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Senate

The Senate met at 1 p.m. and was called to order by the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado.

PRAYER

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

Let us pray.

Mighty God, have mercy upon us because of Your unfailing love. Because of Your great compassion let us feel Your presence today on Capitol Hill. As we gather with so much work left undone, guide our lawmakers with Your wisdom. Lord, show them the right thing to do and give them the courage to do it. Be their shelter in the midst of the storm, regardless of how high the waters rise. When they feel exhausted, remind them of the great sufficiency of Your grace. Look with favor on our Nation and save us from self-inflicted wounds.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MICHAEL F. BENNET led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 30, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

Mr. BENNET thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, there will be an hour of debate on the Galante nomination. At 2 p.m. there will be two rollcall votes on confirmation of the nominations of William Baer to be an Assistant Attorney General and Carol Galante to be an Assistant Secretary for HUD.

Following those votes, there will be a recess allowing for caucus meetings. The majority's meeting will begin at 3 o'clock today.

Would the Chair announce the business of the day.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF CAROL J. GALANTE TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT

NOMINATION OF WILLIAM JOSEPH BAER TO BE AN ASSISTANT ATTORNEY GENERAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of Carol J. Galante, of California, to be an Assistant Secretary of Housing and Urban Development, and William Joseph Baer, of Maryland, to be an Assistant Attorney General.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 60 minutes of debate equally divided in the usual form on the Galante nomination.

The Senator from California.

THE FISCAL CLIFF

Mrs. BOXER. Mr. President, as we stand here—or sit here—and watch what is happening, we know there are negotiations going on to avert at least part of the fiscal cliff. I want to say—I have said this privately, but I want to do it publicly—I hope our leaders can find a way out of this.

I watched the President speak today and I thought, as usual, he was very fair in what he said. What he basically said is it is the middle class that grows this economy. It is the middle class that needs to be lifted up. It is the middle class that cannot afford tax hikes. Those at the very top can do just a little bit more.

It is a very simple point. I hope, given that everyone says they are for the middle class—I know my colleagues on the other side of the aisle say that every day, that they agree with that—that finding this compromise will not be elusive but will come to pass.

I have been here for a while. My understanding is we have not met between Christmas and New Year's Day since 1962. So it does take a crisis of major proportions to make that happen. I think we are in a crisis right now, but it is a self-made one. It is a self-imposed one. It is similar to the crisis we had on the debt ceiling—self-imposed. It is not some, God forbid, exterior attack on our country which we

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

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could not prevent. It is not some, God forbid, plague or a terrible virus that is running across the land. To me it is something that is not that complicated.

As the President said, we have a series of tax cuts that are expiring. If we let them expire, it means there will be a huge tax increase, mostly hitting the middle class and the working poor. The upper incomes, the people in that category, have done so well that even they say they would have to talk to their accountant before they even knew there was any impact on their tax bill. So we can come together.

The President favored a limit which would be $250,000, meaning that everyone who earns up to that would get a tax break. Everybody's income up to $250,000 gets a tax break, everybody, 100 percent of the people. But those who are fortunate to have higher incomes would go back to the tax rates that prevailed when Bill Clinton was President.

Why the other side is horrified by that is perplexing to me. I look back at the Clinton era. I was here. That is a long time ago. I came to the Senate with Senator FEINSTEIN when Bill Clinton was President, and he faced similar issues in that we had a deficit that was getting out of control, a debt that was getting out of control. We needed to have growth. So he put forward a budget plan that invested in our people, invested in the infrastructure, invested in education, and at the same time said we can find cuts in other areas and we can raise taxes on those who are doing very well.

What happened with that fair and balanced approach? What happened was the greatest prosperity in modern history—23 million jobs, no more deficits, we got to a balanced budget. I remember saying to my husband: My goodness, what is going to happen? There will not be any more U.S. Government bonds because we are going to be out of the debt situation. We saw it on the horizon.

When George W. Bush became President, he decided to go back, backward on rates across-the-board, from the wealthiest to the middle to the poor, and he put two wars on a credit card and we are where we are.

To add to this history, we all know we are coming out of the worst recession since the Great Depression. It has been difficult. It was led by, unfortunately, some unscrupulous people on Wall Street who created a nightmare in the housing market. I remember saying to Treasury Secretary Paulson: Can you please explain the role of derivatives here and what happened and how we got into this crisis? He put his head in his hands and he said: Not now. I will talk to you later.

That is not very encouraging when the Secretary of the Treasury puts his head in his hands and says I can't explain it now.

We are coming out of this difficult time, and guess what. We are doing much better. We had an election. It was pretty clear. People want to see us reach a balance.

As I stand here, I know there are negotiations going on in the rooms surrounding us. I wish for the best, I hope for the best, and I ask for the best. There is a word called ''compromise.'' It doesn't mean you compromise your principles, but it means that you can compromise because that is what the American people want us to do. Yes; they do.

I wish to give an example. Say you were out hiking. Mr. President, in your State there are a lot of hikers. If you saw someone on a cliff, trapped, caught on a rope and you knew the only way to save the person was first to cut the rope—you are standing with someone else and you say: Cut the rope at the top. He says: Cut the rope at the bottom, and you stand there arguing; meanwhile, the man is struggling on this cliff: Get me down. Wouldn't it be smart to cut the rope in the middle and save the guy? You can argue later, should I have cut the rope at the top or the bottom—no, cut it in the middle, save the man.

That is a pretty simplistic example of where we are. But I have the privilege of knowing we can get it done when we work together. I was so proud to bring to this Senate a highway bill, a transportation bill. Millions of jobs were at stake. Our States were worried they would stop getting their highway funds. We would have had to stop road projects in the middle. We would not have had State funding for transit. But you know what happened. Senator INHOFE and I sat in a room. You could not find two more divergent people in their thinking, he a conservative Republican and I a progressive Democrat. We sat in a room and he said I want this, this, and this. I said I want that, that, and that. Then we said let's make a deal. Let's meet in the middle. We did it—much to everyone's surprise—and that bill passed the Senate.

When it got to the House, it got stuck. So Senator INHOFE and I and Senator REID went over to meet with JOHN BOEHNER and Chairman MICA and we all agreed we would get it done. Neither side got everything they wanted. Anyone who takes that position, in my opinion, is not putting country first. I don't care whether they are Republican, Democrat or anything else.

We are not, each of us, going to get everything we want, Lord knows. There is a lot I could do if I had a wand and could make it happen. But everybody has a different view of exactly how to go forward. I think we are being tested.

I know it is tough going. I know if we do not get a deal, it does not stop there; we will keep on working. But there is no reason on this beautiful, God's green Earth why we cannot get a deal. If everyone is sincere and saying they want the middle class to be protected, we can get a deal. President Obama says $250,000 is the line. Maybe I think $350,000 is the line; maybe someone else, $500,000; maybe someone else, $150,000. We can meet somewhere and cut that rope somewhere in the middle and save this country from the uncertainty that plagues us right now.

In the olden days—when I say ''olden,'' it is a long time ago—I was a stockbroker. I was an economics major and a stockbroker on Wall Street. The thing Wall Street and investors cannot take is uncertainty. If they know taxes are going up, they will refigure things. If they know taxes are going down, they will refigure things. If they know taxes are staying the same, they will figure it out. But right now they are frozen because they do not know. Families are also, in many ways, frozen. They do not know whether they have to budget so they will have $2,000 less next year. They do not know whether it will be $4,000. They don't know if it is ever going to change. The uncertainty is the fault of leaders who cannot get together. I think it is critical that we get a deal, and I hope it is in the next couple of hours.

I believe it was a reporter who asked me: What is the difference if it is done now or 5 days from now?

I said the difference is this uncertainty, this pall, and an unneeded escalating crisis.

Then someone might say: Well, we don't have to do it now. We will do it on January 4. Well, we don't have to do it on January 4; we will get it done on the 10th.

We need to get it done. America wants us to get it done.

The President has shown that he is willing to be flexible. He has come out with some ideas that I have to swallow—very hard—to accept. I know personally how strongly he feels that $250,000 should be where we draw the line when we allow tax breaks, but he was willing to offer $400,000. He was willing to look at changing some of our programs. It is very tough for him to do that, but he is willing to do that even though he ran on his program and won by millions of votes on his program.

So if the President can be flexible and say: OK, I will step back from everything I really want to do and move in the direction of the Republicans, then the Republicans need to move in our direction. I think we are going to be judged by whether we are going to be stuck in the mud because we just don't have the courage to change or whether we step forward at this moment. I think it should be this moment.

If we cannot get it done, I certainly hope we will have an up-or-down vote on the President's plan, which I feel was very fair. The President offered a plan. Do I like everything about it? Absolutely not. But he showed he is willing to take those steps. I would hate to think our colleagues would filibuster that and demand a 60-vote threshold as we go over this cliff.

The American people are hanging from the cliff, and we can let them

down very gently today and solve this problem. If all we do is stand and stay in our corners, I am very fearful the message is that we don't know how to meet each other halfway, and that is not a good thing. Voters are going to turn on those people who stand in their corners and don't move. That is not the role of legislators.

I will close with this. We have a different form of government than they have in Europe. This is not a parliamentary system. In a parliamentary system, one government rules everything, one party rules everything. They have the Prime Minister, the equivalent of the Speaker, and the leader all in one party, and then they don't compromise. They put their agenda there and get their program through. If there is a lack of confidence, the people can change parties. The next party then comes in and does what it wants. That is not what we do here.

Sometimes I wish it were the form of government we had because at least there would be some action and we would know what to expect. We would not have this uncertainty because each party has its dreams, its hopes, its plans, and they would have a chance to get those policies through. We don't have that here. We have to meet each other halfway because the House is run by the Republicans, and it will be next year. The Senate is run by the Democrats, but it is not a supermajority. We have to deal with our colleagues. The President is a Democrat. We have to work together. That is the name of the game.

If I can work with JIM INHOFE on the highway bill and DEBBIE STABENOW can work with PAT ROBERTS on the farm bill—and there are other examples I could give. For instance, Senator FEINSTEIN worked with her Republican counterpart. I could give many examples on the Appropriations Committee. We know we can do this. We just have to take a deep breath and put our egos aside for this country's sake and make those compromises that allow us to still stand tall. I am only 5 feet, so that's hard, but you get the point.

We can do this, and we should do it now. If we don't do it now, we should vote on the President's plan because the people of this country deserve better than to be left hanging on a cliff. They don't deserve that. It is not right.

Thank you very much.

I yield the floor, and I note the absence of a quorum. I ask that the time be equally divided between the two sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

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

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

Mr. ISAKSON. Happy New Year, Mr. President.

Mr. President, I rise to speak about the nominee for Commissioner of FHA, Carol Galante. I opposed her nomination earlier in the year because of some concerns about what the FHA may or may not do; however, I had no concern whatsoever about her qualifications or ability. She is coming up in the second vote today, and I want to put on the record my wholehearted support for the Senate reaching the 60 votes necessary to confirm her appointment, and I want to explain why.

There are some people in the Chamber who justifiably have concerns about the FHA, its liability on insurance and the fact that it is bearing so much of the burden on housing finance. But that is not the FHA's fault, that is the fault of Dodd-Frank. The restrictions on lenders would have forced FHA to be the lender of last resort—or most resort—for most American people. That is something we in the Senate have the ability to fix, but we should not punish a talented, experienced, well-qualified, and highly recognized individual who knows housing, both multi and single family, from being Commissioner of the FHA.

So I rise to say to any Member that if they have a problem with the FHA, don't take it out on Ms. Galante. Look at what happened after the passage of Dodd-Frank and the fact that the FHA had to take on the burden because there was no other alternative in housing finance. What we need to do, rather than defeating good nominees for office, is give those nominees the kinds of underpinnings where the laws allow capital to flow to the mortgage market through various and numerous entities so the whole burden doesn't have to be borne by the FHA and the U.S. Government.

I rise with pleasure to say I will vote in favor of Carol Galante as Commissioner of the FHA.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee

Mr. CORKER. Mr. President, I rise to speak behind the distinguished Senator from Georgia. He has more experience in the housing market than any Senator in the Senate and always speaks with eloquence and balance. I would like to second what he said.

I spent a lot of time with the nominee, Carol Galante. She is technically very proficient. Over the past 2 weeks she has put in place reforms that are very strong. It is just a start. I know a lot more needs to happen at FHA, but she has put in place some very significant reforms.

I know we have been losing billions of dollars at FHA—and I think seniors have been taking advantage of it—on something called a full-draw fixed-rate reverse mortgage. The advertisements for that have been on TV. The FHA has been losing its shirt over that program. She ended that program—or will end it by the end of January—on her own, along with doing some other things relative to debt-to-income. That is one example of why I think she is technically very proficient.

I know there are Members of this body today who may work against her because they are very dissatisfied with what has been happening at FHA. Candidly, much of that is due to us. We need to pass some legislation to deal with FHA, and we have been resistant to do that. I know JOHNNY ISAKSON, DAVID VITTER, and others in our body have been pushing for us to address that. I know the Presiding Officer serves on the Banking Committee with me, and we know reforms need to take place.

Here is what I would say. The main reason FHA is in the problem it is in is due to loans that were made back in 2006, 2007, 2008, and the beginning of 2009. What is happening is that the losses from those loans are just now kicking in. There is no question that FHA has some issues relative to their economic value, but there have been five increases in rates at FHA recently to try to get it back to where it needs to be.

So what I would say to my friends on this side of the aisle is that if we think the FHA can get better by not having a Commissioner, I find that to be kind of strange. She has been the Acting Commissioner since David Stevens left. It seems to me we would be much better having somebody in that position who is actually accountable and able to bring permanent staff with her. They know the issues that are going to need to be dealt with at FHA.

Again, I think I have spent about as much time with her as anybody in this body. I know Senator ISAKSON has done the same. I find her to be very technically proficient. Over the last few weeks I have seen her do some bold things relative to the debt-to-income ratio with some of the FHA participants. We need to do something about the loan amounts at FHA. They are at 729 now. At some point, they probably need to drop down once we get the rest of the market working in the fashion it should be.

I wholeheartedly support her in this position. There is a lot of work that needs to take place at the FHA. I think she is somebody who has the ability to carry that out. The biggest issue with FHA right now is this body and the folks down the hallway. We need to pass legislation to deal with overall housing finance. I know Senator ISAKSON from Georgia is going to be very involved with that. I hope to be involved, and my guess is the Presiding Officer is going to be involved as well.

My sense is that we need to have someone who is running the FHA to help it to work better. I hope my colleagues on this side of the aisle—hopefully many of them—will join in giving her strong support today and work closely with her to help the FHA to be the kind of place it ought to be. I agree with the Senator from Georgia in that

it should not have the market share it has today, but a big part of that has to do with our inaction in this body and our inability to thus far deal with GSE.

I hope many Members will join in supporting Carol Galante.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California

Mrs. BOXER. Mr. President, how much time remains on this side?

The ACTING PRESIDENT pro tempore. Thirteen minutes for the majority.

Mrs. BOXER. Will the Presiding Officer let me know when I have talked for 4 minutes.

The ACTING PRESIDENT pro tempore. The chair will let the Senator know.

Mrs. BOXER. Mr. President, I wish to thank Senator CORKER for his remarks and join in with his support for Carol Galante. She has a long and distinguished career of building and promoting affordable housing, and she is very well qualified.

She began her career as a housing coordinator for the city of Santa Barbara, rising to become the city's housing and redevelopment manager. I want to point out that Santa Barbara is a magnificent part of my State. I have a beautiful State. At the time, they didn't have much in the way of moderate-income housing, and that was part of the very important work she did.

She moved on to Eden Housing, a nonprofit affordable-housing developer, where she developed over 400 homes as a project manager. She eventually took over as executive director.

She later joined BRIDGE Housing as vice president, and in 1996 she took the helm of that organization as its president and chief executive. BRIDGE is the largest nonprofit developer of affordable-income and mixed-use developments in California. While she was there, Carol oversaw the creation of 13,000 affordable homes for more than 35,000 Californians and programs that helped one-fourth of their residents advance to home ownership because she knew that was the goal. Home ownership, even after all we have been through, is the dream, and she understands that.

So in 2009, President Obama appointed Carol as HUD's Deputy Assistant Secretary for multifamily housing programs where she oversaw a $50 billion portfolio of affordable and market rate multifamily properties through FHA's multifamily insurance program. At a time when support for housing was desperately needed, she took a smaller staff and grew annual lending from $2.5 billion to over $10 billion.

Carol has served for a year now as Acting Commissioner for FHA where she has worked to weed out bad lenders, ensuring greater stability of the reverse mortgage program, and increasing counseling resources for borrowers. As we look over what happened in the housing sector, we know people bought homes who shouldn't have bought homes, lenders took advantage of them, and everybody was in the mix in terms of why things went so sour.

Carol's accomplishments have been recognized through numerous honors, including inductions into the Hall of Fame for Bay Area business leaders in California. She has been recognized by California Home Building and the California Housing Consortium. So she gets support from everybody—from the builders, from the homeowners, from the renters.

Carol has the strong support of a broad coalition of housing advocates and lenders. I ask unanimous consent to have printed in the RECORD a letter from the Mortgage Bankers Association and a letter from what looks to be two or three dozen other housing organizations.

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

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

JULY 26, 2012.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
The Capitol, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
The Capitol, Washington, DC.

DEAR LEADERS REID AND MCCONNELL: The members of the Mortgage Bankers Association, the National Association of Home Builders, and the National Association of Realtors wish to offer our continued support of the nomination of Carol Galante to be Assistant Secretary for Housing and Federal Housing Administration (FHA) Commissioner at the U.S. Department of Housing and Urban Development (HUD).

FHA continues to play a critical role as the overall housing market struggles toward recovery. FHA is especially vital to homebuyers who may need a little ''extra help'' securing safe, decent, and affordable housing, focusing more on the needs of first-time, minority, and low- and moderate-income borrowers than any other national program. At present, approximately 77 percent of FHA-insured home purchase loans are made to first-time homebuyers, and 31 percent of these first-time homebuyers are minorities.

FHA has also played an important role in the financing of multifamily rental housing, which has enabled the construction and rehabilitation of needed affordable rental units, as private market sources of capital have not been available. Since FY2008, FHA's commitments in multifamily loans grew from $2 billion to $13 billion in FY2011. Because of its essential role in the current housing marketplace, FHA must have a seasoned leader to direct its mission at this crucial time in all geographic areas of the country.

Carol Galante will bring tremendous expertise and a deep commitment to strengthening FHA's program areas to the post of Commissioner. Her decades of work in affordable housing development and more recently, managing FHA's multifamily programs, give her a unique perspective on the issues facing our nation's housing and mortgage markets. This experience and practical understanding will serve her well in this new position.

Our organizations are eager to continue working with Ms. Galante in this capacity when she is confirmed, and we are pleased that the Senate reached an agreement to consider her nomination next week. We hope that the full Senate will approve her nomination when it comes to a vote. Thank you in advance for your consideration of these views.

Sincerely,

MORTGAGE BANKERS ASSOCIATION.
NATIONAL ASSOCIATION OF HOME BUILDERS.
NATIONAL ASSOCIATION OF REALTORS.

NOVEMBER 16, 2011.

Hon. TIM JOHNSON,
Chairman, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Dirksen Building, Washington, DC.
Hon. RICHARD SHELBY,
Ranking Member, Committee on Banking, Housing & Urban Affairs, U.S. Senate, Dirksen Building, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER SHELBY: The undersigned organizations strongly endorse the nomination of Carol J. Galante as Assistant Secretary for Housing/Federal Housing Commissioner. We believe her tenure as Acting Commissioner, Deputy Assistant Secretary for Multifamily Housing and her 31–year long private sector real estate experience has prepared her well to be the Assistant Secretary. We urge you to approve her nomination.

As Acting Commissioner, Ms. Galante already has had several impressive achievements. She spearheaded a major overhaul of the HUD Housing Counseling Program, including establishing the new Office of Housing Counseling. The changes to HUD's Housing Counseling Program will improve effectiveness, better target resources to maximize efficiency and ensure that HUD grant funds achieve maximum impact in the communities where they are invested.

She also prioritized a global review of the Home Equity Conversion Mortgage (HECM or reverse mortgage) program, including issuing guidance to the industry on the use of borrower financial assessments and analysis of other potential changes to ensure the long-term stability of this important program.

As the nation contends with the foreclosure crisis, Ms. Galante has ensured that taxpayers are protected from waste, fraud and abuse by holding lenders accountable for non-compliance with the Federal Housing Administration's (FHA) requirements. This included the November 1, 2011 suspension of Allied Home Mortgage Corporation and its President; the withdrawal of 11 lenders from FHA's program and the imposition of more than $1.5 million in civil money penalties on non-compliant lenders.

Lastly, she oversaw the publication of two significant Mortgagee Letters that outline changes to FHA's requirements for lenders, making FHA programs work more effectively for FHA's lender partners.

