953. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Healthcare Fraud Prevention Partnership Report on Real-Time Analytics''; to the Committee on Finance.

EC–954. A communication from the Assistant Secretary for Legislative Affairs, Department of Homeland Security, transmitting the first of several legislative proposals that support the President's Fiscal Year 2024 budget request for the Department of Homeland Security; to the Committee on Finance.

EC–955. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Treatment of certain nonfungible tokens as collectibles'' (Notice 2023–27) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Finance.

EC–956. A communication from the Assistant General Counsel, General Law, Ethics, and Regulation, Department of the Treasury, transmitting, pursuant to law, a report relative to a vacancy in the position of Commissioner of Internal Revenue, Department of Treasury received in the Office of the President of the Senate on March 29, 2023; to the Committee on Finance.

EC–957. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 45J Credit for Production of Electricity from Advanced Nuclear Power Facilities'' (Notice 2023–24) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Finance.

EC–958. A communication from the Branch Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Procedure: Certified Professional Employer Organization Application and Maintenance'' (Rev. Proc. 2023–18) received in the Office of the President of the Senate on March 28, 2023; to the Committee on Finance.

EC–959. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the intent to exercise the authorities under section 506(a)(1) of the FAA to provide military assistance to Ukraine, including for self-defense and border security operations; to the Committee on Foreign Relations.

EC–960. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled ''Determination Under Section 506(a)(1) of the Foreign Assistance

Act of 1961 (FAA) to Provide Military Assistance to Ukraine''; to the Committee on Foreign Relations.

EC–961. A communication from the Regulatory Policy Analyst, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medical Devices; Orthopedic Devices; Classification of Spinal Spheres for Use in Intervertebral Fusion Procedures'' (RIN0910–AI32) received in the Office of the President of the Senate on April 17, 2023; to the Committee on Health, Education, Labor, and Pensions.

EC–962. A communication from the Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled ''Scarlett's Sunshine on Sudden Unexpected Death Act''; to the Committee on Health, Education, Labor, and Pensions.

EC–963. A communication from the Regulatory Policy Analyst, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Mammography Quality Standards Act'' (RIN0910–AH04) received in the Office of the President of the Senate on March 29, 2023; to the Committee on Health, Education, Labor, and Pensions.

EC–964. A communication from the Security Officer II of the Office of Senate Security, transmitting, pursuant to law, a report regarding Risk Management and Mitigation Plan (OSS–2023–0374); to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SCHATZ, from the Committee on Indian Affairs, without amendment:

S. 385. A bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes (Rept. No. 118–9).

By Mr. BROWN, from the Committee on Banking, Housing, and Urban Affairs:

Special Report entitled ''Report on the Activities of the Committee on Banking, Housing, and Urban Affairs of the United States Senate During the 117th Congress'' (Rept. No. 118–10).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. SINEMA (for herself and Mr. BRAUN):

S. 1172. A bill to amend title 28, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished to veterans in non-Department of Veterans Affairs facilities, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. WHITEHOUSE (for himself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. DURBIN, Mrs. FEINSTEIN, Ms. HIRONO, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MERKLEY, Mr. PADILLA, Mr. REED, Mr. SANDERS, Mr. VAN HOLLEN, and Ms. WARREN):

S. 1173. A bill to ensure high-income earners pay a fair share of Federal taxes; to the Committee on Finance.

By Mr. WHITEHOUSE:

S. 1174. A bill to amend the Internal Revenue Code of 1986 to increase funding for Social Security and Medicare; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself and Mr. CORNYN):

S. 1175. A bill to establish incentive pay for positions requiring specialized skills to combat fentanyl trafficking, and for other purposes; to the Committee on the Judiciary.

By Ms. BALDWIN (for herself, Mr. CASEY, Mr. MERKLEY, Mr. BENNET, Ms. DUCKWORTH, Ms. STABENOW, Mr. WHITEHOUSE, Mr. SCHATZ, Mr. HICKENLOOPER, Ms. HASSAN, Mr. HEINRICH, Mr. PADILLA, Mr. MARKEY, Ms. WARREN, Mr. REED, Mr. VAN HOLLEN, Mr. MENENDEZ, Mr. BLUMENTHAL, Mr. MURPHY, Mr. CARDIN, Mrs. MURRAY, Mr. WELCH, and Mr. SANDERS):

S. 1176. A bill to direct the Secretary of Labor to issue an occupational safety and health standard that requires covered employers within the health care and social service industries to develop and implement a comprehensive workplace violence prevention plan, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORNYN:

S. 1177. A bill to provide a taxpayer bill of rights for small businesses; to the Committee on Finance.

By Mr. SANDERS (for himself and Ms. WARREN):

S. 1178. A bill to amend the Internal Revenue Code of 1986 to reinstate estate and generation-skipping taxes, and for other purposes; to the Committee on Finance.

By Mr. RUBIO (for himself, Ms. ROSEN, Mr. CRAMER, and Mr. SCOTT of Florida):

S. 1179. A bill to provide for the restoration of legal rights for claimants under Holocaust-era insurance policies; to the Committee on the Judiciary.

By Mr. RUBIO (for himself and Mr. SCOTT of Florida):

S. 1180. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for the authority to reimburse local governments or electric cooperatives for interest expenses, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1181. A bill to amend the Federal Deposit Insurance Act to improve financial stability, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 1182. A bill to amend the Public Health Service Act to increase the transparency and accountability of the drug discount program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. RUBIO (for himself and Ms. HASSAN):

S. 1183. A bill to prohibit discrimination on the basis of mental or physical disability in cases of organ transplants; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BLACKBURN (for herself, Mr. MARSHALL, Mr. TILLIS, Mr. BRAUN, Mr. RUBIO, and Mr. CRAMER):

S. 1184. A bill to direct the Comptroller General of the United States to conduct a study to evaluate the activities of sister city partnerships operating within the United States, and for other purposes; to the Committee on Foreign Relations.

By Mr. DAINES (for himself, Mr. BOOZMAN, Mr. BRAUN, Mr. WICKER, Mr. RISCH, Mr. CRAPO, Mrs. HYDE-SMITH, Mr. TILLIS, Mr. MARSHALL, Ms. LUMMIS, Mr. SCOTT of Florida, Mr. BARRASSO, Mr. RICKETTS, Mr. CRAMER, Mr. MULLIN, Mr. HOEVEN, Mr. SULLIVAN, Mrs. FISCHER, Mr. COTTON, Mr. THUNE, Mr. BUDD, Mrs. CAPITO, Mr. ROUNDS, Mr. HAWLEY, and Mr. TUBERVILLE):

S. 1185. A bill to prohibit the Secretary of the Interior and the Secretary of Agriculture from prohibiting the use of lead ammunition or tackle on certain Federal land or water under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MARKEY (for himself, Mr. MERKLEY, Ms. WARREN, Mr. MURPHY, Mr. VAN HOLLEN, Ms. SMITH, Mr. WELCH, and Mr. SANDERS):

S. 1186. A bill to restrict the first-use strike of nuclear weapons; to the Committee on Foreign Relations.

By Mrs. GILLIBRAND (for herself, Mr. BOOKER, Mr. PADILLA, Mr. MARKEY, Mr. SANDERS, Ms. WARREN, and Mr. MERKLEY):

S. 1187. A bill to establish the right to counsel, at Government expense for those who cannot afford counsel, for people facing removal; to the Committee on the Judiciary.

By Mr. LEE (for himself and Mr. SCOTT of Florida):

S. 1188. A bill to help individuals receiving assistance under the supplemental nutrition assistance program in obtaining self-sufficiency, to provide information on total spending on means-tested welfare programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOOKER (for himself, Ms. CORTEZ MASTO, Mr. MARKEY, Ms. WARREN, Mr. PADILLA, Mr. BLUMENTHAL, Mrs. MURRAY, Mr. MENENDEZ, Ms. DUCKWORTH, Ms. SMITH, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. DURBIN, Ms. STABENOW, Ms. ROSEN, Mr. SANDERS, Mr. BROWN, Mr. MERKLEY, and Ms. KLOBUCHAR):

S. Res. 159. A resolution recognizing the designation of the week of April 11 through April 17, 2023, as the sixth annual ''Black Maternal Health Week'' to bring national attention to the maternal health crisis in the United States and the importance of reducing maternal mortality and morbidity among Black women and birthing persons; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BLUMENTHAL (for himself and Mr. MURPHY):

S. Res. 160. A resolution commending and congratulating the University of Connecticut men's basketball team for winning the 2023 National Collegiate Athletic Association Men's Basketball Championship; considered and agreed to.

By Mr. KING (for himself, Mr. DAINES, Mr. PADILLA, Mr. CRAMER, Ms. CORTEZ MASTO, Mr. MARSHALL, Mr. REED, Mr. TILLIS, Mr. WYDEN, Mr. BARRASSO, Ms. HASSAN, Mrs. CAPITO, Mr. COONS, Mr. BUDD, Mr. KAINE, Mr. ROUNDS, Mr. BENNET, Mr. RUBIO, Ms. SINEMA, Ms. COLLINS, Mr. WARNER, Mrs. HYDE-SMITH, Mr. HEINRICH, Mr. WICKER, Mrs. MURRAY, Mr. GRAHAM, Mr. VAN HOLLEN, Mr. SCOTT of Florida, Mr. MARKEY, Mr. CASSIDY, Mr.

LUJÁN, Mr. HOEVEN, Ms. HIRONO, Mr. BRAUN, Mr. TESTER, Mr. BOOZMAN, Ms. BALDWIN, Mr. COTTON, Ms. WARREN, Mr. YOUNG, Mr. HICKENLOOPER, Mr. KENNEDY, Ms. CANTWELL, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. MURPHY, Ms. ROSEN, Mr. BLUMENTHAL, Mr. MANCHIN, Ms. DUCKWORTH, Mr. PETERS, Mrs. FEINSTEIN, Mr. CARPER, Mr. CARDIN, Mr. DURBIN, Ms. STABENOW, Mr. WELCH, Mrs. SHAHEEN, and Mr. SCOTT of South Carolina):

S. Res. 161. A resolution designating the week of April 22 through April 30, 2023, as ''National Park Week''; considered and agreed to.

By Mr. MANCHIN (for himself, Mr. WICKER, Mrs. CAPITO, Mr. HEINRICH, and Mr. GRASSLEY):

S. Res. 162. A resolution designating the week of April 17 through April 23, 2023, as ''National Osteopathic Medicine Week''; considered and agreed to.

By Ms. KLOBUCHAR (for herself and Mr. TUBERVILLE):

S. Res. 163. A resolution supporting the goals and ideals of National Public Safety Telecommunicators Week; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. DAINES, the name of the Senator from Missouri (Mr. HAWLEY) was added as a cosponsor of S. 16, a bill to prohibit the award of Federal funds to an institution of higher education that hosts or is affiliated with a student-based service site that provides abortion drugs or abortions to students of the institution or to employees of the institution or site, and for other purposes.

S. 26

At the request of Mr. HAGERTY, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 26, a bill to amend the Internal Revenue Code of 1986 to repeal the amendments made to reporting of third party network transactions by the American Rescue Plan Act of 2021.

S. 138

At the request of Mr. MERKLEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 138, a bill to amend the Tibetan Policy Act of 2002 to modify certain provisions of that Act.

S. 305

At the request of Mr. BLUMENTHAL, the names of the Senator from Texas (Mr. CRUZ), the Senator from California (Mr. PADILLA) and the Senator from Hawaii (Ms. HIRONO) were added as cosponsors of S. 305, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the United States Marine Corps, and to support programs at the Marine Corps Heritage Center.

S. 308

At the request of Mr. ROMNEY, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 308, a bill to end the treatment of the People's Republic of China as a developing nation.

S. 359

At the request of Mr. WHITEHOUSE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 359, a bill to amend title 28, United States Code, to provide for a code of conduct for justices of the Supreme Court of the United States, and for other purposes.

S. 380

At the request of Mr. RUBIO, the name of the Senator from Nebraska (Mr. RICKETTS) was added as a cosponsor of S. 380, a bill to amend title 18, United States Code, to punish the distribution of fentanyl resulting in death as felony murder.

S. 408

At the request of Mr. WHITEHOUSE, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 408, a bill to amend the Internal Revenue Code of 1986 to impose a windfall profits excise tax on crude oil and to rebate the tax collected back to individual taxpayers, and for other purposes.

S. 443

At the request of Mr. BROWN, the name of the Senator from Nevada (Ms. ROSEN) was added as a cosponsor of S. 443, a bill to treat certain liquidations of new motor vehicle inventory as qualified liquidations of LIFO inventory for purposes of the Internal Revenue Code of 1986.

S. 503

At the request of Ms. ROSEN, her name was added as a cosponsor of S. 503, a bill to establish the Space National Guard.

S. 545

At the request of Ms. BALDWIN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 545, a bill to protect the rights of passengers with disabilities in air transportation, and for other purposes.

S. 592

At the request of Ms. STABENOW, the name of the Senator from Nevada (Ms. CORTEZ MASTO) was added as a cosponsor of S. 592, a bill to amend title 38, United States Code, to increase the mileage rate offered by the Department of Veterans Affairs through their Beneficiary Travel program for health related travel, and for other purposes.

S. 596

At the request of Mr. KAINE, the name of the Senator from Tennessee (Mr. HAGERTY) was added as a cosponsor of S. 596, a bill to amend the Internal Revenue Code of 1986 to make employers of spouses of military personnel eligible for the work opportunity credit.

S. 597

At the request of Mr. BROWN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 597, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 614

At the request of Mr. COTTON, the name of the Senator from Ohio (Mr. VANCE) was added as a cosponsor of S. 614, a bill to codify the temporary scheduling order for fentanyl-related substances by adding fentanyl-related substances to schedule I of the Controlled Substances Act.

S. 632

At the request of Mr. RISCH, the name of the Senator from North Carolina (Mr. BUDD) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require the Bureau of Alcohol, Tobacco, Firearms and Explosives to establish an administrative relief process for individuals whose applications for transfer and registration of a firearm were denied, and for other purposes.

S. 657

At the request of Mr. CARDIN, the names of the Senator from Delaware (Mr. COONS), the Senator from Nevada (Ms. CORTEZ MASTO) and the Senator from West Virginia (Mrs. CAPITO) were added as cosponsors of S. 657, a bill to amend the Internal Revenue Code of 1986 to establish a tax credit for neighborhood revitalization, and for other purposes.