Prior to becoming Acting Commissioner, she led the Multifamily Housing Division of FHA, with 1600 employees and 53 field offices. Ms. Galante was responsible for a $50 billion portfolio of affordable and market rate multifamily properties through the FHA Multifamily Insurance Program, as well as the administration of the $9 billion Project Based Rental Assistance Program and the 202/811 grant programs for elderly and disabled housing.

And before she began her federal service, she was President and Chief Executive of BRIDGE Housing, California's largest nonprofit housing development corporation, and its affiliate companies. This included overseeing a Property Management company, an economic development corporation, senior

services and land development. BRIDGE is widely known as a leading practitioner using the best private sector business practices and entrepreneurial ideas to build affordable homes and apartments in a wide variety of communities.

As the nation's housing market remains fragile, we need Ms. Galante's demonstrated experience at FHA to provide leadership on and practical solutions to America's housing challenges. We urge you to approve Ms. Galante to take on this challenge.

Sincerely,

Affordable Housing Tax Credit Coalition; Center for American Progress Action Fund; Center for Responsible Lending; Consortium for Citizens With Disabilities Housing Task Force; Corporation for Enterprise Development; Corporation for Supportive Housing; Council of Large Public Housing Authorities; Council of State Community Development Agencies; Enterprise Community Partners, Inc.; Habitat for Humanity; Housing Assistance Council; Housing Partnership Network; LeadingAge; Local Initiatives Support Corporation; Low Income Investment Fund; McCormack Baron Salazar; Mortgage Bankers Association.

National Affordable Housing Management Association; National Alliance on Mental Illness; National Alliance to End Homelessness; National Association of Affordable Housing Lenders; National Association of Housing & Redevelopment Officials; National Association of Local Housing Finance Agencies; National Community Reinvestment Coalition; National Community Stabilization Trust; National Housing & Rehabilitation Association; National Housing Conference; National Housing Trust; National Leased Housing Association; National Low Income Housing Coalition; Self-Help; Stewards of Affordable Housing for the Future; The Community Builders; Volunteers of America.

Mrs. BOXER. Mr. President, I wish to read from a letter the majority and minority leaders received from the Mortgage Bankers Association, the National Association of Homebuilders, and the National Association of Realtors. These are the businesspeople, and this is what they said about her:

Carol Galante will bring tremendous expertise and a deep commitment to strengthening FHA's programs . . . Her decades of work in affordable housing development and more recently, managing FHA's multifamily programs, give her a unique perspective on the issues facing our nation's housing and mortgage markets.

So here we have a person who understands the business side, and she understands the renters and the owners.

The ACTING PRESIDENT pro tempore. The Senator has used 4 minutes.

Mrs. BOXER. I ask for an additional 30 seconds, please.

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

Mrs. BOXER. So we have someone who understands the business side, the renter side, and the home ownership side.

I am very proud this woman is a Californian. I know there are lots of issues within FHA, and we all have to work on them, and we have heard that from Senator CORKER. But, my goodness, we want someone who can work with us. She is the perfect person.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

In a short while the Senate will vote on two nominees for service in the executive branch of our government. I rise today to speak in support of one of those two, which is William Baer, who has been nominated to serve as Assistant Attorney General managing the Antitrust Division of the U.S. Department of Justice.

I happen to have come to know Bill Baer personally because he practices law in a firm with a very good friend and neighbor of mine here in Washington, and in that regard I can certainly testify to the fact that he is an honorable, interesting, enjoyable person. But that alone doesn't qualify him to hold this high office. He has extraordinary experience. I would say he is very widely acknowledged as one of the best antitrust lawyers in our country. I would say this nomination is really a merit selection nomination. I will get to that in a minute.

Bill Baer graduated from Lawrence University and the School of Law at Stanford University. He has served with distinction throughout his career, earning accolades such as recognition as the Washington, DC, Antitrust Lawyer of the Year by Best Lawyers, as well as one of the decade's most influential lawyers by the National Law Journal.

He is currently head of the Antitrust Practice Group of a very distinguished firm based in Washington, Arnold & Porter, and there he draws on his 35 years of experience in civil and criminal investigation to manage that firm's work in the areas of antitrust litigation, international cartel investigations, and merger and acquisition reviews.

In an earlier chapter in his life, Bill Baer served over several periods at the Federal Trade Commission, rising from a trial attorney during his first term there in 1975 to serve as assistant to the chairman, then assistant general counsel, and between 1995 and 1999 as Director of the Bureau of Competition.

Here is the point I think really speaks to the fact that Bill Baer's nomination to head the Antitrust Division is nonpartisan and based on his extraordinary capabilities. His nomination has received a letter of support signed by 12 prior Assistant Attorneys General for the Antitrust Division of the Department of Justice who served between 1972 and 2011, and these include people who have led the Antitrust Division from President Nixon through Presidents of both political parties, to President Obama. His nomination has also received a letter of support signed by each chair of the Section of Antitrust Law of the American Bar Association—those who have served as chair of that section between 1977 and 2011. So 29 of the most distinguished practitioners of antitrust law from all around the country, all different political persuasions, have written in support of this nomination.

I just wanted to take this opportunity to say it is an honor to not just thank the President for this nomination but to thank Bill Baer for being willing to leave a quite successful law practice to return to the service of our country in an area that is critically important to our free market economy in which he happens to be one of our Nation's foremost experts.

So I hope my colleagues will support the nomination of Bill Baer when it comes to a vote very soon this afternoon.

I thank the Chair, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SHELBY. Mr. President, I wish to take a few minutes this afternoon to explain why I will be opposing the nomination of Carol Galante and why I encourage my colleagues on both sides of the aisle to do the same.

This nomination is not one of the many ''go along to get along'' nominations we do so often in the Senate; this is a nomination that will have a direct effect on our constituents' pocketbooks and it demands, I believe, our serious attention today.

Carol Galante has been the Acting Assistant Secretary and Federal Housing Commissioner at the Department of Housing and Urban Development since July 2011. Therefore, this nomination vote, in a sense, will serve as a referendum of sorts on the current management of the Federal Housing Administration.

Ms. Galante, in her role as Acting FHA Commissioner, has failed to take serious actions to shore up the solvency and prevent a taxpayer bailout of the Federal Housing Administration that we know as FHA.

The latest actuarial report shows that FHA has a negative economic value, and a taxpayer bailout is most likely. Despite these warnings, FHA waited until April 2012 to raise additional premiums, and Secretary Donovan, the Secretary of HUD, has testified to the Senate Banking Committee that it will wait until next year to increase premiums by a meager 10 basis points despite having statutory authority to do more to protect the taxpayers.

Ms. Galante has denied the true severity of the problems at the FHA. In a New York Times piece last year, Ms. Galante said: ''[there] is no evidence or widespread prediction that home prices are going to decline to the kind of levels'' that would require a bailout.

Really? Yet although some prices have risen slightly, the FHA's financial position continues to deteriorate. Several experts now conclude that a taxpayer bailout is simply a matter of time.

The 2012 actuarial report and the disastrous state of FHA's finances led the Washington Post editorial board to conclude:

Right now the critics are starting to look pretty prescient. . . . Affordable possession of one's own home is the American dream. Government support for excessive borrowing has turned into a national nightmare.

The FHA's capital reserve is still well below the level determined by Congress to be the bare minimum to cover FHA's future losses. Even though FHA narrowly avoided a bailout this year, dangers remain in the years ahead due to its over $1 trillion exposure to risky loans and precarious economic conditions.

Most of the FHA's recent actions have only concealed these dangers. For example, instead of adequately raising insurance premiums over the life of the loan, FHA has increased upfront premiums to simply cover losses in the short term. Also, upfront premiums can be rolled into the mortgage principal balance, thereby decreasing equity for borrows who, in most cases, have little equity to begin with. Increasing the upfront premiums could make FHA loans even riskier for both the borrower and the taxpayer who stands behind the mortgages.

I believe it is time to face the reality that the Federal Housing Administration is dangerously undercapitalized, and because of the lack of serious reform FHA teeters on the brink of a bailout, as I have said.

Andrew Kaplan, a New York University economics professor said:

> They [the FHA] are doing very badly . . . there's no two ways about it. Over the next five years, there won't be enough of an economic recovery to fix FHA's finances. Not a chance.

A study by a Wharton professor estimates that an FHA bailout could cost between $50 billion and $100 billion and warned that only a ''quick and substantial economic and housing market recovery'' can avoid ''substantial losses for the American taxpayer.''

Data from the actuarial report shows that the serious delinquency rate for all FHA loans is 9.6 percent. The delinquency rates for loans originated in 2006, 2007, and 2008 are between 20 and 30 percent. Approximately 739,000 loans are seriously delinquent, an increase of over 100,000 loans from last year. If the borrowers of these delinquent loans all default on their mortgages, it would result in $57 billion in claims to the FHA. We hope that would not happen.

The FHA's latest quarterly report shows capital resources of $32 billion. It also states that cash flow from operations, which largely consists of premium revenues, covered only 80 percent of net claims last quarter.

The latest actuarial report in 2012 confirms that FHA's finances are dramatically worse than last year.

FHA's capital ratio has gone negative for the first time since 1991, and economic value is in excess of negative $16 billion. Last year the report projected a $9.4 billion value, representing a decline of $24.9 billion.

FHA's delinquencies continue to rise and continued high loan limits keep FHA's role in the market very broad. The projected loss on outstanding business is at an all-time $39 billion.

FHA is leveraged at 422:1—422:1—and has a sparse $2.55 billion equity cushion on its over $1 trillion portfolio. Think about it. FHA has underestimated its loan losses every year for the past 3 years.

In addition, since the Treasury Department already has so-called permanent and indefinite authority to provide funding for the FHA, a bailout of the FHA could occur without, as the Presiding Officer knows, any congressional vote. This is not a vote today to determine whether we support the President. This is also not a vote to determine whether we can vote in a bipartisan manner. I think this is a vote to determine whether we support the American taxpayer.

I believe Ms. Galante has demonstrated her inability to identify the multitude of problems at the FHA, and I believe it is incumbent upon us, on behalf of the American people—the taxpayers—to reject this nomination and demand real reforms at FHA and a nominee who represents and appreciates the urgency of this situation and a willingness to address it.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, very briefly—I know the Senator from Ohio wants to make some comments—I very much enjoy working with the Senator from Alabama. He has been outstanding on the Banking Committee, and I agree with almost every criticism he has made regarding the FHA. As a matter of fact, we have stood together trying to cause the housing industry to work much better than it is for not just those trying to purchase homes but, obviously, the American taxpayers to whom he just alluded.

But I wish to also point out something that was just said. One of the main reasons the FHA is in the problem it is in is the loans that were made in 2006, 2007, and 2008—long before this nominee was there. I agree this nominee needs to be more aggressive in making changes, and I agree that, even more so, this Congress needs to be more aggressive in making changes.

I ask unanimous consent that a letter from the nominee to myself regarding reforms that are being implemented between now and January 1 be printed in the RECORD.

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Washington, DC, December, 18, 2012.

Senator BOB CORKER,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR CORKER: Thank you for commitment to the health and stability of the Federal Housing Administration (FHA), as expressed most recently at the December 6, 2012 Senate Banking Committee and through your proposed amendment designed to strengthen and protect FHA's Mutual Mortgage Insurance Fund. Secretary Donovan and I share your concerns and I am committed to continuing to take aggressive action to rebuild the reserves of the Mutual Mortgage Insurance Fund, which have been so negatively impacted by the legacy loans insured by FHA—particularly those from the 2007–2009 vintages.

As you know, the actions we have taken to date, including those recently announced in our Annual Report to Congress, are designed to increase recoveries from this legacy book, price risk appropriately on new loans, and begin to shrink FHA's presence in the market. You and I agree, however, that more can and should be done to correct fundamental structural problems in FHA's reverse mortgage program (the Home Equity Conversion Mortgage, or HECM, program), and to refine FHA's risk profile so that both FHA and borrowers are better able to weather the difficulties of any future downturn in the housing market and economy. We are also committed to measures that facilitate the return of private capital to the market. I appreciate your strong advocacy to ensure that FHA takes the actions needed to restore its financial health. I would like to address each of the four critical policies you raised and the immediate actions FHA is taking to address them:

1. Minimum Credit Score for New FHA Loans: FHA is finalizing a formal policy directive (Mortgagee Letter) that will require borrowers with credit scores below 620 to have a maximum total debt-to-income (DTI) ratio no greater than 43 percent in order for their loan applications to be approved through FHA's TOTAL Scorecard, a system used by lenders to score the quality of an FHA loan application. If a borrower's DTI exceeds 43 percent, lenders will be required to manually underwrite the loan, and to document compensating factors that qualify the borrower for FHA-insured financing, such as a larger down payment or a higher level of reserves. Our preliminary data indicate that this requirement would reduce claim rates by approximately 20 percent for borrowers with credit scores of 620 or below. I believe this policy change will significantly strengthen the extent to which FHA is protected from unwarranted risk and borrowers are offered loans that are sustainable for them.

2. Moratorium on the Full-draw HECM Reverse Mortgage: Through the HECM program, seniors have access to a number of different product options. However, in recent years, several structural problems have developed that have altered the usage of FHA's HECM products, changing the risks associated with the program. While declining home prices and greater longevity of seniors have yielded greater projected losses, another major contributor has been the lack of a secondary market for these loans. There are many explanations for the evolution of these complexities, but the end result has been an increase in risk to both FHA and borrowers that must be rectified immediately. As discussed in our Annual Report to Congress, FHA is preparing a policy directive that would result in the immediate cessation of the use of the Standard Fixed Rate HECM product. This product currently represents a large majority of the loans insured through the HECM program, with the Variable Rate Standard product and the HECM Saver products (Fixed Rate and Variable) representing the balance. The amount that can be drawn under the Saver product is substantially less than under the Standard program, and the upfront fees to the borrower are all but eliminated for Saver loans. Eliminating the use of the Fixed Rate Standard program is an immediate stop gap measure, and FHA will also commence rulemaking to make several other important changes, including establishing formal guidelines for conducting financial assessments of borrowers and the creation of set-asides for payment of taxes and insurance.

3. Scale Back of FHA Market Share: In June 2012, FHA began administratively pricing mortgage insurance premiums for large loans (loans above $625,500) at a level 25 basis points higher than those with lower loan limits (150 bps compared to 125 bps). FHA, as mandated by Congress, is currently the only federal entity able to insure loans between $625,500 and $729,000. FHA is committed to taking steps to redirect this business to the private market where it has typically been served. With the premium increase we announced in November, these large loans will now be priced at the current statutory maximum for annual mortgage insurance premiums (155 bps). Further, FHA will implement a policy change that lowers the maximum loan-to-value ratio on loans above $625,500 to 95% from 96.5%, or in other words, raising the down payment from 3.5% to 5% for these loans. The combination of a higher down payment and higher mortgage insurance premiums for these loans will continue our efforts to drive this business to the private market.

4. Access to FHA Loans After a Foreclosure: Borrowers are able to access FHA-insured financing three years after they have experienced a foreclosure only if they have reestablished good credit and qualify for an FHA loan in accordance with the fully documented underwriting requirements for any FHA-insured mortgage origination. FHA is concerned that a few lenders are inappropriately advertising and soliciting borrowers with the false pretense that they can somehow ''automatically'' qualify after three years. First and foremost, FHA will step up its enforcement for FHA-approved lenders with regard to such advertising and remind them of their duty to fully underwrite loan applications in accordance with FHA guidelines. In addition, the credit score/DTI policy outlined above will be applicable to borrowers seeking to obtain FHA-insured financing following a foreclosure. Furthermore, FHA is committed to performing additional data analysis to determine if the original cause of a borrower's foreclosure was due to a one-time economic event, such as the loss of employment that has since been regained, and whether that results in any different or better performance than other reasons for foreclosure. This effort may inform future policies in this area. Finally, as discussed in our Annual Report to Congress, FHA is also committed to structuring a new housing counseling initiative that would apply to a number of borrower classifications, including borrowers with previous foreclosures.

Senator, I deeply appreciate the advocacy, focus, and concern you bring to ensuring that the Mutual Mortgage Insurance Fund is restored to financial health as rapidly as possible. I share your sense of urgency about these matters, and I commit to you that I will move on these additional actions by January 31, 2013, and I have confirmed that the Administration will support these new policies. You have my word on this and I expect to be held accountable to perform.

Sincerely,

CAROL J. GALANTE,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Mr. CORKER. Again, I wish to thank the Senator from Alabama for his comments regarding FHA. I agree; a lot has to change. I just think we are much better having a Director there to try to make those changes happen than not.

With that, I yield the floor and see the Senator from Ohio in the Chamber.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I thank the Senator from Tennessee, who is a valued member of the Banking Committee. I thank him for his comments in support of Ms. Galante's nomination, and I appreciate some of the criticisms Senator SHELBY offered. I wish to answer a couple of those but then move directly to Ms. Galante and concur in the support for Ms. Galante from Senator CORKER.

Two years ago, Senator BEGICH and I introduced an FHA reform bill which, unfortunately, because of people on the other side, has been blocked, for whatever reasons.

Two weeks ago, we tried to pass the FHA Emergency Fiscal Solvency Act—a commonsense reform measure that came out of the House of Representatives, sponsored by a Republican from Illinois, Congressman BIGGERT. She is the chair of the relevant House Financial Services Subcommittee. It passed the House on a suspension, 402 to 7—an unusual demonstration of bipartisanship in the House of Representatives.

Passing that bill would not have prevented action next Congress. Yet some of my colleagues again stand in the way of these taxpayer protections.

Let me turn to Ms. Galante and the reasons I am supporting her nomination.

As an Ohioan, I am inclined to support an Ohio Wesleyan graduate who is married to an Akron native. Obviously, more important than that, she has shown deep interest in the challenges facing the housing market in northeast Ohio, a place that has been devastated by a hollowing out of our manufacturing base and preyed upon by unscrupulous subprime lenders—for a period of more than a decade, I might add.

She has met with the Cuyahoga County Land Bank, the Cleveland Housing Network, city officials to hear about all the great work people are doing in northeast Ohio to rebuild the city's housing market. Some of the most innovative ideas in the country have come out of Cleveland and the land bank and the housing network.

After I sat down with her and shared stories of big banks that were allowing FHA properties in Cincinnati to fall into decay, FHA updated its servicing rules to hold these banks accountable.

FHA has selected Cleveland, Akron, and Canton for its next round of note sales. This program allows for the sale of distressed and delinquent FHA mortgages to parties that will rehabilitate the loans in order to help stabilize these neighborhoods.

Because of her many years of experience in housing and real estate and her commitment to addressing the crucial issues facing today's hardest hit cities—big cities and smaller cities alike—and what has happened to these housing markets, I urge a ''yes'' vote on the Galante nomination.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSON of South Dakota. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. JOHNSON of South Dakota. Mr. President, I rise in support of the nomination of Ms. Carol J. Galante to be HUD Assistant Secretary for Housing and Federal Housing Commissioner.

Carol Galante currently serves in the position for which she has been nominated. Prior to her designation as the Acting FHA Commissioner, Ms. Galante served as the Deputy Assistant Secretary for Multifamily Housing Programs, overseeing HUD's FHA multifamily portfolio as well as 1.6 million units of assisted housing.

The FHA is playing an important countercyclical role in the housing market, providing credit as private sources of capital have withdrawn. Much has been done by the administration and Congress to strengthen FHA's underwriting and fiscal position in recent years. However, as we have seen in a recent report on the financial status of the FHA, the legacy of loans insured in prior years still pose a threat to the fund that must be managed. It is important that the FHA have a confirmed management team in place to continue oversight of these legacy loans. Ms. Galante is a highly qualified nominee, and I urge my colleagues to confirm her without delay.

I yield the floor and suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

THE FISCAL CLIFF

Mr. MCCONNELL. Mr. President, my office submitted our latest offer to the majority leader last night at 7:10 p.m. and offered to work through the night to find common ground. The majority leader's staff informed us they would be getting back to us this morning at 10 a.m., despite the obvious time crunch we all have. It is now 2 p.m. We have yet to receive a response to our good-faith offer. I am concerned about the lack of urgency here. I think we all know we are running out of time. There is far too much at stake for political gamesmanship. We need to protect the American families and businesses from this looming tax hike.

Everyone agrees action is necessary. In order to get things moving, I have just spoken with the majority leader. I also placed a call to the Vice President to see if he could help jump-start the negotiations on his side. The Vice President and I have worked together on solutions before and I believe we can again.

I want my colleagues to know that we will keep everyone updated. The consequences of this are too high for the American people to be engaged in a political messaging campaign. I am interested in getting a result. I was here all day yesterday. As I indicated, we submitted our latest proposal at 7 p.m. last night. I am willing to work with whoever can help.

There is no single issue that remains an impossible sticking point. The sticking point appears to be a willingness, an interest, or, frankly, the courage to close the deal. I want everyone to know I am willing to get this done, but I need a dance partner.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we have been negotiating now for 36 hours or thereabouts. We did have conversations last night that ended late in the evening between the staffs. This morning we have been trying to come up with some counteroffer to my friend's proposal. We have been unable to do that.