S. 789

At the request of Mr. VAN HOLLEN, the names of the Senator from Connecticut (Mr. MURPHY) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 789, a bill to require the Secretary of the Treasury to mint a coin in recognition of the 100th anniversary of the United States Foreign Service and its contribution to United States diplomacy.

S. 841

At the request of Mr. KAINE, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 841, a bill to authorize the Caribbean Basin Security Initiative, to enhance the United States-Caribbean security partnership, to prioritize natural disaster resilience, and for other purposes.

S. 856

At the request of Mr. WICKER, the names of the Senator from Wyoming (Mr. BARRASSO) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 856, a bill to require the Federal Communications Commission to conduct a study and submit to Congress a report examining the feasibility of funding the Universal Service Fund through contributions supplied by edge providers, and for other purposes.

S. 871

At the request of Mr. LUJÁN, the names of the Senator from Oklahoma (Mr. LANKFORD) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 871, a bill to amend section 7014 of the Elementary and Secondary Education Act of 1965 to advance toward full Federal funding for impact aid, and for other purposes.

S. 895

At the request of Mr. BLUMENTHAL, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 895, a bill to provide for further comprehensive research at the National Institute of Neurological Disorders and Stroke on unruptured intracranial aneurysms.

S. 912

At the request of Mr. BARRASSO, the names of the Senator from South Dakota (Mr. ROUNDS) and the Senator from Arizona (Mr. KELLY) were added as cosponsors of S. 912, a bill to require the Secretary of Energy to provide technology grants to strengthen domestic mining education, and for other purposes.

S. 916

At the request of Mr. BLUMENTHAL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 916, a bill to limit and eliminate excessive, hidden, and unnecessary fees imposed on consumers, and for other purposes.

S. 963

At the request of Mr. LUJÁN, the name of the Senator from Vermont (Mr. WELCH) was added as a cosponsor of S. 963, a bill to provide enhanced student loan relief to educators.

S. 977

At the request of Mr. VAN HOLLEN, the names of the Senator from Delaware (Mr. COONS) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. 977, a bill to provide grants for fire station construction through the Administrator of the Federal Emergency Management Agency, and for other purposes.

S. 985

At the request of Mr. LANKFORD, the name of the Senator from Indiana (Mr. BRAUN) was added as a cosponsor of S. 985, a bill to amend the Higher Education Act of 1965 to ensure campus access at public institutions of higher education for religious groups.

S. 992

At the request of Mr. CRUZ, the name of the Senator from New Mexico (Mr. HEINRICH) was added as a cosponsor of S. 992, a bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to designate the Texas and New Mexico portions of the future Interstate-designated segments of the Port-to-Plains Corridor as Interstate Route 27, and for other purposes.

S. 1035

At the request of Mr. BARRASSO, the name of the Senator from Oklahoma (Mr. LANKFORD) was added as a cosponsor of S. 1035, a bill to prohibit funding for the Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change until China is no longer defined a developing country.

S. 1043

At the request of Mr. BARRASSO, the name of the Senator from Mississippi (Mrs. HYDE-SMITH) was added as a cosponsor of S. 1043, a bill to amend the Energy Policy and Conservation Act to modify standards for water heaters, furnaces, boilers, and kitchen cooktops, ranges, and ovens, and for other purposes.

S. 1102

At the request of Mr. BRAUN, the name of the Senator from Missouri (Mr. HAWLEY) was added as a cosponsor of S. 1102, a bill to protect the dignity of fetal remains, and for other purposes.

S. 1103

At the request of Mr. BRAUN, the name of the Senator from Alabama (Mrs. BRITT) was added as a cosponsor of S. 1103, a bill to provide for parental notification and intervention in the case of an unemancipated minor seeking an abortion.

S. 1108

At the request of Mr. THUNE, the name of the Senator from Ohio (Mr. VANCE) was added as a cosponsor of S. 1108, a bill to amend the Internal Revenue Code of 1986 to repeal the estate and generation-skipping transfer taxes, and for other purposes.

S. 1115

At the request of Mr. CASEY, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of S. 1115, a bill to require the Secretary of Labor to revise the Standard Occupational Classification System to accurately count the number of emergency medical services practitioners in the United States.

S. 1140

At the request of Mr. SCHATZ, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1140, a bill to amend the Public Health Service Act with respect to the designation of general surgery shortage areas, and for other purposes.

S.J. RES. 10

At the request of Mr. TUBERVILLE, the names of the Senator from Nebraska (Mr. RICKETTS) and the Senator from Indiana (Mr. YOUNG) were added as cosponsors of S.J. Res. 10, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Veterans Affairs relating to ''Reproductive Health Services''.

S.J. RES. 23

At the request of Ms. LUMMIS, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S.J. Res. 23, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to ''Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat''.

S. RES. 114

At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. Res. 114, a resolution urging the Government of Thailand to protect and uphold democracy, human rights, the rule of law, and rights to freedom of peaceful assembly and freedom of expression, and for other purposes.

S. RES. 134

At the request of Mr. SCHATZ, the name of the Senator from Massachusetts (Ms. WARREN) was added as a cosponsor of S. Res. 134, a resolution supporting the goals and ideals of the Rise Up for LGBTQI+ Youth in Schools Initiative, a call to action to communities across the country to demand equal educational opportunity, basic civil rights protections, and freedom from erasure for all students, particularly LGBTQI+ young people, in K–12 schools.

S. RES. 147

At the request of Mr. SCHATZ, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from New Jersey (Mr. BOOKER) were added as cosponsors of S. Res. 147, a resolution designating April 2023 as ''Preserving and Protecting Local News Month'' and recognizing the importance and significance of local news.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. GRASSLEY):

S. 1181. A bill to amend the Federal Deposit Insurance Act to improve financial stability, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Madam President, today I am introducing the Bank Management Accountability Act along with Senator GRASSLEY. This bipartisan bill will make it easier for banking regulators to claw back compensation from directors and senior executives at failed systemically important banks and to ban those directors and executives from future participation in the financial industry.

We have recently experienced the failures of Silicon Valley Bank and Signature Bank, two systemically important banks each with assets exceeding $100 billion. Executives at these banks received exorbitant compensation as the banks took on excessive risks. The CEO of Silicon Valley Bank received $10 million in compensation in 2022 and sold $3.5 million of company stock in the days before the failure. The CEO of Signature Bank received $8.7 million in compensation in 2022 and sold millions of dollars' worth of company stock in the weeks and months before the failure.

The government declared the failures of Silicon Valley Bank and Signature Bank a ''systemic risk'' to the economy and stepped in with extraordinary backstops and emergency assistance, including protecting uninsured depositors. While these actions prevented contagion from spreading throughout

the financial system, these two failures are expected to cost the Federal Deposit Insurance Corporation's, FDIC's deposit insurance fund over $20 billion and have required the Federal Reserve to extend over $143 billion in credit to their successor banks. The FDIC needs stronger tools to prevent directors and senior executives from enriching themselves when their risky bets destabilize the financial sector and saddle the American people with the costs.

The bipartisan bill we are introducing aims to update the FDIC's outdated compensation clawback authority and weak financial industry ban authority. This bill will make directors and senior executives think twice before engaging in risky activities by allowing the FDIC to claw back the prior 2 years of their compensation if their bank fails. And to ensure that directors and senior executives cannot return to another bank and place depositors' funds at risk again, the bill would make it much easier for the FDIC to prohibit them from participating in the affairs of any financial company for at least two years.