I have had a number of conversations with the President. At this stage, we are not able to make a counteroffer. The Republican leader has told me that—he just said here that he is working with the Vice President. I wish them well. In the meantime, I will continue to try to come up with something, but at this stage, I do not have a counteroffer to make. Perhaps as the day wears on, I will be able to.

I will say that I think the Republican leader has shown absolute good faith. It is just that we are apart on some pretty big issues.

Mr. GRASSLEY. Mr. President, today, the Senate turns to the nomination of William Joseph Baer, of Maryland, to be an Assistant Attorney General. If confirmed he will head the Antitrust Division of the Department of Justice. In considering the confirmation of the President's nominees, I give the President great deference. I believe he should have great latitude in selecting his advisors and officers. But that does not mean that I will not make an independent determination of the nominee's qualifications and fitness for the job. I am not here to merely rubberstamp the President's desires. Factors that I consider relevant include respect for the Constitution, fidelity to the law, intellectual ability, personal integrity, and professional competence. In reviewing Mr. Baer's entire record, I was disappointed to find he does not meet this test. Therefore I will vote no on his confirmation.

Mrs. FEINSTEIN. Mr. President, I come to the floor to express my support for Carol Galante, who is from my home State of California, in her nomination for Commissioner of the Federal Housing Administration and Assistant Secretary for Housing.

The FHA Commissioner is directly responsible for oversight of the FHA insurance portfolio, which includes single family, multifamily housing and insured health care facilities. Carol Galante has been serving in an acting capacity since last year, but it is critical that she be confirmed by the Senate today.

While Acting FHA Commissioner, Carol Galante has made improvements to the long term health and position of the FHA. It is important that we confirm her to this position because continuing in an acting capacity adds to overall uncertainty in the market regarding the role of the FHA.

In the wake of the collapse of the housing bubble, the FHA has played a vital role in providing access to credit for worthy homebuyers looking to purchase a home. As the private mortgage insurance market pulled back, the FHA has stepped in to make sure that credit-worthy borrowers have the ability to get a mortgage.

Carol Galante has taken steps as the Acting Commissioner to help FHA better manage risk, bolster the Mutual Mortgage Insurance Fund and streamline programs to better enable FHA to fulfill its mission of contributing to the creation and growth of stable, sustainable, inclusive communities.

This includes placing a moratorium on the troubled full drawdown reverse mortgage program, increasing underwriting standards for riskier borrowers, and increasing down payment requirements and insurance premiums for higher balance mortgages.

I believe that these steps will help enhance the future solvency of the FHA while allowing the agency to fulfill its mission of providing low-income and first time homebuyers with access to affordable mortgage credit.

Carol Galante had decades of work experience in affordable housing development before she went to HUD to manage FHA's multifamily programs; this gives her a unique perspective on the issues facing our Nation's housing and mortgage markets.

In addition to her early work in the private sector in real estate development, ownership, and management, she worked for a number of California cities as a city planner and in community economic development.

These roles led to her eventual position for 25 years as president and chief executive of BRIDGE Housing Corporation, the largest nonprofit developer of affordable, mixed-income and mixed-use developments in California. While at BRIDGE, she helped create partnerships between government, private industry and nonprofits.

This blend of public and private experience has been extremely valuable for the Federal Housing Administration as it deal with both the private loan and mortgage industry.

Given her demonstrated and unique experience in the housing market, I strongly urge the confirmation of Carol J. Galante as Federal Housing Administration Commissioner and Assistant Secretary for Housing.

VOTE ON THE NOMINATION OF WILLIAM BAER

The PRESIDING OFFICER. Under the previous order, there is now 2 minutes of debate prior to a vote on the Baer nomination.

Who yields time?

Mr. REID. We yield back all time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William Joseph Baer, of Maryland, to be an Assistant Attorney General?

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachussetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Vermont (Mr. LEAHY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. DEMINT), the Senator from Nebraska (Mr. JOHANNS), the Senator from Illinois (Mr. KIRK), the Senator from Ohio (Mr. PORTMAN), and the Senator from Florida (Mr. RUBIO).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 26, as follows:

[Rollcall Vote No. 249 Ex.]

YEAS—64

Akaka	Graham	Nelson (FL)
Ayotte	Hagan	Paul
Baucus	Harkin	Pryor
Begich	Heller	Reed
Bennet	Johnson (SD)	Reid
Bingaman	Johnson (WI)	Rockefeller
Blumenthal	Klobuchar	Sanders
Boxer	Kohl	Schatz
Brown (MA)	Landrieu	Schumer
Brown (OH)	Lee	Shaheen
Cantwell	Levin	Snowe
Cardin	Lieberman	Stabenow
Carper	Lugar	Tester
Casey	Manchin	Toomey
Collins	McCaskill	Udall (CO)
Conrad	Menendez	Udall (NM)
Coons	Merkley	Warner
Corker	Mikulski	Webb
Durbin	Moran	Whitehouse
Feinstein	Murkowski	Wyden
Franken	Murray	
Gillibrand	Nelson (NE)	

NAYS—26

Barrasso	Enzi	McConnell
Blunt	Grassley	Risch
Boozman	Hatch	Roberts
Burr	Hoeven	Sessions
Coats	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Cornyn	Kyl	Wicker
Crapo	McCain	

NOT VOTING—10

Alexander	Kerry	Portman
Chambliss	Kirk	Rubio
DeMint	Lautenberg	
Johanns	Leahy	

The nomination was confirmed.

Mr. LEAHY. Mr. President, I am glad that the Senate voted to confirm the nomination of Bill Baer to serve as Assistant Attorney General in the Antitrust Division of the Department of Justice. His nomination has been pending for 10 months, and more than three

months have passed since the Judiciary Committee favorably reported his nomination with bipartisan support. The Antitrust Division has continued its important work with three acting heads who have worked diligently to fulfill the mission of the office. But those solutions are only temporary, and it is essential that the Senate undertook its constitutional responsibility to advise and consent on a permanent division head with responsibility for enforcing our Nation's antitrust laws.

Mr. Baer is an outstanding candidate to fulfill this role. He has spent over 35 years working in the field of antitrust and consumer protection law. He served as Director of the Bureau of Competition at the Federal Trade Commission in the 1990s, and now chairs the Antitrust Group at the law firm of Arnold & Porter. His nomination has received bipartisan support from leading practitioners of antitrust law, including 12 former heads of the Antitrust Division representing every presidential administration since 1972. His nomination has also received bipartisan support from 29 former chairs of the American Bar Association's Section on Antitrust Law, who praise his ''demonstrated ability as an antitrust lawyer and his outstanding record of public service.''

Bill Baer is a leading voice on antitrust matters. He advised the Antitrust Modernization Commission, and frequently contributes to workshops at the Department of Justice and FTC. He was named one of ''The Decade's Most Influential Lawyers'' by The National Law Journal in 2010, and the ''Leading Lawyer for Antitrust'' in 2011. Chambers, Who's Who, and the Legal 500 have all recognized him as one of our country's leading practitioners in antitrust law.

When the 12 former heads of the Antitrust Division wrote to the Senate Judiciary Committee in support of Mr. Baer's nomination earlier this year, they wrote: ''Mr. Baer's tenure as Director of the [FTC] Bureau of Competition was marked by principled, effective enforcement of the antitrust laws and . . . procedures that balanced the needs of the Commission with the legitimate concerns of both businesses and consumers. We are confident that he will continue the strong, rational, and nonpartisan antitrust enforcement tradition of the United States Department of Justice.''

After months and months of needless delays, Bill Baer can at last begin that important work to help protect the American people.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we had a brief colloquy, the Republican leader and I, before the vote. Now that everyone is on the floor, I will elaborate a little bit. We have one more vote today. Then we are both going to have our respective caucuses. We hope there will be an announcement after that. We will have to wait and see.

Over the last 24 hours, we have been working with Senator MCCONNELL's staff and Senator MCCONNELL to craft legislation to shield middle-class families from huge tax increases that could pass both Chambers on a bipartisan basis. But I wish to be clear. There are still serious differences between the two sides. I am only going to talk about one. We have made a lot of progress. I said earlier today, I appreciate very much Senator MCCONNELL's good-faith efforts, and I am confident he feels the same way about me.

The one thing I do want to mention is that we are not going to have any Social Security cuts. At this stage, that just doesn't seem appropriate. We are open to discussion about entitlement reforms, but we are going to have to take it in a different direction. The present status will not work. We are willing to make difficult concessions as part of a balanced comprehensive agreement, but we will not agree to cut Social Security benefits as part of a small or short-term agreement, especially if that agreement gives more handouts to the rich.

With 36 hours left until the country goes over the Cliff, I remain hopeful but realistic about the prospects of reaching a bipartisan agreement. At some point in the negotiating process it becomes obvious, when the other side is intentionally demanding concessions they know the other side is not willing to make, we are not there.

I hope we are going to be able to go further. Right now, with the status of the negotiations, we are not where we could come forward and say we have this for you. As I indicated, and just to make another statement in that regard, at some point in the negotiating process it appears there are things that stop us from moving forward. I hope we are not there, but we are getting real close, and that is why I still hold out hope we can get something done. I am not overly optimistic, but I am cautiously optimistic we can get something done.

I hope I have made it clear we have one vote. That is all we have. I hope later in the evening there will be another vote or two, but right now we don't have that. We have one scheduled vote, and that is taking place right now. But everybody should hang loose because something may break and we will be able to get something done.

VOTE ON NOMINATION OF CAROL J. GALANTE

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided prior to a vote on the nomination.

Who yields time?

Mr. REID. I yield back the remaining time.

The PRESIDING OFFICER. All time is yielded back. The question is, Will the Senate advise and consent to the nomination of Carol J. Galante, of California, to be an Assistant Secretary of Housing and Urban Development?

Mr. VITTER. 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 Massachusetts (Mr. KERRY), and the Senator from New Jersey (Mr. LAUTENBERG), are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from Illinois (Mr. KIRK), the Senator from Ohio (Mr. PORTMAN), the Senator from Tennessee (Mr. ALEXANDER), and the Senator from Georgia (Mr. CHAMBLISS).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 24, as follows:

[Rollcall Vote No. 250 Ex.]

YEAS—69

Akaka	Feinstein	Mikulski
Ayotte	Franken	Murkowski
Baucus	Gillibrand	Murray
Begich	Graham	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Pryor
Blumenthal	Hoeven	Reed
Blunt	Hutchison	Reid
Boxer	Isakson	Rockefeller
Brown (MA)	Johnson (SD)	Sanders
Brown (OH)	Johnson (WI)	Schatz
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Leahy	Stabenow
Casey	Levin	Tester
Coats	Lieberman	Thune
Coburn	Lugar	Udall (CO)
Collins	Manchin	Udall (NM)
Conrad	McCain	Warner
Coons	McCaskill	Webb
Corker	Menendez	Whitehouse
Durbin	Merkley	Wyden

NAYS—24

Barrasso	Heller	Risch
Boozman	Inhofe	Roberts
Cochran	Johanns	Rubio
Cornyn	Kyl	Sessions
Crapo	Lee	Shelby
Enzi	McConnell	Toomey
Grassley	Moran	Vitter
Hatch	Paul	Wicker

NOT VOTING—7

Alexander	Kerry	Portman
Chambliss	Kirk	
DeMint	Lautenberg	

The PRESIDING OFFICER. The 60-vote threshold having been achieved, the nomination is confirmed.

Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

VOTE EXPLANATION

• Mr. KERRY. Mr. President, I was necessarily absent for the votes on the nomination of Carol J. Galante to be Assistant Secretary at the Department of Housing and Urban Development and William Baer to be Assistant Attorney General at the Department of Justice. If I were able to attend today's session, I would have supported the nominations of Carol J. Galante and William Baer.•

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

RECESS

Mr. REID. Mr. President, I ask unanimous consent the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 3:05 p.m., recessed subject to the call of the chair and reassembled when called to order by the Presiding Officer (Mr. BROWN of Ohio.)

MORNING BUSINESS

Mr. REID. Mr. President, I was gratified to hear the Republicans taking their demand for Social Security cuts off the table. The truth is that they should never have been on the table to begin with.

There is still a significant difference between the two sides but negotiations continue. There is still time left to reach an agreement, and we intend to continue negotiations.

I ask unanimous consent that the Senate now proceed to a period of morning business for debate only, with Senators permitted to speak for up to 10 minutes each.

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

ORDER OF BUSINESS

Mr. REID. Mr. President, we are going to come in at 11 a.m. tomorrow morning. We will have further announcements, perhaps, at 11 o'clock in the morning. I certainly hope so.

The PRESIDING OFFICER. The senior Senator from Connecticut is recognized.

REPORT ON THE TERRORIST ATTACK AT BENGHAZI

Mr. LIEBERMAN. Mr. President, I guess the good news is that I am rising today not to speak about the fiscal cliff. What I am speaking about is not good news because it deals with the tragic event that occurred in Benghazi, Libya, on September 11, when terrorists took the lives of our Ambassador, Chris Stevens, and three other brave Americans who were serving us there.

I rise today, along with the ranking member of the Homeland Security and Governmental Affairs Committee, Senator COLLINS, to submit for the RECORD the report she and I have been working on with our staffs and other members of the committee following those events in Libya. We call this report ''Flashing Red: A Special Report On The Terrorist Attack At Benghazi.'' ''Flashing red'' is a term that was used in a conversation with us by an official of the State Department, and it could not have been more correct. All the evidence was flashing red that we had put American personnel in Benghazi in an increasingly dangerous situation, with violent Islamic extremists gathering there, with events having occurred, attacks on our mission there—two others prior that year. Yet we did not give them the security they needed to protect them, and we did not make the decision that I believe we should have made, since we did not provide them with the security, that we should have closed our mission there. As a result, people really suffered.

We recognize that the congressionally mandated Accountability Review Board at the Department of State has issued a report on the events in Benghazi. I think it was an excellent report. There are other committees of Congress continuing with their own investigations. Each of these will and should make a valuable contribution to our understanding of what happened at Benghazi so that we can take steps to make sure nothing like it ever happens again.

Under the rules of the Senate, the Committee on Homeland Security and Governmental Affairs has a unique mandate to investigate the effectiveness and efficiency of governmental agencies, especially when matters that span multiple agencies are involved.

Our report is intended to inform the Senate and the American people about events immediately before, during, and after the attack at Benghazi. In order to contribute most to the public debate, we have chosen to include only unclassified information in this report. We are hopeful that the report can and will make an important contribution to the ongoing discussions about how to better protect our diplomatic personnel abroad.

Our report contains 10 findings and 11 recommendations that we believe can help us better protect our diplomats and others who serve our country, often in very dangerous places. I ask unanimous consent that the full text of the report be printed in the RECORD.

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

(See exhibit 1.)

Mr. LIEBERMAN. Mr. President, this is probably the last opportunity I will have to do this, to thank the ranking member again for the extraordinary partnership we have had for more than a decade now on the Homeland Security and Governmental Affairs Committee. It is really meaningful to me that we have this last opportunity to do something together, across party lines, that we believe and hope will be in our national interest.

EXHIBIT 1

FLASHING RED: A SPECIAL REPORT ON THE TERRORIST ATTACK AT BENGHAZI

(By Joseph I. Lieberman, Chairman and Susan M. Collins, Ranking Member)

UNITED STATES SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

December 30, 2012

While our country spent September 11, 2012, remembering the terrorist attacks that took place 11 years earlier, brave Americans posted at U.S. government facilities in Benghazi, Libya, were fighting for their lives against a terrorist assault. When the fight ended, U.S. Ambassador to Libya John C. (Chris) Stevens and three other Americans were dead and U.S. facilities in Benghazi were left in ruin. We must remember the sacrifice that these selfless public servants made to support the struggle for freedom in Libya and to improve our own national security. While we mourn their deaths, it is also crucial that we learn from how they died. By examining the circumstances of the attack in Benghazi on September 11th, we hope to gain a better understanding of what went wrong and what we must do now to ensure better protection for American diplomatic personnel who must sometimes operate in dangerous places abroad.

We are cognizant that the Congressionally-mandated Accountability Review Board (ARB) of the Department of State has now issued its important and constructive report and that other Congressional committees are investigating the Benghazi attack as well. Each makes significant contributions to our collective understanding of what transpired and what we must do going forward.

The Committee on Homeland Security and Governmental Affairs (HSGAC), pursuant to its authority under Rule XXV(k) of the Standing Rules of the Senate, Section 101 of S. Res 445 (108th Congress) and Section 12(e) of S. Res 81 (112th Congress), has a unique mandate to investigate the effectiveness and efficiency of governmental agencies, especially when matters that span multiple government agencies are involved. Over the years, HSGAC has spent much time and dedicated considerable resources to understanding the challenges inherent in national security interagency relationships, and it is through this lens that we have examined and drawn lessons from the attack in Benghazi.

Since the 112th Congress is drawing to a close, this investigation has necessarily been conducted with a sense of urgency and with focused objectives. Our findings and recommendations are based on investigative work that the Committee has conducted since shortly after the attack of September 11, 2012, including meetings of members and staff with senior and mid-level government officials; reviews of thousands of pages of documents provided by the Department of State, Department of Defense, and the Intelligence Community (IC); written responses to questions posed by the Committee to these agencies; and reading of publicly-available documents.

In the report that follows we provide a brief factual overview of the attacks in Benghazi and then discuss our findings and recommendations.

BRIEF OVERVIEW OF THE BENGHAZI ATTACKS

The attacks in Benghazi occurred at two different locations: a Department of State ''Temporary Mission Facility'' and an Annex facility (''Annex'') approximately a mile away used by another agency of the United States Government. On September 11th, Ambassador Stevens was in Benghazi, accompanied by two Diplomatic Security (DS) agents who had traveled there with him. Also present were three other DS agents and a Foreign Service Officer, Sean Smith, who were posted at the Temporary Mission Facility (''facility'' or ''compound''). There were also three members of the February 17 Brigade, a Libyan militia deputized by the Libyan government but not under its direct control, and four unarmed local contract guards protecting the compound.

During the day on September 11th, the Ambassador held several meetings on the compound and retired to his room at approximately 9:00 p.m. local time. About 40 minutes later, several agents and guards

heard loud shouting, noises coming from the gate, as well as gunfire, and an explosion. A closed-circuit television monitor at the facility's Tactical Operations Center (''TOC'') showed a large number of armed people flowing unimpeded through the main gate. One of the DS agents in the compound's TOC triggered an audible alarm, and immediately alerted the U.S. Embassy in Tripoli and DS headquarters in Washington. These notifications were quickly transmitted from the Department of State to the Department of Defense. DS headquarters maintained open phone lines with the DS personnel throughout the attack. That same DS agent also called the Annex to request assistance from security personnel there, who immediately began to prepare to aid the U.S. personnel at the diplomatic facility.

When the attack commenced, four DS agents and Foreign Service Officer Smith were in or just outside the same building where the Ambassador was spending that night. A fifth DS agent was in the TOC when the terrorist attack began. Ambassador Stevens, Smith, and one DS agent sought shelter in the building's safe haven, a fortified area designed to keep intruders out, while the other three agents went to retrieve additional weapons and tactical gear such as body armor, helmets, and ammunition. After retrieving their gear, at least two of the DS agents sought to return to the building where the Ambassador was. On the way back, however, the DS agents encountered attackers. The lone DS agent with the Ambassador reported via radio that he was secure within the safe haven, allowing the two agents who had left in search of weapons to seek refuge in the same building where they had armed themselves. The third DS agent who had gone to the TOC to retrieve his gear, stayed there with the DS agent who had been manning the TOC since the beginning of the attack.

The attackers started to set several of the compound's structures on fire, using diesel fuel found on site, and groups of attackers tried to enter several buildings on the compound. The attackers did not succeed in entering the TOC, but did succeed in entering the building where Ambassador Stevens was staying and the building where the two DS agents were seeking refuge. No safe havens were breached during the initial assault. The attackers spread the diesel fuel throughout the building where the Ambassador was hiding, and ignited it, causing the building to fill with smoke.

When the smoke became so thick that breathing was difficult, the DS agent attempted to lead the Ambassador and Smith to escape through a nearby window. The agent opened the window to make sure it was safe to leave, and stepped out but then realized he had become separated from the Ambassador and Smith. The agent radioed the TOC, requesting assistance and returned numerous times to the building to look for the Ambassador and Smith. When the other agents arrived, they also took turns entering and searching the building. Though they were able to find and remove Smith's body, they were unable to find Ambassador Stevens.

After being notified about the attack, Annex personnel had attempted to contact the February 17 Brigade, other militias, and the Libyan government to ask for assistance. After gathering necessary weapons and gear, at approximately 10:04 p.m., six security personnel and a translator left the Annex en route to the facility. Prior to reaching the facility, they again attempted to contact and enlist assistance from the February 17 Brigade, other militias, and the Libyan government. By 10:25 p.m., the security personnel from the Annex had entered the compound and engaged in a 15-minute firefight with the armed invaders. The team reached the Ambassador's building at 10:40 p.m. but was unable to find him due to the intense fire and smoke.

At 11:15 p.m., the Annex security personnel sent the DS agents (who were all suffering from smoke inhalation from their continuous search for Ambassador Stevens and Smith) to the Annex, and followed there later, both groups taking fire while en route. By this time, an unmanned, unarmed surveillance aircraft began circling over the Benghazi compound, having been diverted by the Department of Defense from its previous surveillance assignment over another location. Soon after the Americans returned to the Annex, just before midnight, they were attacked by rocket-propelled grenade (RPG) and small arms fire. The sporadic attacks stopped at approximately 1:01 a.m.

U.S. government security personnel who were based in Tripoli had deployed to Benghazi by chartered aircraft after receiving word of the attack, arriving at the Benghazi airport at 1:15 a.m. They were held at the airport for at least three hours while they negotiated with Libyan authorities about logistics. The exact cause of this hours-long delay, and its relationship to the rescue effort, remains unclear and merits further inquiry. Was it simply the result of a difficult Libyan bureaucracy and a chaotic environment or was it part of a plot to keep American help from reaching the Americans under siege in Benghazi?

The team from Tripoli finally cleared the airport and arrived at the Annex at approximately 5:04 a.m., about ten minutes before a new assault by the terrorist began, involving mortar rounds fired at the Annex. The attack concluded at approximately 5:26 a.m., leaving Annex security team members Tyrone Woods and Glen Doherty dead and two others wounded. The decision was then made to leave the Annex. Libyan forces, not militia, arrived around 6:00 a.m. with 50 vehicles and escorted the Americans to the airport. Two planes carrying all remaining U.S. personnel then left Benghazi. The first flight departed between 7:00 a.m. and 7:40 a.m. (agency timelines vary on this point) and the second at 10:00 a.m.

American government officials outside of Benghazi learned of the attack shortly after it started at 3:40 p.m. EST (9:40 p.m. Benghazi time). DS agents, in addition to notifying personnel at the Annex, immediately alerted officials at the U.S Embassy in Tripoli and the Department of State Headquarters in Washington, D.C. As noted earlier, the U.S. Africa Command (AFRICOM) at the Department of Defense (DOD) directed an unarmed surveillance aircraft to the skies over the Benghazi compound at 3:59 p.m. EST. It arrived there at 5:10 p.m. EST (11:10 p.m. Benghazi time). At 4:32 p.m., the National Military Command Center in the Pentagon alerted the Office of the Secretary of Defense and the Joint Staff, and the information was shared with Secretary of Defense Leon Panetta and Chairman of the Joint Chiefs of Staff, General Martin Dempsey. Secretary Panetta and General Dempsey were at the White House for a previously scheduled meeting at 5:00 p.m. and so were able to brief the President on the developments in Benghazi as they were occurring.

From 6:00 to 8:00 p.m. EST, Secretary Panetta met with senior DOD officials to discuss the Benghazi attack and other violence in the region in reaction to the anti-Muslim video. The Secretary directed three actions: 1) that one Fleet Antiterrorism Security Team (FAST) platoon stationed in Rota, Spain, deploy to Benghazi and that a second FAST platoon in Rota prepare to deploy to Tripoli; 2) that U.S. European Command's In-extremis Force, which happened to be training in central Europe, deploy to a staging base in southern Europe; and 3) that a special operations force based in the United States deploy to a staging base in southern Europe. The National Command Center transmitted formal authorization for these actions at 8:39 p.m. A FAST platoon arrived in Tripoli the evening (local time) of September 12th, and the other forces arrived that evening at a staging base in Italy, long after the terrorist attack on the U.S. facilities in Benghazi had ended and four Americans had been killed.

KEY FINDINGS AND RECOMMENDATIONS

Finding 1. In the months leading up to the attack on the Temporary Mission Facility in Benghazi, there was a large amount of evidence gathered by the U.S. Intelligence Community (IC) and from open sources that Benghazi was increasingly dangerous and unstable, and that a significant attack against American personnel there was becoming much more likely. While this intelligence was effectively shared within the Intelligence Community (IC) and with key officials at the Department of State, it did not lead to a commensurate increase in security at Benghazi nor to a decision to close the American mission there, either of which would have been more than justified by the intelligence presented.

Security decisions concerning U.S. facilities and personnel overseas are informed by several different types of information, including classified threat reporting from the IC; cables and spot reports from U.S. diplomatic posts, which describe local incidents and threats; and publicly available information. Prior to the attack, the IC and the Department of State were aware of the overall threat landscape in Libya and the challenges facing the new Libyan government in addressing those threats. This understanding evolved over time, consistent with broader changes in the nature of the threat, and also based on reported incidents and attacks in Benghazi and other parts of Libya in 2012.

The Committee has reviewed dozens of classified intelligence reports on the evolution of threats in Libya which were issued between February 2011 and September 11, 2012. We are precluded in this report from discussing the information in detail, but overall, these intelligence reports (as the ARB similarly noted) provide a clear and vivid picture of a rapidly deteriorating threat environment in eastern Libya—one that we believe should have been sufficient to inform policy-makers of the growing danger to U.S. facilities and personnel in that part of the country and the urgency of them doing something about it. This information was effectively shared by the IC with key officials at the Department of State. For example, both the Deputy Assistant Secretary of State for International Programs in the Bureau of Diplomatic Security, Charlene Lamb, who was responsible for the security at more than 275 diplomatic facilities, and former Regional Security Officer (RSO) for Libya Eric Nordstrom, who was the principal security adviser to the U.S. Ambassador in Libya from September 21, 2011 to July 26, 2012, told the Committee that they had full access to all threat information from the IC about eastern Libya during the months before the attack of September 11, 2012. Yet the Department failed to take adequate action to protect its personnel there.

This classified intelligence reporting was complemented by open-source reporting on attacks and other incidents targeting western interests in Libya during the months prior to the September 11, 2012 attack. The RSO in Libya compiled a list of 234 security incidents in Libya between June 2011 and

July 2012, 50 of which took place in Benghazi. The document describes an array of incidents, including large-scale militia clashes, protests involving several hundred people, and the temporary detention of non-governmental organization (NGO) workers and of U.S. diplomatic personnel in Benghazi. Under Secretary for Management Patrick Kennedy noted in a briefing for the Committee, that Libya and Benghazi were ''flashing red'' around the time of the attack.

The incident reporting shows that western facilities and personnel became an increasing focus of threats in the spring of 2012. For example, on April 2, 2012 in Benghazi, a British diplomatic vehicle was attacked by a mob of demonstrators. Four days later, on April 6th, a crude improvised explosive device (IED) was thrown over the wall of the U.S. facility in Benghazi, causing minimal damage. A spot report on the day of the event stated that shortly after the event two individuals were questioned. The suspects included one current and one former guard employed by Blue Mountain Group, the company which supplied the unarmed Libyan contract guards responsible for screening visitors to the U.S. compound—underscoring the potential risk of an insider threat in Benghazi. Four days after that, on April 10th, also in Benghazi, a crude IED was thrown at the convoy of the United Nations Special Envoy to Libya.

Other publicly reported incidents occurred during this time frame, but there are four that we believe are particularly noteworthy. Taken as a whole, they demonstrated the capability and intent of Benghazi-based Islamist extremist groups to conduct a significant attack against U.S. or other western interests in Libya:

On May 22, 2012, the International Committee for the Red Cross/Red Crescent (ICRC) building in Benghazi was hit by two RPG rounds, causing damage to the building but no casualties. Several days later, the Brigades of the Imprisoned Sheikh Omar Abdel Rahman claimed responsibility for this attack, accusing the ICRC of proselytizing in Libya.

On June 6, 2012, the U.S. Temporary Mission Facility in Benghazi was targeted by an IED attack that blew a hole in the perimeter wall. Credit for this attack was also claimed by the Brigades of the Imprisoned Sheikh Omar Abdel Rahman, which said it carried out the attack in response to the reported drone strike on al Qaeda leader Abu Yahya al-Libi in Northern Waziristan.

On June 11, 2012, an attack was carried out in Benghazi on the convoy of the British Ambassador to Libya. Attackers fired an RPG on the convoy, followed by small arms fire. Two British bodyguards were injured in the attack. This attack was characterized afterwards in an incident report by the Department of State's Bureau of Diplomatic Security as a ''complex, coordinated attack.''

On June 18, 2012, the Tunisian consulate in Benghazi was stormed by individuals affiliated with Ansar al-Sharia Libya (AAS), allegedly because of ''attacks by Tunisian artists against Islam.''

Overall, the threat to western interests in eastern Libya and in Benghazi specifically was high even prior to the attack of September 11, 2012. Reviewing these incidents, an unclassified open source report by a contractor to AFRICOM noted in July 2012 that:

''Nonetheless, Benghazi has seen a notable increase in violence in recent months, particularly against international targets. These events point to strong anti-Western sentiments among certain segments of the population, the willingness of Salafi-jihadi groups in the city to openly engage in violence against foreign targets, and their capacity to carry out these attacks.''

Taking classified reporting on the increasing dangers in eastern Libya together with the open source incidents should have provided a clear picture of the dangers for American personnel in Benghazi unless their security were greatly improved.

Finding 2. Notwithstanding the increasingly dangerous environment in eastern Libya in 2011 and 2012, the U.S. government did not have specific intelligence of an imminent attack on the U.S. mission in Benghazi. The lack of such actionable intelligence may reflect a failure in the IC to focus sufficiently on terrorist groups that have weak or no operational ties to core al Qaeda and its main affiliates.

While the IC had developed and adequately shared general threat information on terrorist groups and Islamist extremist militias in eastern Libya prior to the attack, it did not have specific warning that this attack was to take place on September 11, 2012. Intelligence capabilities that provide early, specific warnings have played a critical role in preventing terrorist attacks against U.S. facilities overseas and in the homeland in the last decade. There were no such warnings available for Benghazi before the attack of September 11, 2012. Why?

First, there may not have been significant or elaborate advance planning for the attack. In a hearing before our Committee on September 19, 2012, National Counterterrorism Center (NCTC) Director Matthew Olsen described the attack as ''opportunistic'' and stated that the IC had no indication of ''significant advanced planning or coordination for this attack.''

However, the activities of local terrorist and Islamist extremist groups in Libya may have received insufficient attention from the IC prior to the attack, partially because some of the groups possessed ambiguous operational ties to core al Qaeda and its primary affiliates. For example, public statements by Libyan officials and many news reports have indicated that Ansar al-Sharia Libya (AAS) was one of the key groups involved in carrying out this attack on the U.S. facility in Benghazi. The group took credit on its own Facebook page for the attack before later deleting the post. U.S. officials viewed AAS prior to the attack as a ''local extremist group with an eye on gaining political ground in Libya.'' AAS has not been designated as a foreign terrorist organization by the U.S. government, and apparently the IC was ''not focused'' on this group to the same extent as core al Qaeda and its operational affiliates.

This finding has broader implications for U.S. counterterrorism activities in the Middle East and North Africa. With Osama bin Laden dead and core al Qaeda weakened, a new collection of violent Islamist extremist organizations and cells have emerged in the last two to three years. These groups are not all operationally linked to core al Qaeda or in some cases have only weak ties to al Qaeda. This trend is particularly notable in countries such as Libya, Egypt, Tunisia, and Syria that are going through political transition or military conflict as a result of the political upheavals referred to as the ''Arab Spring.''

While such groups do not always have strong operational ties to al Qaeda, they adhere to a similar violent Islamist extremist ideology. As an unclassified August 2012 report by the Library of Congress noted, AAS in Libya shares common symbols (the black flag) and ideology with al Qaeda. This Committee has spent several years focusing on the role that this ideology plays in motivating homegrown violent Islamist extremists, most of whom have no direct ties to al Qaeda. A similar phenomenon, though potentially much more dangerous, is at work with respect to many of these nascent terrorist groups, and is leading many of them to shift their focus from local grievances to foreign attacks against U.S. and other western facilities overseas.

Recommendation: U.S. intelligence agencies must broaden and deepen their focus in Libya, and beyond, on nascent violent Islamist extremist groups in the region that lack strong operational ties to core al Qaeda or its main affiliate groups. One benefit of doing so would be improved tactical warning capabilities, the kind of which were not present at Benghazi, but might have been even for an ''opportunistic'' attack.

Finding 3. The absence of specific intelligence about an imminent attack should not have prevented the Department of State from taking more effective steps to protect its personnel and facilities in Benghazi.

This finding reflects earlier conclusions of the 1985 Advisory Panel on Overseas Security (''Inman Report'') and the 1999 Accountability Review Board report on the attacks on the U.S. embassies in Kenya and Tanzania, which both warned the Department of State against becoming too reliant on tactical intelligence to determine the level of potential terrorist threats. The Inman report points out that ''it would be foolhardy to make security decisions on the basis of an expectation of advance warning of peril.''

Deputy Assistant Secretary Charlene Lamb stated that the level and kind of attack at Benghazi was something they had never seen before anywhere in the world. However, given clear warnings that threats were increasing in the Benghazi area, the Department of State should not have waited for a specific incident to happen or expected the delivery of tactical intelligence of a specific, imminent threat before taking additional steps to protect its diplomats or, if that was not possible, to close the Benghazi facility.

Recommendation: In providing security for its personnel around the world, the Department of State must fully consider the types of attacks that could take place given the strategic threat environment, even in the absence of imminent warning intelligence.

Finding 4. Prior to the terrorist attacks in Libya on September 11, 2012, it was widely understood that the Libyan government was incapable of performing its duty to protect U.S. diplomatic facilities and personnel, as required by longstanding international agreements, but the Department of State failed to take adequate steps to fill the resulting security gap, or to invest in upgrading the Libyan security forces.

A host country's responsibility to protect and safeguard a foreign nation's diplomatic personnel and facilities in its country has been codified in several international treaties, including the 1963 Vienna Convention on Consular Relations, which states that ''[t]he receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.'' The Treaty also states that ''[t]he receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.''

A host country's protection of an American embassy or other diplomatic facilities is one of the most important elements of security at that facility, but it is not the only one. A facility's own security, such as its U.S. Marine Corps Security Guards, DS agents, and in some cases, private security guards under contract, is also critical to its overall security posture. States whose governments do not exercise full control over their sovereign territory, or that have a limited security capability, cannot be counted

on to safeguard U.S. diplomatic personnel and facilities. This is usually true, of course, in the aftermath of a revolution or civil war—as was the case in Libya—where the provision of protective services by the host nations is unpredictable at best. In those instances, the Department of State must improve one or more of the other three protectors of mission security within its control: Marine Corps Security Guards, Dipolmatic Security agents, or private security contractors.

In February 2011, the revolution began to end Colonel Muammar al-Qadhafi's autocratic rule of Libya. Between February and October of 2011, Libya was consumed with intense fighting between anti-government groups and Qadhafi's regime. On October 20, 2011, opposition forces conquered the last Qadhafi stronghold in Sirte and killed Qadhafi. Qadhafi's death ended the revolt but left open the question of who would govern Libya and how.

Just days after Qadhafi's death, Libyans turned to the interim Transitional National Council (TNC), established in the spring of 2011, to improve security and begin the process of reconstituting national institutions. However, the TNC faced numerous challenges and ''struggled to calm the incendiary regional and factional disputes or exert control even over its own militias.'' Since no cohesive opposition group emerged from the civil war, the TNC had to contend with various armed factions that ''remained a law unto themselves.''

On July 7, 2012, Libyan voters participated in the first national election since 1965 and elected 200 members to the General National Congress. The election of the General National Congress represented a significant political achievement, but the formation of a new government was still under negotiation when the attacks in Benghazi occurred three months later in September. Civil order had not yet been restored. According to one expert review, ''[a]ttacks on international targets, a series of aggressive attacks by armed Salafists on religious buildings around the country, and an assassination campaign against senior security officers have fueled widespread criticism of interim leaders since early 2012.''

Given the unstable political and security situation, particularly in eastern Libya, the Libyan government was unable to provide security protection to foreign diplomatic facilities in a manner consistent with international law. That is why the Department of State relied in part on a local militia, the February 17 Brigade, to provide protection for the Benghazi facility, as well as unarmed Libyan guards under contract with a private security firm. Throughout 2012, Department of State officials questioned the February 17 Brigade's competence and expressed concerns about its abilities. U.S. Department of State personnel were also concerned about the involvement of members of the February 17 Brigade in the extrajudicial detention of U.S. diplomatic personnel in at least one incident in Benghazi. Eric Nordstrom, told the Committee that while the February 17 Brigade did provide some protection and would likely respond to an attack, they clearly needed additional training. Only limited training ever occurred.

Some U.S. personnel also questioned the Brigade's loyalty to the Libyan government and their capacity or desire to safeguard American interests. In June 2012, an RSO in Benghazi wrote, ''Unfortunately, given the current threat to the diplomatic mission, the militia members not currently on the [four-man team stationed at the facility] have expressed concern with showing active open support for the Americans in Benghazi.'' Notably, the contract between the State Department and the February 17 Brigade had expired by the time of the attack. In a handoff email to his replacement on August 29, 2012, the principal U.S. diplomatic officer in Benghazi wrote that the contract with the militia ''lapsed several weeks ago'' but that they were still operating under its terms. He said that ''[t]his is a delicate issue, as we are relying on a militia in lieu of the central authorities and [Feb 17 Brigade] has been implicated in several of the recent detentions. We also have the usual concerns re their ultimate loyalties. But they are competent, and give us an added measure of security. For the time being, I don't think we have a viable alternative.'' In early September, a member of the February 17 Brigade told another RSO in Benghazi that it could no longer support U.S. personnel movements. The RSO also asked specifically if the militia could provide additional support for the Ambassador's pending visit and was told no.

The ability of the Libyan government to provide surge forces to rescue or evacuate personnel from the Benghazi facility was also extremely limited. The Department of State recognized this limitation. As early as February 1, 2012, RSO Nordstrom stated in a memo to his superiors that the political situation in post-revolution Libya ''was fragile'' and that ''[m]any basic state institutions, including emergency services and tourist facilities are not yet fully operational.''

Nordstrom noted that ''various factions and militias continue to vie for power in the absence of a stable political and security environment, often resulting in violence.''

This view of the Libyan government's inadequate security capabilities persisted through the attack on September 11, 2012. Communications from U.S. personnel in Libya continued to repeat the same conclusions stated by Nordstrom earlier in February. For instance, an early August cable from the Tripoli Embassy to the Department of State in Washington, states that even though the TNC had established a Supreme Security Council (SSC) to stabilize the security situation in Benghazi, its own commander had said that the SSC had ''not coalesced into an effective, stable security force.'' Further, the cable warned that the ''absence of a significant deterrence, has contributed to a security vacuum that is being exploited by independent actors.'' Similarly, an August 20, 2012 security update reported that other diplomats believed the SSC was '''fading away,' unwilling to take on 'anyone with powerful patrons from powerful tribes.'''' That same month, DS personnel reviewing tripwires for an ordered departure of the post—that is, political, security, and intelligence benchmarks which would prompt diplomatic officials to close a facility or modify its operations—stated that ''[m]ission opinion is that Libyan security forces are indifferent to the safety needs of the U.S. mission.'' On September 11, 2012, the day of the attack, the ''Weekly Report'' prepared by Department of State officers on the security situation in Benghazi described the frustrations of an SSC commander that the police and security forces were ''too weak to keep the country secure.''

Prior to Ambassador Stevens' visit to Benghazi in September 2012, the U.S. mission in Benghazi had made a request to the Libyan Ministry of Foreign Affairs for additional security in Benghazi to support the visit. At a minimum, these requests included appeals for a 24/7 police presence consisting of a vehicle and personnel at each of the compound's three gates. The only Libyan government response appears to have been an SSC police vehicle parked in front of the front gate (which, as the ARB noted, sped away as the attack began).

Though a few members of the February 17 Brigade and the Libya Shield militia assisted the Americans on the night of the attack, the security that these militias and the local police provided to U.S. personnel was woefully inadequate to the dangerous security environment in Benghazi.

The unarmed local contract guards also provided no meaningful resistance to the attackers. The Department of State's Inspector General had previously found that concerns about local security guards were not limited to Libya. A February 2012 Department of State Inspector General (IG) report found that more than two-thirds of 86 diplomatic posts around the world surveyed reported problems with their local guard contractors. Of those posts that reported problems with their contractors, 37 percent said there was an insufficient number of local guards and 40 percent said there was insufficient training. The IG found that overseas diplomatic posts, particularly those in high-threat situations beyond Iraq, Afghanistan, and Pakistan urgently needed best-value contracting, which takes into account the past performance of contractors.

Recommendation: When it becomes clear that a host nation cannot adequately perform its functions under the Vienna Convention, the Department of State must provide additional security measures of its own, urgently attempt to upgrade the host nation security forces, or decide to close a U.S. Diplomatic facility and remove U.S. personnel until appropriate steps can be taken to provide adequate security. American personnel who serve us abroad must often work in high risk environments, but when they do, we must provide them with adequate security. That clearly was not the case in Benghazi on September 11, 2012.

Recommendation: The Department must conduct a review of its local guard programs and particularly the use of local guard contractors at high-risk posts who do not meet appropriate standards necessary for the protection of our personnel or facilities.