Under existing law, high standards of liability significantly interfere with regulators' ability to seek restitution from directors and officers of failed banks and bar them from the industry. After the 2008 financial crisis, Congress established much more powerful clawback authority. But this tool is only available when the largest banks are unwound using a special process called ''orderly liquidation authority'' that the regulators have never used—even for the failures of Silicon Valley Bank and Signature Bank. That is why directors and senior executives at large banks rarely are subject to compensation clawbacks and financial industry bans, even if they are negligent in running their bank and the government ultimately needs to step in with extraordinary backstops and emergency assistance.

Our bill would apply the easier rules for clawing back compensation from Dodd-Frank's special ''orderly liquidation authority'' to a much broader set of banks, including Silicon Valley Bank and Signature Bank. It would also specify that recouped funds may not be paid out of directors' and officers' liability insurance coverage to make sure that they have true personal liability and skin in the game. Finally, it would lower the standard for barring directors and senior executives at failed systemically important banks from the financial industry. These updates would greatly enhance the banking regulators' ability to recover funds for the benefit of the taxpayers, to protect depositors from directors and senior executives who have already driven a bank into failure, and to provide powerful disincentives against excessive risk taking.

All of our constituents deserve strong bank regulators with the necessary tools to go after executives and directors at banks whose failures threaten the economy. The Bank Management Accountability Act will enhance our regulators' authorities to demand meaningful accountability from Wall Street and Silicon Valley, which in turn will increase confidence in our financial system. I urge our colleagues to support this important bipartisan legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 159—RECOGNIZING THE DESIGNATION OF THE WEEK OF APRIL 11 THROUGH APRIL 17, 2023, AS THE SIXTH ANNUAL ''BLACK MATERNAL HEALTH WEEK'' TO BRING NATIONAL ATTENTION TO THE MATERNAL HEALTH CRISIS IN THE UNITED STATES AND THE IMPORTANCE OF REDUCING MATERNAL MORTALITY AND MORBIDITY AMONG BLACK WOMEN AND BIRTHING PERSONS

Mr. BOOKER (for himself, Ms. CORTEZ MASTO, Mr. MARKEY, Ms. WARREN, Mr. PADILLA, Mr. BLUMENTHAL, Mrs. MURRAY, Mr. MENENDEZ, Ms. DUCKWORTH, Ms. SMITH, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. DURBIN, Ms. STABENOW, Ms. ROSEN, Mr. SANDERS, Mr. BROWN, Mr. MERKLEY, and Ms. KLOBUCHAR) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 159

Whereas, according to the Centers for Disease Control and Prevention, Black women in the United States are 2.6 times more likely than White women to die from pregnancy-related causes;

Whereas Black women in the United States suffer from life-threatening pregnancy complications, known as ''maternal morbidities'', twice as often as White women;

Whereas maternal mortality rates in the United States are—

(1) among the highest of any member country of the Organisation for Economic Co-operation and Development; and

(2) increasing rapidly, from 17.4 deaths per 100,000 live births in 2018, to 32.1 deaths per 100,000 live births in 2021;

Whereas the United States has the highest maternal mortality rate among affluent countries, in part because of the disproportionate mortality rate of Black women;

Whereas the rate of preterm birth among Black women is nearly 50 percent higher than the preterm birth rate among White or Hispanic women;

Whereas the high rates of maternal mortality among Black women span across—

(1) income levels;

(2) education levels; and

(3) socioeconomic status;

Whereas structural racism, gender oppression, and the social determinants of health inequities experienced by Black women and birthing persons in the United States significantly contribute to the disproportionately high rates of maternal mortality and morbidity among Black women and birthing persons;

Whereas racism and discrimination play a consequential role in maternal health care experiences and outcomes of Black birthing persons;

Whereas a fair and wide distribution of resources and birth options, especially with regard to reproductive health care services and maternal health programming, is critical to closing the racial gap in maternal health outcomes;

Whereas Black midwives, doulas, perinatal health workers, and community-based organizations provide holistic maternal care, but face structural and legal barriers to licensure, reimbursement, and provision of care;

Whereas COVID–19, which has disproportionately harmed Black people in the United States, is associated with an increased risk of adverse pregnancy outcomes and maternal and neonatal complications;

Whereas the COVID–19 pandemic has further highlighted issues within the broken health care system in the United States and the harm of that system to Black women and birthing persons;

Whereas data from the Centers for Disease Control and Prevention has indicated that Black women had the highest rate of maternal deaths related to COVID–19 in 2020 and 2021, at 13.2 per 100,000 live births, while the rate among White women was 4.5 per 100,000 live births;

Whereas, even as there is growing concern about improving access to mental health services, Black women are least likely to have access to mental health screenings, treatment, and support before, during, and after pregnancy;

Whereas Black pregnant and postpartum workers are disproportionately denied reasonable accommodations in the workplace, leading to adverse pregnancy outcomes;

Whereas Black pregnant people disproportionately experience surveillance and punishment, including shackling incarcerated people in labor, drug testing mothers and infants without informed consent, separating mothers from their newborns, and criminalizing pregnancy outcomes;

Whereas justice-informed, culturally congruent models of care are beneficial to Black women; and

Whereas an investment must be made in—

(1) maternity care for Black women and birthing persons, including support of care led by the communities most affected by the maternal health crisis in the United States;

(2) continuous health insurance coverage to support Black women and birthing persons for the full postpartum period up to at least 1 year after giving birth; and

(3) policies that support and promote affordable, comprehensive, and holistic maternal health care that is free from gender and racial discrimination, regardless of incarceration: Now, therefore, be it

Resolved, That the Senate recognizes that—

(1) Black women are experiencing high, disproportionate rates of maternal mortality and morbidity in the United States;

(2) the alarmingly high rates of maternal mortality among Black women are unacceptable;

(3) in order to better mitigate the effects of systemic and structural racism, Congress must work toward ensuring that the Black community has—

(A) safe and affordable housing;

(B) transportation equity;

(C) nutritious food;

(D) clean air and water;

(E) environments free from toxins;

(F) fair treatment within the criminal justice system;

(G) safety and freedom from violence;

(H) a living wage;

(I) equal economic opportunity;

(J) a sustained workforce pipeline for diverse perinatal professionals; and

(K) comprehensive, high-quality, and affordable health care with access to the full spectrum of reproductive care;

(4) in order to improve maternal health outcomes, Congress must fully support and encourage policies grounded in the human rights, reproductive justice, and birth justice frameworks that address Black maternal health inequity;

(5) Black women and birthing persons must be active participants in the policy decisions that impact their lives;

(6) in order to ensure access to safe and respectful maternal health care for Black birthing persons, Congress must reintroduce and pass the Black Maternal Health Momnibus Act of 2021 (S. 346, H.R. 959, 117th Congress); and

(7) ''Black Maternal Health Week'' is an opportunity to—

(A) deepen the national conversation about Black maternal health in the United States;

(B) amplify community-driven policy, research, and care solutions;

(C) center the voices of Black mothers, women, families, and stakeholders;

(D) provide a national platform for Black-led entities and efforts on maternal health, birth, and reproductive justice; and

(E) enhance community organizing on Black maternal health.

SENATE RESOLUTION 160—COMMENDING AND CONGRATULATING THE UNIVERSITY OF CONNECTICUT MEN'S BASKETBALL TEAM FOR WINNING THE 2023 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION MEN'S BASKETBALL CHAMPIONSHIP

Mr. BLUMENTHAL (for himself and Mr. MURPHY) submitted the following resolution; which was considered and agreed to:

S. RES. 160

Whereas, on Monday, April 3, 2023, the University of Connecticut's men's basketball team (referred to in this preamble as the ''UConn Huskies'') won the 2023 National Collegiate Athletic Association Men's Basketball Championship with a 76–59 win over the San Diego State Aztecs at NRG Stadium in Houston, Texas;

Whereas this is the UConn Huskies' fifth national championship, continuing the team's undefeated streak in national championship games;

Whereas the UConn Huskies earned all 5 national titles since 1999, a feat that no other college team has surpassed;

Whereas Adama Sanogo was named the Most Outstanding Player of the tournament, averaging 19.7 points per game with 4 double-doubles; and

Whereas the UConn Huskies won every National Collegiate Athletic Association tournament game by 13 points or more, becoming only the fifth team in history to do so: Now, therefore, be it

Resolved, That the Senate—

(1) commends the University of Connecticut men's basketball team for winning the 2023 National Collegiate Athletic Association Men's Basketball Championship;

(2) congratulates the fans, students, and faculty of the University of Connecticut; and

(3) respectfully requests that the Secretary of the Senate transmit an enrolled copy of this resolution to—

(A) the President of the University of Connecticut, Radenka Maric; and

(B) the Head Coach of the University of Connecticut men's basketball team, Dan Hurley.

SENATE RESOLUTION 161—DESIGNATING THE WEEK OF APRIL 22 THROUGH APRIL 30, 2023, AS ''NATIONAL PARK WEEK''

Mr. KING (for himself, Mr. DAINES, Mr. PADILLA, Mr. CRAMER, Ms. CORTEZ MASTO, Mr. MARSHALL, Mr. REED, Mr. TILLIS, Mr. WYDEN, Mr. BARRASSO, Ms. HASSAN, Mrs. CAPITO, Mr. COONS, Mr. BUDD, Mr. KAINE, Mr. ROUNDS, Mr. BENNET, Mr. RUBIO, Ms. SINEMA, Ms. COLLINS, Mr. WARNER, Mrs. HYDE-SMITH, Mr. HEINRICH, Mr. WICKER, Mrs. MURRAY, Mr. GRAHAM, Mr. VAN HOLLEN, Mr. SCOTT of Florida, Mr. MARKEY, Mr. CASSIDY, Mr. LUJÁN, Mr. HOEVEN, Ms. HIRONO, Mr. BRAUN, Mr. TESTER, Mr. BOOZMAN, Ms. BALDWIN, Mr. COTTON, Ms. WARREN, Mr. YOUNG, Mr. HICKENLOOPER, Mr. KENNEDY, Ms. CANTWELL, Ms. LUMMIS, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. MURPHY, Ms. ROSEN, Mr. BLUMENTHAL, Mr. MANCHIN, Ms. DUCKWORTH, Mr. PETERS, Mrs. FEINSTEIN, Mr. CARPER, Mr. CARDIN, Mr. DURBIN, Ms. STABENOW, Mr. WELCH, Mrs. SHAHEEN, and Mr. SCOTT of South Carolina) submitted the following resolution; which was considered and agreed to:

S. RES. 161

Whereas, on March 1, 1872, Congress established Yellowstone National Park as the first national park for the enjoyment of the people of the United States;

Whereas, on August 25, 1916, Congress established the National Park Service with the mission to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of current and future generations;

Whereas the National Park Service continues to protect and manage the majestic landscapes, hallowed battlefields, and iconic cultural and historical sites of the United States;

Whereas the units of the National Park System can be found in every State and many territories of the United States and many of those units embody the rich natural and cultural heritage of the United States, reflect a unique national story through people and places, and offer countless opportunities for recreation, volunteerism, cultural exchange, education, civic engagement, and exploration;

Whereas, in 2022, the national parks of the United States attracted nearly 312,000,000 recreational visits, an increase of 5 percent over 2021 visitation levels;

Whereas visits and visitors to the national parks of the United States are important economic drivers, responsible for contributing $42,500,000,000 in spending to the national economy in 2021;

Whereas the dedicated employees of the National Park Service carry out their mission to protect the units of the National Park System so that the vibrant culture, diverse wildlife, and priceless resources of these unique places will endure for perpetuity; and

Whereas the people of the United States have inherited the remarkable legacy of the National Park System and are entrusted with the preservation of the National Park System throughout its second century: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 22 through April 30, 2023, as ''National Park Week''; and

(2) encourages the people of the United States and the world to responsibly visit, experience, recreate in, and support the treasured national parks of the United States.

SENATE RESOLUTION 162—DESIGNATING THE WEEK OF APRIL 17 THROUGH APRIL 23, 2023, AS ''NATIONAL OSTEOPATHIC MEDICINE WEEK''

Mr. MANCHIN (for himself, Mr. WICKER, Mrs. CAPITO, Mr. HEINRICH, and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 162

Whereas there are more than 141,500 osteopathic physicians and 36,500 osteopathic medical students in the United States;

Whereas osteopathic physicians and medical students train at high-caliber schools of osteopathic medicine across the United States, including in rural communities;

Whereas osteopathic physicians have made significant contributions to the healthcare system of the United States since the founding of osteopathic medicine in 1892;

Whereas osteopathic medicine emphasizes a whole-person, patient-centric approach to healthcare, and osteopathic physicians play an important role in the healthcare system of the United States;

Whereas osteopathic physicians have been critical in the fight against the COVID–19 pandemic and have worked on the front lines treating patients;

Whereas osteopathic physicians train and practice in all medical specialties and practice settings;

Whereas osteopathic physicians and medical students in the United States are dedicated to improving the health of their communities through efforts to increase education and awareness and by delivering high-quality health services; and

Whereas osteopathic physicians practice in every State: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 17 through April 23, 2023, as ''National Osteopathic Medicine Week'';

(2) recognizes the contributions of osteopathic physicians to the healthcare system of the United States; and

(3) celebrates the role that colleges of osteopathic medicine play in training the next generation of physicians.

SENATE RESOLUTION 163—SUPPORTING THE GOALS AND IDEALS OF NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK

Ms. KLOBUCHAR (for herself and Mr. TUBERVILLE) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. RES. 163

Whereas public safety telecommunications professionals play a critical role in emergency response;

Whereas the work that public safety telecommunications professionals perform goes far beyond simply relaying information between the public and first responders;

Whereas, when responding to reports of missing, abducted, and sexually exploited children, the information obtained and actions taken by public safety telecommunications professionals form the foundation for an effective response;

Whereas, when a hostage taker or suicidal individual calls 911, the first contact that individual has is with a public safety telecommunications professional, whose negotiation skills can prevent the situation from worsening;

Whereas, during crises, public safety telecommunications professionals, while collecting vital information to provide situational awareness for responding officers—

(1) coach callers through first aid techniques; and

(2) give advice to those callers to prevent further harm;

Whereas the work done by individuals who serve as public safety telecommunications professionals has an extreme emotional and physical toll on those individuals, which is compounded by long hours and the around-the-clock nature of the job;

Whereas public safety telecommunications professionals should be recognized by all levels of government for the lifesaving and protective nature of their work;

Whereas major emergencies, including natural disasters and the coronavirus disease 2019 (COVID–19) pandemic, highlight the dedication of public safety telecommunications professionals and their important work in protecting the public and police, fire, and emergency medical officials; and

Whereas public safety telecommunications professionals are often called as witnesses to provide important testimony in criminal trials: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of National Public Safety Telecommunicators Week;

(2) honors and recognizes the important and lifesaving contributions of public safety telecommunications professionals in the United States; and

(3) encourages the people of the United States to remember the value of the work performed by public safety telecommunications professionals.