Finding 5. The Benghazi facility's temporary status had a detrimental effect on security decisions, and that fact was clearly known by DS personnel in Benghazi and to their superiors who nevertheless left the American personnel in Benghazi in this very dangerous situation. The Department of State did not take adequate measures to mitigate the facility's significant vulnerabilities in this high-threat environment.

The Department of State opened the temporary mission in Benghazi in 2011 after the revolution against the Qadhafi government began because eastern Libya was the headquartes of the opposition to Qadhafi, and the embassy in Tripoli had been closed due to security concerns. The temporary mission was first located in a hotel and then moved, based on security concerns, to the compound referred to as the Temporary Mission Facility. After the U.S. Embassy was reopened in Tripoli when Qadhafi was overthrown, the Department of State initially planned to close the Benghazi facility in late 2011. However, in December 2011, the Department decided to extend its presence in Benghazi until December 2012. In the memo approving this decision, the Department stated that the facility would be a ''smaller operation'' but noted its importance to eastern Libyans and the assistance it could provide to the embassy in Tripoli.

The temporary status of the Benghazi facility contributed to its vulnerability. For example, DS agents stationed in Benghazi were always on temporary duty assignments, remaining there for relatively short periods, often no longer than a month. As Nordstrom noted, having temporary duty agents made ''developing security procedures, policies,

and relationships more difficult.'' The temporary status also made it difficult to procure funds for security upgrades. A briefing paper prepared for a meeting of Assistant Secretary of State for Diplomatic Security Eric Boswell and then-Ambassador to Libya Gene Cretz noted, ''Due to the ambiguity surrounding the duration of the U.S. Mission in Benghazi, RSO Benghazi has encountered funding issues for projects that are commonplace at most U.S. missions.'' The Committee received conflicting evidence with regard to whether the temporary Benghazi facility was on the Security Environment Threat List—a semiannual document that aids DS management in the allocation of overseas security resources and programs. In any event, it is hard to imagine there were more than a few Department of State missions anywhere in the world that were in a more dangerous environment than Benghazi.

In the December 2011 memo approving the Temporary Mission Facility in Benghazi, the Department of State noted the need for corrective security measures for the facility. According to RSO Nordstrom, the Department of State never consulted with him about the security requirements of the facility before the December 2011 action memo was sent to Under Secretary Kennedy for approval. The memo approved by Kennedy indicated that the Department of State would ''rapidly implement a series of corrective security measures as part of the consolidation of the State footprint.'' However, the memo lacked details as to the security standards to be followed and the resources required to implement the security measures. The absence of dedicated resources contributed to the constraints under which those in Washington and Benghazi would operate throughout 2012.

During 2012, however, the Department did make a variety of field expedient security enhancements, including:

The installation of concrete jersey barriers;

The installation of four vehicle barriers for access control and anti-ram protection;

Increased compound lighting;

The installation of barbed wire on top of the existing perimeter wall to raise height and on top of the interior chain link fence to create secondary barrier;

The installation of platforms for property and street surveillance;

The construction of four guard booths;

The installation of steel grillwork on windows;

The installation of emergency releases on select windows grills for fire/emergency exit;

The replacement of several wooden doors with steel doors with appropriate locking hardware;

Sandbag emplacements for internal defense purposes; and

Hardening villas with safe rooms with a steel door.

But these physical security upgrades were insufficient to deter or repel the dozens of armed attackers that swarmed the compound, unimpeded, on September 11, 2012. As discussed in more detail below, the facility lacked the type of pedestrian barriers that could have slowed the attackers, even though the Department of State Inspector General and an earlier Accountability Review Board had each recommended the installation of such barriers at diplomatic posts in high-risk places like Benghazi.

Because the Benghazi facility was temporary, no security standards applied to it. While existing security standards require meaningful physical barriers to slow pedestrian access for permanent U.S. diplomatic facilities, there were few meaningful physical barriers at the Benghazi facility that would slow pedestrian access other than the closed gate. Once the gate was opened, there were no other physical impediments at that access point to keep anyone out of the facility's grounds or slow their assault.

Having additional physical barriers to reinforce the gate might have delayed the breach of the compound, giving those inside more time to prepare for the attack. For example, some permanent diplomatic facilities have a compound access control (CAC) point, a ''mantrap,'' or both. Both of these types of barriers act as gates or enclosures that are used to limit the movement of pedestrians entering a diplomatic facility. While a CAC is primarily installed in conjunction with a pedestrian entrance, a mantrap is typically installed in conjunction with a vehicle gate or barrier. According to Deputy Assistant Secretary Charlene Lamb, a CAC was not in place at Benghazi due to time and money constraints. She estimated a CAC there would have cost hundreds of thousands of dollars. No mantrap was in place either, though the reason for that is less clear. Unfortunately, we will never know if the additional investment in either a CAC or mantrap would have provided the time needed to save the lives of Ambassador Chris Stevens and Foreign Service Officer Sean Smith because of the fires set by the terrorists.

The absence of mantraps has been identified as a security vulnerability at least twice in the last ten years by the Department of State. According to a 2009 Department of State Inspector General Report, the 2004 Accountability Review Board regarding the attack on the U.S. consulate in Jeddah, Saudi Arabia recommended the installation of pedestrian barriers at U.S. diplomatic facilities overseas. During that attack, terrorists exited their vehicle and quickly breached the perimeter after being stopped by the entrance's anti-vehicle barrier. The attackers killed six and wounded several others.

Five years later, the Department of State Inspector General found that the absence of approved security standards or recent directives from the Bureau of Diplomatic Security regarding the installation of mantraps resulted in a fewer number of mantraps at overseas posts than required worldwide. At the time, 25 percent of critical threat posts that responded to the IG's survey did not have or request a mantrap and 39 percent of posts rated as a high threat post that responded to the survey also had no mantraps, plans for a mantrap, or were unable to accommodate mantraps. The numbers were worse for low and medium threat posts. According to the Department of State IG report, the average cost of installing mantraps at a U.S. diplomatic post (including related infrastructure) is approximately $55,000.

In determining the amount of additional security to provide to the Benghazi facility, the Department of State did not conduct a joint analysis or confer with other agencies, such as DOD or members of the IC. For U.S. diplomatic facilities at greatest risk, such as Benghazi, more interagency analysis of security needs must be done to identify gaps in security and take the steps to address them. Since the attack in Benghazi, the Department of State and the Department of Defense have jointly begun this important work, focusing initially on the highest threat facilities around the globe, but that should have happened before the attack.

Resourcing for security is a joint responsibility of the Executive Branch and the Legislative Branch. The Department of State's decisions regarding security at the Benghazi facility were made in the context of its budget and security requirements for diplomatic facilities around the world. Overall, the Department of State's base requests for security funding have increased by 38 percent since Fiscal Year (FY) 2007, and base budget appropriations have increased by 27 percent in the same time period. Other security funding provided beyond that in supplemental appropriations bills has been nearly entirely for diplomatic facilities in just three countries—Iraq, Afghanistan, and Pakistan. Less has gone elsewhere and very little is available to the temporary facilities such as the one in Benghazi.

Importantly, funding requests for baseline diplomatic security programs have not been fully funded in any year since FY 2010. These accounts fund local guards, security technology, DS agents, and maintenance, construction and security upgrades for facilities. The Administration requested almost $2.4 billion for the Worldwide Security Protection (WSP) and Embassy Security, Construction and Maintenance (ESCM) accounts in fiscal year 2011 (the Department of State's two largest diplomatic security accounts), but the House of Representatives recommended a funding level that was $127.5 million less than the President's Budget request. The Senate restored $38 million of the funding in the final enacted appropriations bill for that year. In fiscal year 2012, the gap was larger: Congress enacted appropriations for diplomatic security that were $275 million less than was requested.

At the same time, Congress has generally been responsive in providing supplemental and Overseas Contingency Operations (OCO) funds to the Department of State—more than $1.7 billion since 2007—in response to emergent, security-driven funding requests, although primarily for facilities in Iraq, Afghanistan and Pakistan. However, there was no supplemental or OCO request made by the President for additional diplomatic security enhancements in FY2010 or FY2011. Neither the Department of State nor Congress made a point of providing additional funds in a supplemental request for Libya, or more specifically, Benghazi.

Congress' inability to appropriate funds in a timely manner has also had consequences for the implementation of security upgrades. RSO Nordstrom stated that Continuing Resolutions had two detrimental effects on efforts to improve security in Benghazi. First, the Department of State would only allow funds to be expended at a rate of 80 percent of the previous year's appropriations level, so as not to risk a violation of the Anti-Deficiency Act. Second, in the absence of a supplemental appropriations or reprogramming request, security funds for Benghazi had to be taken ''out of hide'' from funding levels for Libya because Benghazi was not included in previous budget requests.

Recommendation: The Department of State should establish a mandatory process to determine what security standards are applicable to temporary facilities to ensure that they are adequately protected.

Recommendation: In the future, more interagency joint assessments or analyses of security needs must be done for U.S. diplomatic facilities at greatest risk. A joint assessment could not only improve our government's ability to identify security gaps, it would make all agencies more aware of assets available to meet security challenges and those available to respond to a crisis.

Recommendation: The Administration and Congress must work together to provide sufficient, steady, and timely funding resources to secure diplomatic facilities and personnel worldwide.

Finding 6. The Department of State did not adequately support security requests from its own security personnel in Benghazi.

Throughout 2012, the number of DS agents temporarily deployed to Benghazi fluctuated, decreasing to as low as *one* agent for a six week period in March and April 2012 due to visa problems. At the time of the attack, there were three DS agents who were stationed in Benghazi and two more who accompanied the Ambassador there from Tripoli.

RSO Nordstrom said that security personnel in Tripoli were sometimes used to augment Benghazi security when necessary.

As conditions changed in late spring and early summer, officers in Tripoli and in Washington had good situational awareness of the growing threats in Libya and especially in Benghazi. However, the Department of State did not provide enough security to address the increased threats and did not adequately support field requests for additional security. For example, in March 2012 the Tripoli Embassy had requested five full-time security positions for Benghazi. However, a day after sending this request, Nordstrom was told that Washington had capped the number of agents in Benghazi at three, even though the request for five agents was consistent with the December 2011 action memo approved by Under Secretary Kennedy to extend the duration of the Benghazi facility. In addressing the March request for five DS agents, Deputy Assistant Secretary Lamb questioned RSO Nordstrom about the fact that two of those five requested positions would be used for non-personnel security related duties—one for driving and one to secure a computer. Deputy Assistant Secretary Lamb asked that local employees be hired for these positions since they were arguably not related to security. Later, two local nationals were hired to fulfill these duties. In July Embassy officials in Tripoli requested a *minimum* of three DS agents for Benghazi.

Nordstrom also testified that he would have preferred to extend a DOD support team, which DOD provided to the Department of State on a non-reimbursable basis, that was scheduled to depart in August 2012. The 16–person Site Security Team (SST) was stationed in Tripoli, but on occasion some of its members also helped with security in Benghazi. The team's deployment had previously been extended twice. Nordstrom said he thought that requesting an extension would have ''too much political cost,'' and he was not told to do so. In July 2012, Nordstrom had sent a request, via cable approved by Ambassador Stevens, for a minimum of 13 temporary U.S. security personnel—which he said could be either DS employees or SST personnel, or a combination of both—to support needs in Tripoli. Nordstrom said he never received a response to that request. Though the Department of State never formally asked DOD to extend the SST team, at the time of the attack several members of the SST were still in Tripoli for other purposes, and two participated in the rescue effort the night of the attack.

In the Department's late 2011 plan describing a transition to ''locally staffed operations,'' one of the reasons given for that transition was that ''DS does not have sufficient resources to sustain the current level of the security assets in Libya.'' Lamb commented on this issue in her interview with the Committee, stating that it was hard to sustain large numbers of DS agents on short-term tours because there is not a floating pool of agents so that to fill a gap in Libya she needed to create a gap elsewhere.

Finding 7. Despite the inability of the Libyan government to fulfill its duties to secure the facility, the increasingly dangerous threat assessments, and a particularly vulnerable facility, the Department of State officials did not conclude the facility in Benghazi should be closed or temporarily shut down. That was a grevious mistake.

The Department of State kept the Benghazi facility open despite the inability of the Libyan government to fulfill its duties to secure the facility and the increasingly dangerous threat environment that American intelligence described. Though diplomatic security officials in Libya repeatedly considered and discussed the adequacy of security at the Benghazi facility, we found no evidence that any official ever recommended closing the facility even though the facility's vulnerability remained high, particularly in relation to the limited number and quality of the security personnel on site including the militia, the contracted guards, and DS agents on short-term assignments.

In the months leading up to the September 11, 2012 attack, U.S. personnel sitting on the Benghazi Emergency Action Committee (EAC)—the interagency entity responsible for assessing the security of the facility—met several times to discuss the growing threats in eastern Libya, and whether additional actions to protect U.S. personnel ought to be taken. As late as August 15, 2012, an EAC was convened and resolved to update the ''tripwires'' for the facility. The updates were to include a new category, ''suspension of operations,'' under which diplomatic personnel remain present at a post but limit activity off U.S. grounds. Notes from that meeting show that joint security exercises were carried out with Annex security personnel that same month, and that conditional manpower requests and the revised set of tripwires were sent to the Embassy in Tripoli for review. A Department of State document shared between officials in Tripoli show various ''tripwires'' in Benghazi were, in fact, set off weeks before September 11, 2012. Following a bomb attack on a Libyan Army colonel in August, the principal U.S. diplomatic officer in Benghazi wrote that ''[g]iven our small size, there is really no distinction between authorized and ordered departure from Benghazi: if we lose one more person, we will be ineffective . . . we are already at a skeleton crew.''

Still, no additional security was provided to the facility in Benghazi and there was no ordered evacuation. RSO Nordstrom said the inability of the host nation to provide security is a significant tripwire. Yet neither he nor, to his knowledge anyone else at the Department of State, recommended the Benghazi post be closed.

Despite the Department of State's initial determination that the facility in Benghazi would be a temporary one, as time progressed, some Department of State officials believed U.S. diplomats needed to remain there longer than they initially expected. Just weeks before his death and even after there had been attacks against the facility and other western targets in Benghazi, Ambassador Stevens continued to make the case that the Department of State needed a long term presence in Benghazi.

A number of other western governments also continued to maintain a presence in Benghazi throughout the summer and fall of 2012. Under Secretary Kennedy noted that diplomats for Italy, France, Turkey and the United Nations remained in Benghazi during that time period.

One option American officials did consider was co-locating the American government facilities in Benghazi. By December 27, 2011, officials had ''come to the conclusion that co-location is the best and most economical option for'' a continued presence in Benghazi. They also recognized that there were administrative hurdles to this—such as finding a suitable location large enough for the presence of all personnel. The ARB report on the 1998 Nairobi and Dar es Salaam attacks recommended that, ''When building new chanceries abroad, all U.S. government agencies, with rare exceptions, should be located in the same compound.'' The Department of State should also examine whether similar standards should be adopted for the co-location of temporary facilities.

Finding 8. The Department of Defense and the Department of State had not jointly assessed the availability of U.S. assets to support the Temporary Mission Facility in Benghazi in the event of a crisis and although DOD attempted to quickly mobilize its resources, it did not have assets or personnel close enough to reach Benghazi in a timely fashion.

The Department of Defense (DOD) has a longstanding cooperative relationship with the Department of State, providing support for evacuation and security of diplomatic facilities. For Libya, responsibility for DOD support for diplomatic missions primarily rested with AFRICOM and its Combatant Commander, General Carter F. Ham, headquartered in Stuttgart, Germany. AFRICOM is one of DOD's six geographic combatant commands and is responsible for all DOD operations, exercises, and security cooperation on the African continent (with the exception of Egypt), its island nations, and surrounding waters. The command is also responsible to the Secretary of Defense for military relations with 54 African nations, the African Union, and African regional security organizations. It was established in February 2007 and became a standalone command in October 2008. The reason for establishing AFRICOM grew out of concerns about DOD's division of responsibility for Africa among three geographic commands—European Command (EUCOM), Central Command (CENTCOM), and Pacific Command (PACOM)—and worries that security in Africa was receiving less attention than it required based on the increasing presence of Islamist extremists and terrorists there.

Since its creation, AFRICOM has been involved in a number of operations in Africa, with a focus on training African forces and engaging in counterterrorism activities in the Horn of Africa. Unlike many of the other geographical combatant commands, AFRICOM was developed to maintain a light footprint. It maintains a single base on the entire continent, in Djibouti. In the spring of 2011, AFRICOM directed U.S. support to the NATO military operations in Libya, and in October 2011, it established a joint task force to command and control post-conflict U.S. operations related to Libya. Since DOD assumes responsibility for evacuation of diplomatic personnel, U.S. citizens, and designated host nation and third country nationals in crises, AFRICOM was responsible for working with Department of State officials in Libya to develop and coordinate Noncombatant Evacuation Operations (NEO) plans for the diplomatic facilities within the region. But the Department of State did not know how long it would take DOD to evacuate personnel at the Benghazi facility in the case of a crisis, naturally making it more difficult for the Department of State to ensure it had adequate security at the facility.

In addition, General Ham did not have complete visibility of the extent and number of government personnel in Benghazi in the event that a NEO was required. If sufficient time had been available for such an evacuation, we are concerned that this limitation could have impeded AFRICOM's ability to respond and fulfill its mission responsibility.

AFRICOM's lack of operational assets near Benghazi hindered its capacity to evacuate U.S. personnel during the attacks. The Djibouti base was several thousand miles away. There was no Marine expeditionary unit, carrier group or a smaller group of U.S. ships closely located in the Mediterranean Sea that could have provided aerial or ground support or helped evacuate personnel from Benghazi. AFRICOM also lacked a dedicated Commander's In-extremis Force (CIF)—a specially trained force capable of performing no-notice missions. As a result,

General Ham was forced to call on the European Command's CIF whose location in Eastern Europe prevented it from getting to Benghazi before the four Americans were killed and all other U.S. personnel were evacuated. We note that AFRICOM later received an independent CIF in October, 2012. DOD and AFRICOM tried to provide effective support on September 11th, but given the nature of the attack in Benghazi and the distance of their assets from Benghazi, they were tragically unable to do so.

Recommendation: DOD and the Department of State must jointly perform comprehensive crisis defense and evacuation planning for personnel at U.S. diplomatic facilities worldwide, particularly in high risk environments to determine whether DOD can provide timely support and evacuation capabilities, and assist the Department of State in deciding whether to keep facilities open.

Recommendation: Because Africa has increasingly become a haven for terrorist groups in places like Libya and Mali, DOD should provide more assets and personnel within range on land and sea to protect and defend both Americans and our allies on the African continent.

Finding 9. Although the September 11, 2012 attack in Benghazi was recognized as a terrorist attack by the Intelligence Community and personnel at the Department of State from the beginning, Administration officials were inconsistent in stating publicly that the deaths in Benghazi were the result of a terrorist attack.

One of the key lessons of this Committee's six-year focus on the threat of violent Islamist extremism is that, in order to understand and counter the threat we face, we must clearly identify that threat. During the Committee's investigation into the Fort Hood massacre, for example, we found systemic problems with the way the military addressed violent Islamist extremism in its policies and procedures (treating this specific threat within the broader context of ''workplace violence''). Similarly, while we welcomed the Administration's release last year of a national strategy and implementation plan for countering radicalization domestically, we expressed our disappointment in the Administration's continued refusal to identify violent Islamist extremism as our enemy. The enemy is not a vague catchall of violent extremism, but a specific violent Islamist extremism. It is unfair to the vast majority of law-abiding Muslims not to distinguish between their peaceful religion and a twisted corruption of that religion used to justify violence.

There are related lessons to be learned from the Administration's public comments about Benghazi, which we believe contributed to the confusion in the public discourse after the attack about exactly what happened.

The NCTC and U.S. law define terrorism as the ''premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.'' Senior officials from the IC, the Department of State, and the FBI who participated in briefings and interviews with the Committee said they believed the attack on the mission facility in Benghazi to be a terrorist attack immediately or almost immediately after it occurred. The ODNI's spokesman also has publicly said, ''The intelligence community assessed from the very beginning that what happened in Benghazi was a terrorist attack.''

In short, regardless of questions about whether there had been a demonstration or protest outside the Temporary Mission Facility in advance of the attack, the extent to which the attacks were preplanned, or the role of an anti-Islamic video which had sparked protests at the U.S. embassy in Cairo and elsewhere earlier on September 11th, there was never any doubt among key officials, including officials in the IC and the Department of State, that the attack in Benghazi was an act of terrorism.

For example, two emails from the State Department Diplomatic Security Operations Center on the day of the attack, September 11, and the day after, September 12, 2012, characterized the attack as an ''initial terrorism incident'' and as a ''terrorist event.'' Agencies and offices responsible for terrorism, including the National Counterterrorism Center (NCTC), the CIA's Office of Terrorism Analysis, and the FBI's Counterterrorism Division, were immediately involved with gathering information about the attack. Indeed, how could there have been any doubt in anyone's mind that, when a large number of armed men break into a U.S. diplomatic facility, set fire to its buildings, and fire mortars at Americans, that it is by definition a terrorist attack?