AMENDMENTS SUBMITTED AND PROPOSED

SA 85. Mr. VAN HOLLEN (for himself, Ms. MURKOWSKI, and Mr. OSSOFF) submitted an amendment intended to be proposed by him to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table.

SA 86. Mr. VAN HOLLEN (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 83 submitted by Mr. MCCONNELL (for Mr. SULLIVAN) and intended to be proposed to the bill S. 870, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 85. Mr. VAN HOLLEN (for himself, Ms. MURKOWSKI, and Mr. OSSOFF) submitted an amendment intended to be proposed by him to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ASSISTANCE TO FIREFIGHTERS FIRE STATION CONSTRUCTION GRANTS.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Emergency Management Agency.

(2) CAREER FIRE DEPARTMENT.—The term ''career fire department'' means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

(3) COMBINATION FIRE DEPARTMENT.—The term ''combination fire department'' means a fire department that has—

(A) paid firefighting personnel; and

(B) volunteer firefighting personnel.

(4) EMS.—The term ''EMS'' means emergency medical services.

(5) NONAFFILIATED EMS ORGANIZATION.—The term ''nonaffiliated EMS organization'' means a public or private nonprofit EMS organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator finds that EMS are adequately provided by a fire department.

(6) VOLUNTEER FIRE DEPARTMENT.—The term ''volunteer fire department'' means a fire department that has an all-volunteer force of firefighting personnel.

(b) GRANT PROGRAM.—The Administrator shall establish a grant program to provide financial assistance to entities described in subsection (c) to modify, upgrade, and construct fire and EMS department facilities.

(c) ELIGIBLE APPLICANTS.—The Administrator may make a grant under this section to the following:

(1) Career, volunteer, and combination fire departments.

(2) Fire training facilities.

(3) Nonaffiliated EMS organizations, combination and volunteer emergency medical stations (except that for-profit EMS organizations are not eligible for a grant under this section).

(d) APPLICATIONS.—An entity described in subsection (c) seeking a grant under this section shall submit to the Administrator an application in such form, at such time, and containing such information as the Administrator determines appropriate.

(e) MEETING FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Administrator shall convene a meeting of qualified members of national fire service organizations and, at the discretion of the Administrator, qualified members of EMS organizations to obtain recommendations regarding the criteria for the awarding of grants under this section.

(2) QUALIFICATIONS.—For purposes of this subsection, a qualified member of an organization is a member who—

(A) is recognized for firefighting or EMS expertise;

(B) is not an employee of the Federal Government; and

(C) in the case of a member of an EMS organization, is a member of an organization that represents—

(i) EMS providers that are affiliated with fire departments; or

(ii) nonaffiliated EMS providers.

(f) PEER REVIEW OF GRANT APPLICATION.—The Administrator shall, in consultation with national fire service and EMS organizations, appoint fire service personnel to conduct peer reviews of applications received under subsection (d).

(g) PRIORITY OF GRANTS.—In awarding grants under this section, the Administrator shall consider the findings and recommendations of the peer reviews carried out under subsection (f).

(h) USES OF FUNDS.—

(1) IN GENERAL.—A recipient of a grant under this section may use funds received for the following:

(A) Building, rebuilding, or renovating fire and EMS department facilities.

(B) Upgrading existing facilities to install exhaust emission control systems, install backup power systems, upgrade or replace environmental control systems (such as HVAC systems), remove or remediate mold, and construct or modify living quarters for use by male and female personnel.

(C) Upgrading fire and EMS stations or building new stations.

(2) CODE COMPLIANT.—In using funds under paragraph (1), a recipient of a grant under this section shall meet 1 of the 2 most recently published editions of relevant codes and standards, especially codes and standards that—

(A) require up-to-date hazard resistant and safety provisions; and

(B) are relevant for protecting firefighter health and safety.

(i) GRANT FUNDING.—

(1) IN GENERAL.—The Administrator shall allocate grant funds under this section as follows:

(A) 25 percent for career fire and EMS departments.

(B) 25 percent for combination fire and EMS departments.

(C) 25 percent for volunteer fire and EMS departments.

(D) 25 percent to remain available for competition between the various department types.

(2) INSUFFICIENT APPLICATIONS.—If the Administrator does not receive sufficient funding requests from a particular department type described in subparagraphs (A) through (C) of paragraph (1), the Administrator may make awards to other departments described in such subparagraphs.

(3) LIMITATION ON AWARDS AMOUNTS.—A recipient of a grant under this section may not receive more than $7,500,000 under this section.

(j) PREVAILING RATE OF WAGE AND PUBLIC CONTRACTS.—

(1) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(2) OVERTIME.—Each employee described in paragraph (1) shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek, as the case may be.

(3) ASSURANCES.—The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that the labor standards described in paragraphs (1) and (2) will be maintained upon the construction work.

(4) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the labor standards described in paragraphs (1) and (2), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

(5) PUBLIC CONTRACTS.—Contractors and subcontractors performing construction work pursuant to this section shall procure only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States in accordance with the requirements (and exceptions thereto) applicable to Federal agencies under chapter 83 of title 41, United States Code.

(k) APPLICABILITY.—Chapter 10 of title 5, United States Code, shall not apply to activities carried out pursuant to this section.

(l) REPORTING REQUIREMENTS.—

(1) ANNUAL REPORT TO ADMINISTRATOR OF FEMA.—Not later than 1 year after the date of enactment of this Act, and annually thereafter during the term of a grant awarded under this section, the recipient of the grant shall submit to the Administrator a report describing how the recipient used the amounts from the grant.

(2) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter until the date on which the rebuilding or renovation of fire facilities and stations are completed using grant funds under this section, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report that provides an evaluation of the effectiveness of the grants awarded under this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $750,000,000 for fiscal year 2024 to carry out this section. Funds appropriated under this Act shall remain available until expended.

SA 86. Mr. VAN HOLLEN (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 83 submitted by Mr. MCCONNELL (for Mr. SULLIVAN) and intended to be proposed to the bill S. 870, to amend the Federal Fire Prevention and Control Act of 1974 to authorize appropriations for the United States Fire Administration and firefighter assistance grant programs; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. ASSISTANCE TO FIREFIGHTERS FIRE STATION CONSTRUCTION GRANTS.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Emergency Management Agency.

(2) CAREER FIRE DEPARTMENT.—The term ''career fire department'' means a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters.

(3) COMBINATION FIRE DEPARTMENT.—The term ''combination fire department'' means a fire department that has—

(A) paid firefighting personnel; and

(B) volunteer firefighting personnel.