However, the IC's assessment was not reflected consistently in the public statements made by Administration officials, several of whom cited the ongoing investigation, in the week following the attack:

On September 12th, Secretary of State Hillary Clinton attributed the attack to ''heavily armed militants'' who assaulted the compound . . .'' Her suspicion was that the people involved in this ''were looking to target Americans from the start.'' She also noted that we ''continue to apply pressure on Al Qaeda and other elements that are affiliated . . .''

Also that September 12th President Obama, referring to the anti-Islamic video, said ''we reject all efforts to denigrate the religious beliefs of others. But there is absolutely no justification to this type of senseless violence . . .'' He went on to add, ''Of course, yesterday was already a painful day for our nation as we marked the solemn memory of the 9/11 attacks,'' and that ''No acts of terror will ever shake the resolve of this great nation, alter that character, or eclipse the light of the values that we stand for.''

However, that same day, the President had the following exchanges with Steve Kroft in a taping for the CBS news program *60 Minutes:*

Mr. Kroft: Do you believe that this was a terrorist attack?

The President: Well, it's too early to know exactly how this came about, what group was involved, but obviously it was an attack on Americans and we are going to be working with the Libyan government to make sure that we bring these folks to justice one way or the other . . .

Mr. Kroft: That doesn't sound like your normal demonstration.

The President: As I said, we're still investigating exactly what happened, I don't want to jump the gun on this. But—you're right that this is not a situation that was—exactly the same as what happened in Egypt. And—my suspicion is—is that there are folks involved in this who were looking to target Americans from the start. So we're gonna—make sure that our first priority is to get our folks out safe, make sure that our embassies are secured around the world. And then we are gonna go after—those folks who carried this out . . .

This is also obviously a reminder that for all the progress that we've made in fighting terrorism, that we're living in a volatile world. And, you know, our troops, but also our diplomats and our intelligence officers they're putting their lives on the line every single day in some very dangerous circumstances . . .

But I think we also also have to understand that, we have to remain vigilant. And that even as we—continue to apply pressure on Al Qaeda and—other elements that are affiliated—that in big chunks of the world, in Northern Africa and the Middle East, you've got—a lot of dangerous characters. And we've got to make sure that we're continuing to apply pressure on them . . .

Two days later, during a September 14, 2012, White House press briefing, Press Secretary Jay Carney was asked to respond to senators' characterizations of the incident as a terrorist attack following a briefing by Secretary Panetta and others:

[Unidentified Reporter]: Jay, one last question—while we were sitting here—Secretary Panetta and the Vice Chair of the Joint Chiefs briefed the Senate Armed Services Committee. And the senators came out and said their indication was that this, or the attack on Benghazi was a terrorist attack organized and carried out by terrorists, that it was premeditated, a calculated act of terror. Levin said—Senator Levin—I think it was a planned, premeditated attack. The kind of equipment that they had used was evidence it was a planned, premeditated attack. Is there anything more you can—now that the administration is briefing senators on this, is there anything more you can tell us?

Mr. Carney: Well, I think we wait to hear from administration officials. Again, it's actively under investigation, both the Benghazi attack and incidents elsewhere. And my point was that we don't have and did not have concrete evidence to suggest that this was not in reaction to the film. But we're obviously investigating the matter, and I'll certainly—I'm sure both the Department of Defense and the White House and other places will have more to say about that as more information becomes available.

Then, on September 16th, during one of several similar appearances on the Sunday news programs, Ambassador Susan Rice had the following exchange with David Gregory of *NBC's Meet the Press:*

Gregory: Can you say definitively that the attacks on—on our consulate in Libya that killed Ambassador Stevens and others there security personnel, that was spontaneous, was it a planned attack? Was there a terrorist element to it?

Ms. Rice: Well, let us—let me tell you the—the best information we have at present. First of all, there's an FBI investigation which is ongoing. And we look to that investigation to give us the definitive word as to what transpired. But putting together the best information that we have available to us today our current assessment is that what happened in Benghazi was in fact initially a spontaneous reaction to what had just transpired hours before in Cairo, almost a copycat of—of the demonstrations against our facility in Cairo, which were prompted, of course, by the video. What we think then transpired in Benghazi is that opportunistic extremist elements came to the consulate as this was unfolding. They came with heavy weapons which unfortunately are readily available in post revolutionary Libya. And it escalated into a much more violent episode. Obviously, that's—that's our best judgment now. We'll await the results of the investigation . . .

On September 18th, President Obama said on the Late Show with David Letterman that ''extremists and terrorists used this (referring again to the anti-Islamist video) as an excuse to attack a variety of our embassies, including the consulate in Libya.''

A definitive response to the question of whether Benghazi was a terrorist attack was given by NCTC Director Matthew Olsen during a hearing before this Committee on September 19, 2012. Olsen was asked by the Chairman whether he ''would say that Ambassador Stevens and the three other Americans died as a result of a terrorist attack.''

Director Olsen responded that, ''[c]ertainly, on that particular question, I would say yes. They were killed in the course of a terrorist attack'' on our diplomatic mission in Benghazi.

After Olsen's September 19th appearance before the Committee, other Administration officials stated with more certainty that Benghazi was a terrorist attack. For example:

On September 19th, referring to Matthew Olsen's statements that Benghazi was a terrorist attack, Victoria Nuland stated ''We stand by comments made by our intelligence community who has first responsibility for evaluating the intelligence and what they believe we are seeing.''

On September 20th, Jay Carney said, ''It is, I think, self-evident that what happened in Benghazi was a terrorist attack. Our embassy was attacked violently, and the result was four deaths of American officials. So again, that's self evident . . . ''

On September 21st, Secretary Clinton said, ''What happened in Benghazi was a terrorist attack, and we will not rest until we have tracked down and brought to justice the terrorist who murdered four Americans.''

On September 24th, however, when one of the co-hosts of the television program *The View* asked the President to clarify what she perceived to be discrepancies in the public record regarding the Administration's position about whether Benghazi attack was an act of terrorism, the President's answer was not as definitive:

Joy Behar: It was reported that people just went crazy and wild because of this anti-Muslim movie, or anti-Muhammad, I guess, movie. But then I heard Hillary Clinton say that it was an act of terrorism. Is it? What do you say?

The President: Well, we're still doing an investigation. There's no doubt that the kind of weapons that were used, the ongoing assault, that it wasn't just a mob action. Now, we don't have all the information yet, so we're still gathering it. But what's clear is that around the world, there's still a lot of threats out there. And that's why we have to maintain the strongest military in the world. That's why we can't let down our guard when it comes to the intelligence work that we do, and staying on top of not just al Qaeda—the traditional al Qaeda in Pakistan and Afghanistan—but all these various fringe groups that have started to develop . . .

Director Olsen's statement on September 19, 2012 before this Committee was also significant because he mentioned ties to al Qaeda. He said:

At this point, what I would say is that a number of different elements appear to have been involved in the attack, including individuals connected to militant groups that are prevalent in eastern Libya, particularly in the Benghazi area. As well, we are looking at indications that individuals involved in the attack may have had connections to al Qaeda or al Qaeda's affiliates, in particular al Qaeda in Islamic Maghreb.

Olsen's acknowledgement was important because, in talking points that were prepared the previous week by the IC for Congress, a line saying ''we know'' that individuals associated with al Qaeda or its affiliates participated in the attacks had been changed to say: ''There are *indications* that *extremists* participated,'' dropping the reference to al Qaeda and its affiliates altogether. Members of the IC differed over whether or not this information should remain classified. It is nevertheless noteworthy that the analyst who drafted the original talking points—a veteran career analyst in the intelligence community believed it was appropriate to include a reference to al Qaeda in the unclassified talking points. The senior analyst concluded that the information could be made public because of the claims of responsibility made by Ansar al-Sharia, which has been publicly linked to al Qaeda.

In addition to the change deleting al-Qaeda, a reference to ''attacks'' in Benghazi was changed to ''demonstrations.'' Director of National Intelligence (DNI) James Clapper and representatives from the CIA, the State Department, NCTC and the FBI told this Committee that the changes characterizing the attacks as ''demonstrations'' and removing references to al-Qaeda or its affiliates were made within the CIA and the IC, while the change from ''we know'' to ''indications'' was made in response to an FBI request. They also testified that no changes were made for political reasons, that there was no attempt to mislead the American people about what happened in Benghazi, and that the only change made by the White House was to change a reference of ''consulate'' to ''mission.''

To provide a full account of the changes made to the talking points, by whom they were made and why, DNI Clapper offered to provide the Committee with a detailed timeline regarding the development of the talking points. At the time of writing this report, despite repeated requests, the Committee had yet to receive this timeline. According to a senior IC official, the timeline has not been delivered as promised because the Administration has spent weeks debating internally whether or not it should turn over information considered ''deliberative'' to the Congress. The September 28, 2012 public statement from the ODNI confirmed the IC's judgment ''that some of those involved were linked to groups affiliated with, or sympathetic to al Qa'ida.''

We anticipate that the ongoing investigation into these attacks by the FBI will provide important new details about exactly which violent Islamist extremists carried out the attack, the extent to which it was planned, and their precise motivations. But as everyone now acknowledges, there is no doubt that Benghazi was indeed a deliberate and organized terrorist attack on our nation. If the fact that Benghazi was indeed a terrorist attack had been made clear from the outset by all Administration and Executive Branch spokespeople, there would have been much less confusion and division in the public response to what happened there on September 11, 2012.

Much of the public discussion about the Benghazi attack has focused on whether a protest took place in Benghazi prior to the attack. While the IC worked feverishly in the days after the attack to identify the perpetrators of the attack, they did not place a high priority on determining with certainty whether a protest had in fact occurred. The IC's preliminary conclusion was that there had been a protest outside of the mission prior to the attack, making this assessment based on open source news reports and on other information available to intelligence agencies. The IC later revised its assessment and the Accountability Review Board has since ''concluded that no protest took place before the Special Mission and Annex attacks.''

The unnecessary confusion in public statements about what happened that night with regards to an alleged protest should have ended much earlier than it did. Key evidence suggesting the absence of a protest was not widely shared as early as it could have been, creating or contributing to confusion over whether this was a peaceful protest that evolved into something more violent or a terrorist attack by an opportunistic enemy looking for the most advantageous moments to strike.

As early as September 15th, the Annex team that had been in Benghazi during the attack reported there had been no protest. This information was apparently not shared broadly, and to the extent that it was shared, it apparently did not outweigh the evidence decribed above that there was a protest. The next day, the President of Libya's General National Congress, Mohamed Yousef el-Magariaf, also stated on the CBS News show *Face the Nation* that the attack was planned and involved Al Qaeda elements.

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

Information from those interviews was written into FBI FD–302 interrogation reports and sent back to the FBI headquarters. Nearly a week later, on or around September 22nd, key information from those interrogation reports was disseminated by the FBI in Intelligence Information Reports (IIRs) to other agencies within the IC. By that date, however, the IC had already received conclusive proof via other means that there had been no protest prior to the attack, in the form of video evidence from the facility's CCTV cameras.

We also found documentation that one DS agent apparently concluded there had been no protest as early as September 18th. On that date, a State Department DS agent who had seen national press reporting about the attacks asked an agent at the DS Command Center in an email, ''Was there any rioting in Benghazi reported prior to the attack?'' The reply from the Command Center agent: ''Zip, nothing, nada.''

Recommendation: When terrorists attack our country, either at home or abroad, Administration officials should speak clearly and consistently about what has happened. While specific details and a full accounting cannot be provided until the government has completed its investigation, the fact that a terrorist attack occurred must be communicated with clarity.

Finding 10. As discussed earlier, the talking points about the September 11th attack in Benghazi which were issued by the Intelligence Community on September 14th in response to a request by the House Permanent Select Committee on Intelligence, were the subject of much of the confusion and division in the discussion of the attack. That confusion and division were intensified by the fact that the talking points were issued before the IC had a high degree of confidence about what happened in Benghazi and in the midst of a national political campaign.

Recommendation: While the Intelligence Community's primary mission is to inform the appropriate officials of the executive and legislative branches of our government about events that affect our security, it is not the responsibility of the IC to draft talking points for public consumption—especially in the heat of a political campaign—and we therefore recommend that the IC decline to do so in the future.

CONCLUSION

The deaths of Ambassador Stevens and three other Americans at the hands of terrorists is a tragic reminder that the fight our country is engaged in with Islamist extremists and terrorists is not over. U.S. and

Western diplomats, and other personnel operating in the Middle East and other countries where these terrorists use violence to further their extremist agenda and thwart democratic reforms are increasingly at risk.

We hope this report will help contribute to the ongoing discussion that our nation must have about how best to protect the brave men and women who serve our country abroad and how to win this war that will continue for years to come. We owe it to our public servants abroad to protect them as they work to protect us. The government of the U.S. failed tragically to fulfill that responsibility in Benghazi on September 11, 2012. We hope the findings and recommendations we have made in this Special Report will help ensure that such a failure never happens again.

ENDNOTES

1. The details of this narrative are based on briefings to the Committee in November 2012, as well as publicly available documents describing the narrative provided by the Department of State and the Department of Defense.

2. Charlene Lamb and Eric Nordstrom, interviews with Committee staff, December 2012.

3. U.S. Embassy Tripoli, Libya, Regional Security Office, ''Security Incidents since June 2011.''

4. Committee Member briefing, November 14, 2012.

5. REDACTED, e-mail message to DS–IP–NEA, April 6, 2012.

6. U.S. Embassy Tripoli, Libya, Regional Security Office, ''Security Incidents since June 2011.''

7. Ibid.

8. Ibid.

9. REDACTED, e-mail message to DS–IP–NEA; DSCC_E TIA/PII; DSCC_E TIA/ITA; DSCC_C DS Seniors, ''Benghazi—SR—Attack on British Ambassador Motorcade—06112012,'' June 11, 2012.

10. Hadeel Al-Shalchi, ''Gunmen attack Tunisian consulate in Benghazi,'' *Reuters,* June 18, 2012. *http://www.reuters.com/article/2012/06/18/us-libya-gunmen-tunisia-idUSBRE85H1V620120618*; Michel Cousins, ''Tunisian Consulate in Benghazi attacked,'' *Libya Herald,* June 18, 2012. *http://www.libyaherald.com/2012/06/18/tunisian-consulate-in-benghazi-attacked/*

11. Navanti Group, *Security Conditions in Benghazi, Libya*, July 12, 2012.

12. However, as discussed later in this report, reliance solely on early warning intelligence is insufficient for making security improvement decisions.

13. *Homeland Threats and Agency Responses:* Hearing before the Homeland Security and Governmental Affairs Committee, United States Senate, 112th Cong., September 19, 2012. (Statement of Matthew Olsen, Director, NCTC).

14. Eli Lake, ''Ansar al Sharia's Role in Benghazi Attacks still a Mystery,'' *The Daily Beast,* November 5, 2012, *http://www.thedailybeast.com/articles/2012/11/05/ansar-al-sharia-s-role-in-benghazi-attacks-still-a-mystery.html*

15. Ibid.

16. For a general discussion of this phenomenon: Robert F. Worth, ''Al Qaeda-Inspired Groups, Minus Goal of Striking U.S.'', *The New York Times,* October 27, 2012, *http://www.nytimes.com/2012/10/28/world/middleeast/al-qaeda-inspired-groups-minus-goal-of-striking-us.html*

17. Federal Research Division, Library of Congress, *Al-Qaeda in Libya: A Profile,* August 2012. See, e.g., the discussion of two local Libyan Islamist-oriented militias—Ansar al-Sharia and al-A'hrar Libya—which are described as broadcasting ''typical al-Qaeda-type propaganda on the Internet.''(33), *http://freebeacon.com/wp-content/uploads/2012/10/LOC-AQ-Libya.pdf*

18. As discussed further, infra, the State Department and the IC must also think beyond ''warning'' intelligence of specific attacks when making security decisions. This is one of the key lessons of the Accountability Review Board (ARB) Reports on the 1998 terrorist attacks on the U.S. embassies in Kenya and Tanzania.

19. *Inman Report, Report of the Secretary of State's Advisory Panel on Overseas Security,* (June 1985). *http://www.fas.org/irp/threat/inman/.*

20. Charlene Lamb, interview with Committee staff, December 6, 2012.

21. *See Finzer* v. *Barry*, 798 F.2d 1450, 1455 (D.C. Cir. 1986) (Bork, J.), (*citing* 2 C. Hyde, International Law 1249 (1945)) (''The principle that host states have a special responsibility to ensure that foreign embassies and the personnel inside them are free from threats of violence and intimidation is 'solidly entrenched in the Law of Nations.' '').

22. Vienna Convention on Consular Relations, (Adopted April 24, 1963, entered into force, March 19, 1967) Art. 31; see also The 1961 Vienna Convention on Diplomatic Relations, Art. 22 (Adopted April 18, 1961, entered into force, April 29, 1964).

23. Vienna Convention on Consular Relations, (Adopted April 24, 1963, entered into force, March 19, 1967) Art. 40.

24. Christopher M. Blanchard, Congressional Research Service, *Libya: Transition and U.S. Policy*, October 18, 2012 (16).

25. Adam Nossiter and Kareem Fahim, ''Revolution Won, Top Libyan Official Promises Elections and a More Pious State,'' *New York Times,* October 24, 2011, A10.

26. Ibid.

27. Blanchard (17).

28. Blanchard (6).

29. See, for example, REDACTED, e-mail message to REDACTED, January 4, 2012; or REDACTED, e-mail message to REDACTED, April 1, 2012.

30. ''Security Incidents since June 2011,'' U.S. Embassy Tripoli, Libya, Regional Security Office and REDACTED, email to DS–IP–NEA, ''Benghazi RSO Spot Report,'' March 15, 2012.

31. Eric Nordstrom, interview with Committee staff, December 7, 2012. The State Department did provide some training to members of the Brigade.

32. See, for example, REDACTED, e-mail message to REDACTED, January 4, 2012; or REDACTED, e-mail message to REDACTED, April 1, 2012. See also, REDACTED, email to REDACTED, June 17, 2012.

33. REDACTED, e-mail message to REDACTED, June 17, 2012.

34. REDACTED, e-mail message to REDACTED, ''Benghazi Hand-off Notes,'' August 29, 2012.

35. REDACTED, e-mail message to Charlene Lamb, ''Ambassador's protective detail in Benghazi,'' September 20, 2012.

36. *The Security Failures of Benghazi:* Hearing before the Committee on Oversight and Government Reform, U.S. Congress, 112th Cong., October 10, 2012. (Eric Allan Nordstrom, Regional Security Officer, Tripoli, Libya from 9/21/11—7/26/12).

37. RSO Eric Nordstrom, Memorandum to DS/DSS/TIA/OSAC, ''OSAC Crime and Safety Report,'' February 1, 2012.

38. Ibid.

39. REDACTED, e-mail message to REDACTED, ''The Guns of August: security in eastern Libya,'' August 8, 2012.

40. Ibid.

41. REDACTED, e-mail message to REDACTED, ''Benghazi Weekly Report, Special Eid al-Fitr Edition,'' August 20, 2012.

42. Under an ordered departure, all U.S. diplomatic personnel and their families are instructed by the Chief of Mission to leave the post.

43. *Benghazi Assessment of Tripwires Breached as of August 13, 2012.*

44. REDACTED, e-mail message to REDACTED, ''Benghazi Weekly Report,'' September 11, 2012, (1).

45. REDACTED, e-mail message to Charlene Lamb, ''Ambassador's protective detail in Benghazi,'' September 20, 2012.

46. State Department, Office of Inspector General, *Review of Best-Value Contracting for the Department of State Local Guard Program and the Utility of Expanding the Policy Beyond High-Threat Posts in Iraq, Afghanistan, and Pakistan*, February, 2012 (9).

47. Ibid. (5).

48. Alex Tiersky and Susan Epstein, Congressional Research Service, *Securing U.S. Diplomatic Facilities and Personnel Abroad: Background and Policy Issues*, November 26, 2012, (3).

49. REDACTED, e-mail message to DS–IP–NEA and REDACTED, September 13, 2012.

50. NEA—Jeffrey Feltman, Action Memo to Under Secretary Kennedy, December 27, 2011, (2).

51. *The Security Failures of Benghazi:* Hearing before the Committee on Oversight and Government Reform, U.S. Congress, 112th Cong., October 10, 2012. (Eric Allan Nordstrom, Regional Security Officer, Tripoli, Libya from 9/21/11–7/26/12).

52. Diplomatic Security Issues Only Briefing paper for March 6, 2012 meeting of Assistant Secretary Boswell and Ambassador Cretz.

53. Eric Nordstrom, interview with Committee staff, December 7, 2012.

54. Ibid.

55. NEA—Jeffrey Feltman, Action Memo to Under Secretary Kennedy, December 27, 2011, (2).

56. REDACTED, e-mail message to DS–IP–NEA and REDACTED, September 13, 2012.

57. Charlene Lamb and Eric Nordstrom, interviews with Committee staff, December 2012.

58. Charlene Lamb, interview with Committee staff, December 6, 2012.

59. Department of State, Inspector General, *Review of the Department's Implementation of Mantraps*, Report Number ISP–I–09–29, February 2009, (2–3).