(4) EMS.—The term ''EMS'' means emergency medical services.

(5) NONAFFILIATED EMS ORGANIZATION.—The term ''nonaffiliated EMS organization'' means a public or private nonprofit EMS organization that is not affiliated with a hospital and does not serve a geographic area in which the Administrator finds that EMS are adequately provided by a fire department.

(6) VOLUNTEER FIRE DEPARTMENT.—The term ''volunteer fire department'' means a fire department that has an all-volunteer force of firefighting personnel.

(b) GRANT PROGRAM.—The Administrator shall establish a grant program to provide financial assistance to entities described in subsection (c) to modify, upgrade, and construct fire and EMS department facilities.

(c) ELIGIBLE APPLICANTS.—The Administrator may make a grant under this section to the following:

(1) Career, volunteer, and combination fire departments.

(2) Fire training facilities.

(3) Nonaffiliated EMS organizations, combination and volunteer emergency medical stations (except that for-profit EMS organizations are not eligible for a grant under this section).

(d) APPLICATIONS.—An entity described in subsection (c) seeking a grant under this section shall submit to the Administrator an application in such form, at such time, and containing such information as the Administrator determines appropriate.

(e) MEETING FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Administrator shall convene a meeting of qualified members of national fire service organizations and, at the discretion of the Administrator, qualified members of EMS organizations to obtain recommendations regarding the criteria for the awarding of grants under this section.

(2) QUALIFICATIONS.—For purposes of this subsection, a qualified member of an organization is a member who—

(A) is recognized for firefighting or EMS expertise;

(B) is not an employee of the Federal Government; and

(C) in the case of a member of an EMS organization, is a member of an organization that represents—

(i) EMS providers that are affiliated with fire departments; or

(ii) nonaffiliated EMS providers.

(f) PEER REVIEW OF GRANT APPLICATION.—The Administrator shall, in consultation with national fire service and EMS organizations, appoint fire service personnel to conduct peer reviews of applications received under subsection (d).

(g) PRIORITY OF GRANTS.—In awarding grants under this section, the Administrator shall consider the findings and recommendations of the peer reviews carried out under subsection (f).

(h) USES OF FUNDS.—

(1) IN GENERAL.—A recipient of a grant under this section may use funds received for the following:

(A) Building, rebuilding, or renovating fire and EMS department facilities.

(B) Upgrading existing facilities to install exhaust emission control systems, install backup power systems, upgrade or replace environmental control systems (such as HVAC systems), remove or remediate mold, and construct or modify living quarters for use by male and female personnel.

(C) Upgrading fire and EMS stations or building new stations.

(2) CODE COMPLIANT.—In using funds under paragraph (1), a recipient of a grant under this section shall meet 1 of the 2 most recently published editions of relevant codes and standards, especially codes and standards that—

(A) require up-to-date hazard resistant and safety provisions; and

(B) are relevant for protecting firefighter health and safety.

(i) GRANT FUNDING.—

(1) IN GENERAL.—The Administrator shall allocate grant funds under this section as follows:

(A) 25 percent for career fire and EMS departments.

(B) 25 percent for combination fire and EMS departments.

(C) 25 percent for volunteer fire and EMS departments.

(D) 25 percent to remain available for competition between the various department types.

(2) INSUFFICIENT APPLICATIONS.—If the Administrator does not receive sufficient funding requests from a particular department type described in subparagraphs (A) through (C) of paragraph (1), the Administrator may make awards to other departments described in such subparagraphs.

(3) LIMITATION ON AWARDS AMOUNTS.—A recipient of a grant under this section may not receive more than $7,500,000 under this section.

(j) PREVAILING RATE OF WAGE AND PUBLIC CONTRACTS.—

(1) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'').

(2) OVERTIME.—Each employee described in paragraph (1) shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek, as the case may be.

(3) ASSURANCES.—The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that the labor standards described in paragraphs (1) and (2) will be maintained upon the construction work.

(4) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the labor standards described in paragraphs (1) and (2), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

(5) PUBLIC CONTRACTS.—Contractors and subcontractors performing construction work pursuant to this section shall procure only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States in accordance with the requirements (and exceptions thereto) applicable to Federal agencies under chapter 83 of title 41, United States Code.

(k) APPLICABILITY.—Chapter 10 of title 5, United States Code, shall not apply to activities carried out pursuant to this section.

(l) REPORTING REQUIREMENTS.—

(1) ANNUAL REPORT TO ADMINISTRATOR OF FEMA.—Not later than 1 year after the date of enactment of this Act, and annually thereafter during the term of a grant awarded under this section, the recipient of the grant shall submit to the Administrator a report describing how the recipient used the amounts from the grant.

(2) ANNUAL REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter until the date on which the rebuilding or renovation of fire facilities and stations are completed using grant funds under this section, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report that provides an evaluation of the effectiveness of the grants awarded under this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $750,000,000 for fiscal year 2024 to carry out this section. Funds appropriated under this Act shall remain available until expended.

AUTHORITY FOR COMMITTEES TO MEET

Mr. CARPER. Madam President, I have 11 requests for committees to

meet during today's session of the Senate. They have the approval of the Majority and Minority Leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

COMMITTEE ON ARMED SERVICES

The Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 9:30 a.m., to conduct a hearing.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

The Committee on Banking, Housing, and Urban Affairs is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing on nominations.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

The Committee on Energy and Natural Resources is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing.

COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a briefing.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

The Committee on Homeland Security and Governmental Affairs is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing.

COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 10 a.m., to conduct a hearing on nominations.

SELECT COMMITTEE ON INTELLIGENCE

The Select Committee on Intelligence is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a closed briefing.

SUBCOMMITTEE ON AIRLAND

The Subcommittee on Airland of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE, AND NUCLEAR SAFETY

The Subcommittee on Clean Air, Climate, and Nuclear Safety of the Committee on Environment and Public Works is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON INTELLECTUAL PROPERTY

The Subcommittee on Intellectual Property of the Committee on the Judiciary is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON STRATEGIC FORCES

The Subcommittee on Strategic Forces of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 18, 2023, at 4:45 p.m., to conduct a hearing.

PRIVILEGES OF THE FLOOR

Mr. CARPER. Madam President, before I begin my floor remarks, let me just ask unanimous consent that several individuals who serve in my personal office and on the Senate Committee on Environment and Public Works majority staff be granted privileges of the floor for the remainder of this Congress. Their names are Daniel Kim, Victoria Carle, Linnea Saby, Nicole Comisky, and Matthew Marzano.

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

Ms. MURKOWSKI. Madam President, I ask unanimous consent that privileges of the floor be granted to my fellows for the rest of the year: Abbie Lyons, Aaron Stuvland, Doson Nguyen, and Robert Bruce.

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

ORDERS FOR WEDNESDAY, APRIL 19, 2023

Mr. WHITEHOUSE. I further ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. on Wednesday, April 19; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; that following the conclusion of morning business, the Senate resume consideration of Calendar No. 28, S. 870; further, at 11:30 a.m., the Senate vote on the Paul and Hagerty amendments as provided under the previous order; that following the disposition of the Hagerty amendment, Senator TUBERVILLE or his designee be recognized to make a motion to proceed to Calendar No. 35, S.J. Res. 10; that the time until 4:15 p.m. be equally divided between the two leaders or their designees and with the final 15 minutes equally divided in the same form; that the Senate recess from 3 p.m. until 4 p.m. to allow for the all-Senators briefing, with the time counting equally to both sides.