60. Attack on U.S. Consulate General in Jeddah, James C. Oberwetter, U.S. Ambassador to Saudi Arabia, On-the-Record Briefing, Jeddah, Saudi Arabia, December 7, 2004 http://2001-2009.state.gov/p/nea/rls/rm/39516.htm

61. Department of State, Inspector General, *Review of the Department's Implementation of Mantraps*, Report Number ISP–I–09–29, February 2009, (3).

62. Committee member briefing, November 14, 2012.

63. Congressional Research Service (CRS), e-mail message to Committee staff, December 20, 2012. For example, CRS noted all Overseas Contingency Operations enacted and requested for the Worldwide Security Protection account in Fiscal Years 2012 and 2013 were for facilities in Afghanistan and Pakistan. Additionally, there was approximately $1.5 billion funding for Iraq embassy ''security and overhead cover'' in FY 2012.

64. According to CRS, these include State Department accounts for Worldwide Security Protection (WSP); Embassy Security, Construction and Maintenance (ESCM); Diplomatic Security, Counterterrorism within the Diplomatic and Consular Programs; and Diplomatic Security within the Border Security Program.

65. Department of State, *Congressional Budget Justification Volume 1: Department of State Operations Fiscal Year 2013* (February 13, 2012), and the Consolidated Appropriations Act, 2012, P.L. 112–74.

66. Alex Tiersky and Susan Epstein, Congressional Research Service, *Securing U.S. Diplomatic Facilities and Personnel Abroad: Background and Policy Issues*, November 26, 2012, (15).
67. Eric Nordstrom, interview with Committee staff, December 7, 2012.
68. REDACTED, e-mail message to REDACTED, October 1, 2012.
69. Eric Nordstrom, interview with Committee staff, December 7, 2012.
70. Eric Nordstrom, e-mail message to REDACTED, March 29, 2012.
71. Charlene Lamb, interview with Committee staff, December 6, 2012.
72. Ibid.
73. *The Security Failures of Benghazi:* Hearing before the Committee on Oversight and Government Reform, U.S. Congress, 112th Cong., October 10, 2012. (Eric Allan Nordstrom, Regional Security Officer from September 21—July 26, 2012).
74. 12 Tripoli 690, July 9, 2012.
75. *The Security Failures of Benghazi:* Hearing before the Committee on Oversight and Government Reform, U.S. Congress, 112th Cong., October 10, 2012. (Eric Allan Nordstrom, Regional Security Officer from September 21—July 26, 2012).
76. DS/IP/OPO/FPD, Proposal for Security Support to RSO Tripoli.
77. Charlene Lamb, interview with Committee staff, December 6, 2012.
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79. REDACTED, e-mail message to REDACTED, August 6, 2012, ''Security Incident Involving Embassy Vehicle Driven by DOD Personnel.''
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81. ''Benghazi.docx,'' document attached to email of August 31, 2012.
82. Committee member briefing, November 29, 2012.
83. NEA—Jeffrey Feltman, Action Memo to Under Secretary Kennedy, December 27, 2011. Re: ''Future of Operations in Benghazi, Libya''
84. Accountability Review Board, *Bombings of the US Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on August 7, 1998*, (January 8, 1999). NB: The facility in Benghazi was a lease and not new construction.
85. Committee member briefing, November 14, 2012.
86. *Fiscal Year 2013 National Defense Authorization Budget Request from U.S. European Command and U.S. Africa Command:* Armed Services Committee, United States House of Representatives, 112th Congress, February 29, 2012. (General Carter Ham, Commander, United States Africa Command). *http://www.africom.mil/getArticle.asp?art=4133*
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89. General Carter Ham, *Counterterrorism in Africa*, Homeland Security Policy Institute event, December 3, 2012. According to General Ham, DOD had been developing this force since 2011.
90. U.S. Senate, Homeland Security and Government Affairs Committee, *A Ticking Time Bomb: Counterterrorism Lessons From the U.S. Government's Failure to Prevent the Fort Hood Attack*, 112th Cong., 1st sess, February 3, 2011, 7,9.
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94. Committee member briefings, November 14, 2012 and November 29, 2012.
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96. See, for example, REDACTED on behalf of the DS Command Center, email message, ''Terrorism Event Notification—Libya,'' September 12, 2012.
97. Secretary Hillary Clinton, ''Remarks on the Deaths of American Personnel in Benghazi, Libya,'' Treaty Room, September 12, 2012.
98. President Barack Obama, ''Remarks by the President on the Deaths of U.S. Embassy Staff in Libya,'' Rose Garden, September 12, 2012.
99. President Barack Obama, interview by Steve Kroft, *60 Minutes*, CBS, September 12, 2012, transcript.
100. Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg, Andrea Mitchell, interview by David Gregory, *Meet the Press*, NBC, September 16, 2012, transcript. *http://www.msnbc.msn.com/id/49051097/ns/meet_the_press-transcripts/t/september-benjamin-netanyahu-susan-rice-keith-ellison-peter-king-bob-woodward-jeffrey-goldberg-andrea-mitchell/*
101. *Homeland Threats and Agency Responses:* Hearing before the Homeland Security and Governmental Affairs Committee, United States Senate, 112th Cong., September 19, 2012. (Statement of Matthew Olsen, Director, NCTC).
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104. Press Secretary Carney, press briefing, The White House, September 20, 2012, transcript.
105. Secretary of State Hillary Clinton, ''Remarks With Pakistani Foreign Minister Hina Rabbani Khar Before Their Meeting,'' Treaty Room, September 21, 2012.
106. President Obama, interview by Joy Behar, The View, September 24, 2012. *http://www.youtube.com/watch?v=Hdn1iX1a528*
107. Homeland Threats and Agency Responses: Hearing before the Homeland Security and Governmental Affairs Committee, United States Senate, 112th Cong., September 19, 2012. (Statement of Matthew Olsen, Director, NCTC). The ODNI also released a statement on September 28, 2012 which confirmed that the IC had ''assess[ed] that some of those involved were linked to groups affiliated with, or sympathetic to al-Qa'ida.'' *See* Statement by the Director of Public Affairs for the Director of National Intelligence, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya, September 28, 2012.
108. Committee member briefing, November 29, 2012.
109. Committee member briefing, November 29, 2012.
110. Sources: Office of the DNI cut ''al Qaeda'' reference from Benghazi talking points, and CIA, FBI signed off, CBS News, November 20, 2010
111. Committee member briefing, November 29, 2012.
112. ''Statement by the Director of Public Affairs for the Director of National Intelligence, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya,'' Office of the Director of National Intelligence, press release, September 28, 2012.
113. Accountability Review Board, Department of State, December 19, 2012, 4.
114. Acting Director Michael Morell, briefing Senator Collins, November 28, 2012.
115. Committee member briefing, November 29, 2012.
116. Ibid.
117. REDACTED, e-mail message on September 18, 2012.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I am pleased to join the chairman of the Homeland Security Committee, Senator JOE LIEBERMAN, in submitting for the CONGRESSIONAL RECORD our investigative report on the terrorist attack against the U.S. mission in Benghazi, Libya, that claimed the lives of four Americans who were serving our country. This report is indeed the last initiative the chairman and I will produce together. It is the final work product of 10 years of cooperation and collaboration and was authored in the same bipartisan spirit as our investigations into the attack at Fort Hood and into the Government's response to Hurricane Katrina, among many others.

I will so miss working with Chairman LIEBERMAN. He is an extraordinary Senator who has contributed so much during his years in the Senate and as a leader of our committee. Sadly, our last official act together was prompted by the terrorist attack in Benghazi on September 11 of this year that took the lives of our Ambassador and three other brave Americans. Our findings and recommendations are based on the extensive investigative work the committee has conducted since shortly after the attack of September 11, 2012, including meetings with senior and midlevel government officials; reviews of literally thousands of pages of documents, both classified and unclassified, provided by the Department of State, the Department of Defense, and the intelligence community; a review of written responses to questions posed by our committee to numerous agencies; our consultations with security experts and former officials; and our review of publicly available documents.

Our investigation found that the terrorists essentially walked right into the Benghazi compound, unimpeded, and set it ablaze due to extremely poor security in a threat environment that was indeed ''flashing red,'' in the words of a high-ranking State Department official.

As we all recognize, the ultimate responsibility for this atrocity lies with the terrorists who attacked our diplomats. Nevertheless, there are several lessons we must learn from this tragedy if we are to make our diplomats

safer in the future. It is in that spirit that we are putting our unclassified report into the RECORD so that we can share it with our colleagues and with the American people. We will have more to say about our specific findings and recommendations when we release the report tomorrow.

In the months leading up to the attack, it was well known in Washington that Benghazi was increasingly dangerous and at risk for a significant attack.

Our mission facility in Benghazi was itself the target of two prior attacks involving improvised explosive devices, including an April attack in which one current and one former contract guard at the facility were suspects, and a June attack that blew a hole in the perimeter wall.

There were also multiple attacks on other western targets, including a June attack in which a rocket propelled grenade was fired at the convoy of the British ambassador to Libya, injuring two British bodyguards. Yet, the State Department failed to take adequate steps to reduce the facility's vulnerability to a terrorist attack of this kind.

While the Department and the Intelligence Community lacked specific intelligence about this attack, the State Department should not have waited for—or expected—specific warnings before increasing its security in Benghazi, a city awash with weapons and violent extremists.

Our report also underscores the need for the Intelligence Community to enhance its focus on violent Islamist extremist groups in the region to improve the likelihood of obtaining such intelligence.

The lesson about over-dependence on such intelligence, however, is not new. The independent Accountability Review Board reports following the 1998 attacks on our embassies in Africa found that ''both the intelligence and policy communities relied excessively on tactical intelligence to determine the level of potential terrorist threats to posts worldwide,'' yet prior security reviews and ''previous experience indicate[d] that terrorist attacks are often not preceded by warning intelligence.'' The State Department must finally take this lesson to heart.

The State Department failed to implement adequate security measures to account for the fact that there was no reasonable expectation that the host government—Libya—would protect our diplomats. There was an overreliance on the rule of international law when Benghazi was operating under the rule of militias outside the effective control of the central Libyan government.

The unreliability and conflicting loyalties of the Libyan militia and the unarmed Blue Mountain guards hired to protect the facility are deeply troubling, especially since this problem was recognized long before the attack. Despite evidence that they were not dependable, American personnel were forced to rely upon them far too much. For example, in August, State Department personnel in Benghazi stated that ''[m]ission opinion is that Libyan security forces are indifferent to the safety needs of the U.S. mission.'' This proved all too true.

When a host nation cannot adequately protect our diplomats, the State Department must provide additional security measures of its own, urgently press the host government to upgrade its security forces, or remove U.S. personnel until appropriate steps can be taken to provide adequate security. It is telling that the British government removed its personnel from Benghazi after the attack on its ambassador.

Too often, the State Department failed to sufficiently respond to—or even ignored—repeated requests from those on the ground in Benghazi for security resources, especially for more personnel.

Ironically, the challenges facing the security personnel in Benghazi were well summarized in a March 2012 write-up from the top U.S. security officer in Benghazi as he sought to recognize his security agents with a meritorious honor award. The official justified the award based upon the fact that, ''Agent ingenuity took over where funding and Department restrictions left off.''

The temporary and junior security personnel in Benghazi pleaded for more help from Washington and Tripoli, but they were forced to make do on their own.

The Department must also reassess its local guard programs, particularly the use at high-risk posts of local guard contractors who do not meet standards necessary for the protection of our personnel or facilities.

I have previously noted the parallels and repeated mistakes identified in the report on the 1998 bombings of our embassies in Kenya and Tanzania, and we include several of these in our report. One of the recurring lessons is that the President and Congress must work together to ensure that we appropriately fund security for the State Department.

We have seen finger pointing about the lack of resources for embassy security, but the budget is a shared responsibility. The inadequate security in Benghazi was a product of both budgets approved by Congress and of the desire of the administration for a light footprint.

Overall, appropriations for the Department of State's security have increased by 27 percent since 2007 and Congress has generally been responsive in providing supplemental and Overseas Contingency Operations—OCO—funds to the Department of State. But, there was no supplemental or OCO request made by the President for additional embassy security enhancements in the last three years.

The administration must reevaluate its budget priorities, and since the Benghazi attack, Secretary Clinton is undertaking such a review. She has asked to reprogram $1.4 billion of the FY13 budget request to jump start this effort.

The lack of resources is just one of a number of factors we identified in our report that contributed to a perfect storm on the night of September 11.

Our report also calls for the State Department to work more closely with the Department of Defense and the intelligence community to improve the security of our diplomats in high-threat areas when our national interests require their presence. When a host nation cannot protect our personnel, the Department of State must work more effectively with the Department of Defense to assign and deploy military assets, such as Marine Security Guards, and plan for contingencies in the event of an attack.

One of our findings is that, while the Defense Department attempted to mobilize its resources quickly, it had neither the personnel nor other assets close enough to reach Benghazi in a timely fashion. Indeed, as we learned, the Combatant Commander of U.S. Africa Command did not have complete visibility regarding the number of U.S. government personnel in Benghazi who would require evacuation in the event of an attack.

Our diplomats are increasingly being called on to serve in dangerous posts, in countries where emerging democracies lack the ability to protect U.S. personnel and where terrorists and extremist factions harbor antipathy toward the West. The U.S. cannot afford to retreat entirely from dangerous places where our country's interests are at stake, nor is it possible or smart to transform every diplomatic post into a fortress.

The absence of reasonable time-tested security measures is, however, unacceptable in such high-risk countries. When a host nation cannot adequately protect our diplomats or if the State Department and other U.S. agencies cannot work together to provide appropriate security, we cannot ignore the option of temporarily removing U.S. personnel until appropriate steps can be taken to provide adequate security.

Finally, our report concludes that the attack in Benghazi was recognized as a terrorist attack by the intelligence community from the beginning.

Nonetheless, administration officials were inconsistent in stating publicly that the deaths in Benghazi were the result of a terrorist attack. If the fact that Benghazi was indeed a terrorist attack had been made clear from the outset by the administration, there would have been much less confusion about what happened in Benghazi that terrible night. The attack clearly was not a peaceful protest in response to a hateful anti-Muslim video that evolved into a violent incident. It was a terrorist attack by an opportunistic enemy.

This, too, is not a new lesson. One of the key lessons of this Committee's 6-

year focus on the threat of violent Islamist extremism is that, in order to understand and counter the threat we face, we must clearly identify that threat. We have repeatedly expressed our disappointment in the administration's reluctance to identify violent Islamist extremism as our enemy—while making the sharp distinction between the peaceful religion of Islam and a twisted corruption of that religion used to justify violence. The administration's inconsistent statements about whether this was a terrorist attack are symptomatic of this recurring problem. We hope this lesson will finally be heeded.

Ultimately, it is with the goal of enabling continued U.S. engagement around the world to support our own national interests that we offer our findings and recommendations regarding the terrorist attacks in Benghazi, Libya, on September 11, 2012. The men and women who serve our country in dangerous posts deserve no less.

Mr. President, I thank the chairman for his extraordinary work on this very important project.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. MANCHIN. Mr. President, first, I thank both of my colleagues for their diligent work. They committed themselves to this work, and I appreciate it. They keep us all informed.

(The remarks of Mr. MANCHIN pertaining to the introduction of (S. 3714) are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

INCREASING AMERICAN JOBS THROUGH GREATER EXPORTS TO AFRICA

Mr. DURBIN. Mr. President, I rise with the intention of asking consent for the immediate consideration of passage of S. 2215, the Increasing American Jobs Through Greater Exports to Africa Act that I have introduced in the Senate with Senators BOOZMAN, COONS, CARDIN, and LANDRIEU. It is being sponsored and led in the House of Representatives by Congressman CHRIS SMITH and Congresswoman KAREN BASS.

It is a straightforward and bipartisan bill that tackles a very serious problem by specifically making sure that American companies have the ability to compete in the growing African market. Economists have called this the next frontier, and it is hungry for American goods and services. It is also a market that others are competing for too often at the expense of American businesses, American employees, American products, and American values.

China, in particular, has an aggressive strategy to help its companies invest in Africa, leaving a troubling footprint across the continent of its economic, labor, environmental, and governance values and standards. The loss to American workers and American influence on the continent is enormous and inexcusable. That is why we introduced this bill to make sure a senior administration official brings desperately needed coordination and leadership to the U.S. export strategies in Africa. It also makes sure the various agencies, such as the Department of Commerce, the Export-Import Bank, the Department of State, and others are fully engaged in helping foster U.S. investment in Africa.

For months we have been working with various committees of the House and Senate on this effort. I want to notably thank JOHN KERRY of Massachusetts and Senator DICK LUGAR of Indiana for seeing its unanimous support through the Foreign Relations Subcommittee was secure—as well as the Banking and Financing Committees for their help in allowing us to go forward.

The bill cleared the hotline on the Democratic side some time ago, and we worked with a number of our Republican colleagues to address many legitimate concerns. So imagine my disappointment at this closing hour when I learned that there is a new Republican hold blocking this bill at the very last minute.

Mr. President, you have been to Africa. You know what we are facing. This is a continent which is emerging in the 21st century in a way that we never imagined. It is surprising to some to learn that when they try to project forward where the economic growth in the world will occur in the next 10 or 20 years, 60 percent of that growth will be in Africa. Many people still view it in a stereotypical context of some backward continent of people with limited resources and limited ability. Nothing could be further from the truth.

Africa is going to emerge in the 21st century. The question is, Will the United States be there as a trading partner sharing not only our goods and services but our values? We ought to take heed to the fact that the Chinese are there, and their role is growing. If we step back and allow the Chinese to master this continent at our expense, we will pay for it for generations. They will literally have ensconced themselves in this economy in so many different ways.

Currently, they are making what they call concessional loans, which means discount loans. If they want to build a stadium in Addis Ababa, Ethiopia, go see the Chinese. If they need to borrow $100,000 or $100 million, whatever it happens to be, they will give it to them. They just need to pay them back 70 percent of what they borrowed—only 70 percent. How could the Ethiopians say no?

Then the Chinese say: On one condition; the contractor is going to be from China and at least half of the employees will be Chinese employees, as will the engineering firm, the agricultural firm, and all of the different agencies of the private sector that come in to build this stadium. Then when it is finished, they don't leave. They stick around to bid on the next project. They become an integral part of the economy of that nation at the expense of the United States.

What should we do about it? Nothing? After hearing this story in Ethiopia, I came back and gathered the American agencies that promote exports to Africa. It turned out there were a half dozen of them. They were glad to see one another. They don't get together that often. I asked them what they were doing. They said they each have concerns, and they are doing a little of this and a little of that but no coordination.

How many speeches have we heard about the waste of government and taxpayer dollars because of the fumbling and uncoordinated effort by our government. That is why I introduced this bill to avoid that.

The purpose of this bill is to dramatically increase exports to Africa, to use existing resources at existing agencies to achieve it, and to make sure that at the end of the day we create more jobs in America and more businesses successfully exporting goods and services to that great continent. At the end of the day, the Africans will have quality products, goods, and services, and there will be more jobs in the United States. What is wrong with that equation? Obviously, there is at least one Senator who thinks it is a bad idea, and he has put a hold on this bill after I spent months working to clear it through all of the committees in the hopes that we could have this bipartisan bill.

This is a bill that is supported and sponsored by Republican subcommittee chairman CHRIS SMITH over in the House of Representatives. This is supposed to be what we are about—to come up with a bipartisan effort, an effort that will create jobs in America, coordinate existing agencies, and open new markets for America's goods and services that will benefit every State in the Union. That is what I set out to do.

I am so close to getting it done. One Senator is going to object. It is unfortunate after all of the work we put into this that they would stop this bill. I hope the Senator will reconsider his position. I have an official request that I am going to make at this point.

I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 536, S. 2215; that the committee-reported substitute amendment be withdrawn; the Durbin substitute amendment which is at the desk be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to this measure be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, reserving the right to object, I wish to make just a couple observations and explain why I am going to object.

First, for the record to be clear, it is my understanding this measure—and there is no question the Senator from Illinois has put a great deal of work into this. All his motives are absolutely commendable and legitimate. The measure itself, I believe, has not gone through a markup in the Banking Committee. There are many Members who have serious concerns about this particular bill for which the unanimous consent request is being made.

More broadly, about the Ex-Im Bank—in fact, I would argue this bill and this unanimous consent request puts a light on one of the concerns many of us have with the Ex-Im Bank in the first place. Let's remember what the Ex-Im Bank is. This is a taxpayer subsidy for large corporations to export products. I am a big fan of trade. I am a big fan of exports. I am not a fan of taxpayers having to subsidize the activity, and some of us, myself very much included, believe it ought to be a very high priority of this and any other administration to work for the mutual end of these taxpayer-subsidized export vehicles all around the world. They exist in other places as well, and that is the excuse that is usually given for why we have to also subsidize our corporations on their exports. I don't think that is a very good argument. I would certainly prefer to see a broad curtailment and eventually the end of this process; whereby, Europeans and Asians and Americans all engage in this flawed policy of subsidizing their respective corporations' export efforts.