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

ORDER FOR ADJOURNMENT

Mr. WHITEHOUSE. If there is no further business to come before the Senate, I ask that it stand adjourned under the previous order, following the remarks of Senator MURKOWSKI, to whom I express gratitude for her courtesy.

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

The Senator from Alaska.

S. 870

Ms. MURKOWSKI. Mr. President, I am pleased that we are at this point in the Senate calendar when we are talking about legislation on the floor. We have S. 870, which is the Fire Grants and Safety Act. I am a sponsor, a proud cosponsor of this measure.

My State of Alaska routinely faces severe fire seasons every year. As cochair of the Senate Fire Caucus, I follow these issues very carefully. Whether they are wildland fires or fires in our urban centers, I believe we have a bill in front of us, a measure in front of us, that deserves all of our support.

The Fire Grants and Safety Act is a pretty simple bill. It is not very often that we actually have things that are simple and short, and this one is just a few pages long. It reauthorizes the U.S. Fire Administration, the Assistance to Firefighters Grant Program, as well as the Staffing for Adequate Fire and Emergency Response Grant Program. That is the SAFER Program. It reauthorizes all of these through 2030, instead of allowing them to expire next year. The Fire Administration's authorization is increased slightly, but the rest are basically straight extensions here.

As I mentioned, it is a pretty simple bill, but I think it is important to appreciate and understand the importance because sometimes I think these programs are underappreciated. They help our local fire departments recruit personnel—pretty important, we have got to get those firefighters to us—but not only to recruit them but to retain them as well. It also helps allow them to purchase updated vehicles and equipment.

We also help our fire stations by providing for safety and rescue training as well as health screenings.

The Fire Grants and Safety Act is also a very timely measure and not just because we are looking at these programs nearing their expiration date, but our U.S. Fire Administrator has reminded us that ''America is still burning.'' That is the quote. Last year, fires destroyed over 1 million structures and over 7.5 million acres of land across the country.

Again, in the State of Alaska, it is not unusual that we have 1 million-plus acres burn each season, and in many seasons, well more than a million.

But in addition to dealing with the impact to the land and to structures that are on them, it is a safety issue that comes with fighting fires. Approximately, 2,500 people, including 96 firefighters, have died because of these fires. Again, as we are seeing wildfires become larger and more catastrophic, the danger that it presents from a health-safety perspective but also the devastation and impact to the land becomes that much greater.

In our State in Alaska, our geography and really our lack of core infrastructure oftentimes makes it harder to respond, sometimes really not possible at all. But you have got wildfires

that can start hundreds of miles from a road system. It is difficult to deal with. But then you have house fires in one village off where road travel—there is no connection between the two villages and an inability to help address a local fire, as we have seen, unfortunately, on far too many occasions.

Just last month, the Kennicott McCarthy Volunteer Fire Department received $77,950. It doesn't sound like a lot in terms of dollars that we talk about here on this floor, but it was $77,000-plus to support recruitment and retention of firefighters. They were able to utilize FEMA's SAFER Grant Program. Again, this is a program that is going to sunset this year. But let me put the Kennicott McCarthy Volunteer Fire Department into context. This fire department is over 300 miles from Anchorage, the large city there. That is about a 7-hour drive in good weather. And I would challenge people—most times getting into McCarthy, it doesn't make any difference what the weather is, the road is tough enough that it is going to take you well more than 7 hours. There are about 42 people who live in the McCarthy-Kennicott area year-round, but in the summertime, you have got a growth in population when tourists come into the area and when folks who have cabins and properties like to spend the summers out there. So it can grow to over 1,000, 1,200 people in the summer. It serves as the gateway to the Wrangell-St. Elias National Park. So it is an important tourist destination for us.

This little town hosted over 65,000 visitors last year. So it kind of causes you to ask the question: How can a town of 42 year-round residents support this influx of outside traffic without the assistance of the Federal Government here? That is exactly what these SAFER grants have allowed them to do. So believe me. That $77,000 is going to go a long way for that volunteer fire department in Kennicott-McCarthy.

I mentioned that we face unique challenges in Alaska, but I would wager to say that every Member of this Chamber or one of your family members or your friends or your neighbors—every one of us has benefited from the emergency services that are provided by our local fire departments. So, as they have helped us, it is our turn to be helping them.

I am hopeful that we will be able to move through this process. It was good to have a vote on an amendment this afternoon. We will have the opportunity for more tomorrow and, hopefully, be able to wrap this bill up soon, this week.

But I do hope that this measure will garner the same level of bipartisan support as its predecessors. Back in 2017, we passed a fire grant reauthorization by unanimous consent. I think that that reflects how every State recognizes the benefit from this act, and I think that this year's effort should, really, be no different.

The Fire Grants and Safety Act has garnered widespread support. We have got organizations and groups, like the International Association of Fire Chiefs, the National Volunteer Fire Council, the Congressional Fire Services Institute, the National Fallen Firefighters Foundation, the International Society of Fire Service Instructors, as well as the International Association of Fire Fighters. So we have great, great support from these very important organizations.

One of my friends and a real leader in Alaska is the president of the Alaska Professional Fire Fighters Association, Dominic Lozano. He has shared his endorsement of this measure.

He explains and says:

> Over the last few years, Alaska has faced record fire seasons across the state, making our firefighters, rescuers, and emergency medical workers as vital as ever. And whether the fires take place in urban or rural Alaska, our rugged terrain and harsh climate can make emergency response far more difficult. This bill will assist Alaska Fire Departments with hiring new firefighters to attain proper staffing levels as well as provide valuable equipment to agencies across the state.

I really appreciate Dominic's support for this measure.

I will tell you that I think we know that our firefighters have an extraordinarily difficult job, a dangerous job, a job that tasks them every day. I had an opportunity to participate in a VIP day, where we all donned the turnout suits and had the hats and had the opportunity to see how the ''jaws of life'' actually work.

We had the opportunity to go into a training facility that was built out to be a burning apartment building and to haul the hose from the truck, up the stairs, and into a burning room to put out the fire. I can tell you that those who went in to literally take the heat got a very, very, very small, small glimpse of what our firefighters go through every day.

I thank all of our firefighters. I thank our Alaska firefighters and all of those around the country for the tremendous and selfless work that they do in putting themselves in harm's way to protect our lives, our lands, and our communities. I am certainly committed to making sure that they have the resources to get home safely every single day.

I appreciate the leadership from Senator PETERS, Senator COLLINS, and Senator CARPER that they have put into this Fire Grants and Safety Act. Again, I am glad to cosponsor it with them and am glad to be able to give some short comments in support.

Our firefighters deserve this bill, and our communities need this bill. That should be enough for all of us to support it.

I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:20 p.m., adjourned until Wednesday, April 19, 2023, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 18, 2023:

DEPARTMENT OF DEFENSE

RADHA IYENGAR PLUMB, OF NEW YORK, TO BE A DEPUTY UNDER SECRETARY OF DEFENSE.

DEPARTMENT OF JUSTICE

AMY LEFKOWITZ SOLOMON, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ATTORNEY GENERAL.