Here is what happens with this bill, and this is exactly the kind of thing that happens when the government sets up a political venture to engage in economic activity. It gets politicized. Someone comes along with perfectly good motives and good intentions and decides there is some category of activity that is more important than other categories of activity. In this case, it is a geographical prioritization that the Senator from Illinois wishes to make by requiring a certain amount of business be transacted in Africa. I suspect there are people in this body and in other places who would make similarly persuasive arguments that there are places in Asia that ought to get this special treatment which the Senator from Illinois is recommending, and there are other people who would suggest maybe it shouldn't be a geographically based preference, but it ought to be a product line-based preference or it ought to be driven by the number of American workers who are involved in whatever it is that is being exported.

I can imagine all kinds of export criteria by which political forces could decide that the Ex-Im Bank ought to have special treatment in special categories, all of which simply distorts the normal market activities that would actually optimize exports, economic growth, and job creation.

So despite all the good intentions and the hard work done by the Senator from Illinois, I think this specific policy would be a mistake. More broadly, I think we are not yet on the right path of curtailing the taxpayer obligation for these export subsidies.

For that reason, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to clarify a few things. The Parliamentarian referred the bill to the Senate Foreign Relations Committee. It was reported favorably by that committee. It was referred to the Senate Banking Committee, but I made a point with Senator BOOZMAN, our colleague on the Republican side, of taking this bill to the Banking Committee, which clearly shows this is not an attempt to go around this committee. I have the greatest respect for the Members of the Banking Committee on both sides and we have done our best to work with them.

Secondly, this argument that we have to get out of the business of having government support for business activity is a naive argument. Let me give just a couple numbers to reflect on, when it comes to the future of our chances of American businesses working successfully to export to Africa.

Right now, the Export-Import Bank of the United States has supplied the support of about $1 trillion in 2011 for all exports to Africa. Some of these are guarantees on loans. Some of them allow for lower interest rates because the guarantees do exist. But let me tell my colleagues what is happening with the Chinese at the same time. While we are putting in $1 trillion in Africa, the Chinese are putting in $12 trillion. Who is going to win that competition? When it is all over, who will win that competition? By a margin of 12 to 1 the Chinese will win it. Many of those who say they support business and new jobs for America basically want to abandon the field and walk away from it. They want to let the Chinese take it away: We are going to play free market, that is all; no government involvement. We are just going to have a flatout arms' length transaction with these countries—and we will end up with fewer jobs in America, fewer exports to Africa, fewer businesses working on that continent.

Some people say: Why did you pick Africa? Of all the places, we could have picked Asia or all these different places. When we take a look at the indicators, the African Continent is undergoing a period of rapid growth and middle-class development that most Americans aren't even aware of. In the year 2000, 6.7 percent of the population of Africa had access to the Internet. Talk about the Dark Ages: 6.7 percent, in 2000. By 2009, it had grown from 6.7 percent to 27.1 percent of the population with access to the Internet. Seventy-eight percent of Africa's rural population now has access to clean water. Our images of a backward continent are just plain wrong. Our opportunities are unlimited but not if we ignore the reality. The Chinese are going to outthink us and outwork us and we are going to lose and we will ultimately say: We are pure of heart. We are not going to have our government in this. The Chinese may want to do it. We will just give up the jobs that could have come to America. We will give up the opportunity for businesses to export to Africa from the United States. What a terrible outcome that is. It truly is shortsighted. It argues for a good economic theory but one that doesn't reflect the reality of the world we live in today.

After all these months of hard work by a bipartisan group of Senators and Congressmen, we come down to one objection. That is how the Senate works. I know it and I respect it. Each Senator has a right to make an objection. I wish to applaud my colleague from Pennsylvania for coming to the floor and saying it in his own words. Many times this is done in secrecy without any disclosure of who is behind a hold or an objection, and I salute the Senator from Pennsylvania for his honesty in coming to the floor, even though we obviously disagree on this important issue.

THE FISCAL CLIFF

Mr. DURBIN. Mr. President, it is hard to imagine we are a little over 24 hours away from going over the so-called fiscal cliff, which occurs at midnight on December 31—tomorrow. This cliff is self-imposed. It is a penalty we voted for if we fail to deal with the deficit our Nation faces. Unfortunately, as of this moment, we have not reached an agreement to avoid it. I haven't given up hope. Conversations and negotiations continue all through this day and I am sure into tomorrow, and I hope by the end of tomorrow night we can celebrate the end of this year and the beginning of a new year with good news for the American people.

This is exactly the wrong time for us to go over this cliff. We are in the midst of an economic recovery. We are seeing new job creation. Businesses are seeing new growth. We are seeing the kind of economic indicators we have been waiting for, for years. Going over the cliff is going to bring uncertainty to our markets and, with that uncertainty, a pullback in consumer confidence and a reduction, I am afraid, in business activity and in the creation of new jobs.

There are sensible ways to avoid it. The President has suggested one. In addition to spending cuts, we need to increase revenue to reduce our deficit. The President said let's have the tax rates which applied during the Clinton administration—a time of great economic expansion—apply to those making over $250,000 a year. That is only 2 percent of the population, but it generates hundreds of billions of dollars in savings over a 10-year period of time. There has been resistance from the

other side of the aisle, and we are in active negotiation with the Republicans now as to what we can do to raise revenue to reduce our deficit.

We are also talking about some other elements that trouble me. One of them is the estate tax. The estate tax is a tax paid by very few Americans. Less than 1 percent of those who die each year pay anything to the Federal Government on their estates because most people don't have an estate large enough to qualify for estate tax liability.

There was a long debate for many years on this issue, and Frank Luntz and some of the Republican advisers masterfully came up with this term the ''death tax'' and they created this impression among a lot of people that this tax—the estate tax or death tax—would be imposed on virtually everyone. In fact, when I went to O'Hare Airport once to check in curbside, where people can do that, one of the United Airlines attendants took my baggage, saw the name tag on it, and said: Senator, please do something and protect me from the death tax. I wanted to stop and tell this hard-working gentleman he would have to win the lottery to pay the death tax, as he called it. It is reserved for a small number of people in this country who have done very well in life and end up paying a tax ultimately on the increase in value of many of the assets they bought during the course of their life.

Having said that, it has become part of our deficit negotiation. I am troubled by the notion we are somehow going to give a tax break to some 6,000 very fortunate Americans and incur a new expense for our Federal Government of some $130 billion or $140 billion in the process. What are we thinking? At a time when we have to try to bring together the resources to reduce our deficit, why would we want to give a new bonus break for the wealthiest people in this country when it comes to the estate tax? That, to me, would be a step backward. I hope we aren't forced into any agreement that includes it, although I stand here knowing full well if there is an ultimate compromise, there will be parts of it I find disgusting and reprehensible which I may have to swallow in the name of finding a compromise that will avoid this fiscal cliff. That is the nature of a political compromise. I hope that one isn't included, but it may be.

In addition, we have to do things that are important for this economy and one of the most important is to make sure we extend unemployment benefits for the long-term unemployed. If we don't act and act quickly, 2 million Americans will lose their unemployment benefits tomorrow—2 million. These people are literally struggling to get by and keep their families together while they look for a job. We should make sure this stimulus—the money for unemployed families—continues, so while they are trying to find a job or, in fact, going through new education and training, they have a helping hand. That is who we are as Americans and we ought to include it in any package that avoids this fiscal cliff.

Beyond that, there is much work that needs to be done beyond the fiscal cliff. This negotiation does not go deeply into deficit reduction, and I think we need to. I was a member of the Simpson-Bowles Commission. I salute my colleague KENT CONRAD of North Dakota, who is retiring in just a few days, for his amazing leadership in bringing us to this moment in this national debate, but we still have much work to do, and I am sorry KENT will not be here to be personally part of it. I have viewed him as an almost irreplaceable resource in this debate. He knows more about our Federal budget and the deficit challenge we face than any Member of Congress, period. All the rest of us have learned so much from him, and we are certainly going to miss him.

We need to continue this effort he started to reduce the deficit. We need to look seriously at our entitlement programs so at the end of the day we meet our obligation to future generations. Social Security is solvent for 20 years. We should make it solvent for 75, and we can do it; if we face it today, we can do it. I think we ought to have a separate commission taking a look at this challenge, reporting back to Congress and entertaining alternatives and substitutes on the floor that are certified to meet the same goal. That is important.

We also know in 12 years Medicare will not have the resources it needs to meet its obligations. Forty or 50 million Americans depend on it, literally, for their life-and-death issues when it comes to health care. We need to work on that immediately to deal with reducing the cost of Medicare while still protecting the integrity and promise of that amazing program that has served us so well for almost 50 years.

We have a challenge ahead of us. First, let's work together on a bipartisan basis to try to avoid this fiscal cliff; if we cannot, let's work as quickly as we can to get back on our feet, on a bipartisan basis, and come up with an agreement that moves our economy forward. Finally, let's deal with deficit reduction and long-term entitlement reform. That is part of our obligation.

I spoke to our Senate Democratic caucus a little earlier today about the terrible problems we face in Illinois, with one of the lowest credit ratings in the Nation, primarily because our pension systems are underfunded. For more than four decades, Republican and Democratic Governors have ignored the challenge, as have many leaders in our general assembly. And now the responsibility falls on this generation of leaders to try to deal with a vexing situation where it would take literally one-third of our State budget to meet the unfunded liabilities of our pension systems.

We cannot let that happen at the Federal level. Whether it is Social Security or Medicare, we need to make the thoughtful choices, the thoughtful advances in these programs today that protect them for generations to come.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator from Texas.

THE FISCAL CLIFF

Mrs. HUTCHISON. Mr. President, we are here just hours before a looming deadline that is going to affect just about every American in some way, and I do believe both sides of the aisle and both sides of the Rotunda want to come to a conclusion that will keep us from having what looks like a complete meltdown of governing in Washington.

Someone asked the question in one of our conferences: When was the last time Congress was in session and voting between Christmas and New Year's? The answer was, since 1970 there has not been such a session. And it has actually happened only four times in the history of our country, and two of those times were dealing with World War II.

So I think the enormity of the issue is very clear, and that is why we are here. I think we should have done this 6 months ago, a year ago. I think all of us agree we should not be here at this last hour still trying to negotiate a point at which so many Americans are going to be more heavily taxed.

I was pleased to see that the distinguished deputy leader on the Democratic side talked about the three areas we have to address, and deficit reduction is most certainly one of them because we are facing a ceiling of a $16.4 trillion debt that is getting ready to be exceeded. So, yes, deficit reduction and entitlement reform are two areas we must address.

This country cannot continue to have Social Security and Medicare spiraling toward insolvency. We cannot do it. But it is going to take a bipartisan approach. It is not rocket science to see that we have a Democratic Senate, a Republican House, and a Democratic President, and that is going to be the same starting January 3 of next year for at least 2 more years. So we know what we are dealing with, and I think it affects us right now in the fiscal cliff negotiations because we are not going to do anything unless it is bipartisan. We will not be able to pass anything in the House that does not have significant Republican votes in the Senate, and the Democrats in the Senate are not going to be able to support something that will not require some votes of Democrats in the House.

So we are together—maybe it is like a dysfunctional family, but we do have to work together because without bipartisanship, nothing is going anywhere. Therefore, I think you have to go back to negotiations 101, which is that someone in a negotiation has to win some and lose some. The other party in a negotiation has to win some

and lose some. The President is not going to get everything he wants. The Republicans in the House and Senate are not going to get everything we want, nor are the Democrats in the House and Senate.

So we have areas where we can come together, and I have seen it. All of us were talking in the last couple of hours about how we have talked to our counterparts on the other side of the aisle about what could bring us together, and there are very clear areas where we can come to an agreement.

We are not going to be able to negotiate all parts of what we must do to get our financial house in order. We are not going to be able to do tax reform in a comprehensive way, we are not going to be able to do the fixing of and reforming of our entitlement programs, and we are not going to be able to set all of the spending cuts we are going to have to do going forward right here in the next 36 hours. We cannot do it. That has to be done on a basis of determining after many hearings what our priorities are and what the ceiling on spending should be. We must set a ceiling. Is it 18 or 20 percent of gross domestic product? Is it some amount that goes down each year? That is the question that has to be decided after a lot of discussion next year.

But what we can do is avoid a fiscal calamity by not having the sequestration take place on January 2 at midnight—but make that for a very short term. It cannot be 2 years of a moratorium on sequestration because then we would not get to where we need to be in determining the priorities that will lower the rate of spending in this country. Our problem in this country is a spending problem, and with a $16.4 trillion debt, more spending is not going to be the answer.

So let's look at a very short-term avoidance of sequestration because we do not want to disrupt our military when they have boots on the ground in harm's way. We would not do that. We would not do it on either side of the aisle. So we need to talk about some short-term sequestration avoidance but not a long-term one because there are things we can cut in the military budget that will not affect the equipment and the pay and the living conditions of our military. We can cut other things. So we have to be able to come to terms with not having sequestration but making it very short term.

I think it is clear the President has wanted to increase taxes on what he considers the wealthy. I disagree with the President on what is wealthy, and I hope we can come to terms. Even the President has said a $400,000 threshold is something he could accept. Many on the other side of the aisle have said $500,000 or $600,000—$400,000 or $500,000 or $600,000 is something they could work with. And if we do some other things, I believe we could come to a consensus—not something that we like because I do not think we ought to raise taxes on anyone, and I have certainly voted that way, but there is some area where we can have a fix that will keep us from having to go over this cliff and hurt so many people in this country.

I think it is so important that we look at the big-ticket items in a comprehensive way, knowing that we are going to have to do that next year. But there are things we can do right now. I do not know 1 person out of 100 here who wants the AMT to take effect and cause people who make $33,750 to have to pay more taxes. I think we should do away with the AMT completely, but certainly it should not kick in at $33,750. We need to fix it, and I think everybody here agrees we need to fix it.

The distinguished deputy leader was talking about the death tax. Now, he does not think we should fix the death tax. I certainly do. If we go to a $1 million exemption and a 55-percent tax, I think that is going to hurt family-owned businesses, it is going to hurt farms and ranches, and it is going to hurt the people who work for those family-owned businesses. Why is that? It is because the value of farms and ranches, which is land, does not have a revenue stream that allows you to pay the tax. So what do you have to do? You have to sell an asset, but you cannot get the full valuation that is put on it. You cannot do it. I have owned a manufacturing company, and I can tell you, you cannot sell the equipment for the value that is put on that piece of equipment. So what happens to a family-owned business? They end up having to sell at pennies on the dollar to pay the tax, and people are put out of work. Is that really what we want?

The exemptions we have now are $5.1 million and a 35-percent rate. It would go to $1 million—in 36 or 48 hours—$1 million and a 55-percent rate. And remember, the death tax is a tax that has already been paid again and again and again. It is a tax on the value of the equipment or the land that has already been taxed with a property tax or a sales tax on the equipment.

So there is a reason to have some accommodation in the death tax so that we will not face more unemployed people who worked for a family-owned business or farm, and if it is not the No. 1 issue of the Farm Bureau of this country, it certainly is in the top two or three because they know—they know—what it is like to have to sell land at a value that is not realistic and pay a tax. And a 55-percent tax is pretty confiscatory.

So I do hope we can come together on a bipartisan basis because if we do not come together on a bipartisan basis, nothing will get done, because we have the House that is looking to the Senate, which is supposed to be the adult in the room, and they are looking at us to see how the votes turn out, and we need a large majority on both sides of the aisle to send to the House something that has a firm stamp of approval of this body.

We need the President to be a player here as well. I am encouraged that he is now talking to our leaders and hopefully being constructive. And certainly our Vice President, who served in this body for so long, does understand the importance of the one-on-one talks, and he is talking to, I know, our leader and most certainly the Democratic leader as well.

So the hour is getting late, both figuratively and literally. We do not have much time to settle an issue that will affect the economy of this country.

Last but not least, I am sure the President does not want to have a calamity like this happen on his watch. And I do not want, on my watch, as one who is leaving the Senate this year, for this to be the last thing that happens on my watch. I do not think anyone here is going to benefit from a calamity happening in this country's economy—even for a few days—because it just looks as though we cannot govern.

It is time to realize that on a bipartisan basis we can do some things that will not be universally liked. It will not be liked by everyone in this room because we are not going to get everything we think is right. But we can move our country forward. We can help everyone in this country, every taxpayer.

But we are not going to raise taxes to spend more. We should be saying, OK, if there is going to be a threshold that pays more taxes, we should know it is going to bring down the deficit. That is a very important point that we hope will be determined at the end of this road in 36 to 48 hours.

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

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

DEFENSE APPROPRIATIONS

Mr. SCHUMER. Mr. President, I am pleased that on Friday, December 28, the Senate passed H.R. 1. I would like to outline some of the goals that I and many of my colleagues from New York have for this legislation. As you know, the Senate Appropriations Committee under the leadership of the late Chairman Inouye and now Chairman MIKULSKI, has put together a very robust and flexible bill that will help many victims of our damaged States, from housing to small business to transportation. The depth of the devastation to New York was significant—some estimate nearly $100 billion in damage.

When I saw whole neighborhoods in my State washed away, it was clear that significant Federal disaster funding was necessary. Although it has been 2 months since Hurricane Sandy ravaged New York, I am pleased the Senate has passed H.R. 1, with more than $60 billion in Federal funding to

aid homeowners, small businesses, hospitals, and New York's critical public infrastructure.

I spent hours with New Yorkers after the storm, and I thank my Senate colleagues for hearing their pleas and ensuring that the Federal Government has stepped up to help them in this terrible time.

I hope that our colleagues in the other body will swiftly pass H.R. 1. New Yorkers have already been waiting too long.

I would like to describe how H.R. 1 will provide Federal relief to the victims of Hurricane Sandy.

Shortly after the storm subsided, some claimed that the FEMA disaster relief fund had enough funds and that a supplemental appropriation could wait. I could not disagree more and fought hard to ensure that the bill we have today was brought to the Senate floor. H.R. 1 includes $11.5 billion for the disaster relief fund to support disaster response and recovery needs of our local governments and first responders.

H.R. 1 includes $17 billion for the community development block grant for victims of Hurricane Sandy who have lost their homes or businesses. FEMA will provide repair funding of $31,900, but for many of the 300,000 New York homeowners with significant damage, the CDBG funds are essential to cover their uninsured losses. These funds can also be used for the critical mitigation projects, such as flood proofing so that these same homeowners will be safe when the next storm comes.

H.R. 1 provides $5.4 billion in Federal funds to the Army Corps to fortify our New York coastline. From Staten Island to Montauk, the coast of New York is vulnerable to future storms. The following projects were never fully constructed due to a lack of funding and will now be eligible: South Shore of Staten Island; city of Long Beach; Rockaway beach; Coney Island; Fire Island to Montauk Point; Gilgo and Robert Moses beaches; and Asharoken Village.

As was said throughout debate on H.R. 1, disaster funding is also about prevention. It is essential that the Army Corps conduct a comprehensive flood protection study of the New York Harbor region. I hope they will get to work immediately once the bill becomes law.

H.R. 1 will also build a bridge back to profitability for our small businesses. Thousands of small business owners were inundated by Hurricane Sandy endured total destruction or interruption of commerce for days and weeks. Like we have in other storms, the community development block grant funding provided in H.R. 1 should be used for a small business relief program to boost the region's ailing posthurricane economy. I will be watching to make sure that New York small businesses who need assistance receive it.

H.R. 1 will allow for the hardening of New York's Electric Grid. I believe it is critical that drastic rate increases are prevented. The Long Island Power Authority and Con Edison need help elevating substations, installing smart grid sensors, and building stormproof poles. The duration of power outages in New York was one of the worst catastrophes of Hurricane Sandy, and we hope that these funds will mean New Yorkers never have to experience that again.

H.R.1 also will protect and improve the gasoline infrastructure in New York Harbor. Hurricane Sandy's wrath destroyed unprotected gas terminals and pipelines in New York harbor and gas shortages brought whole communities to their knees. Federal mitigation funding should and must be used to protect our gasoline infrastructure from the next storm by providing backup power and booster systems for facilities like the Buckeye pipeline.

H.R. 1 includes $10.8 billion for public transportation. New York has one of the largest public transit systems in the country and suffered over $5 billion in damage from the storm. Experts have said that much of this damage could be prevented in the future with new mitigation techniques H.R. 1 provides to ensure that our transit systems build subway seals, erect flood gates in tunnels, and establish advanced drainage systems.

H.R. 1 also includes $200 million for the Department of Health and Human Services. I hope that at least $150 million will be provided to the National Institutes of Health for repair and recovery of New York University's medical research program. The Smilow Research Center is one of NYU's three animal research facilities, and because of Hurricane Sandy, an untold amount of medical discovery and hard work has been lost. According to NYU, an estimated 10 million gallons of water poured into the ground and the basement of the institution, bending 3-inch steel doors in half, washing away walls as well as sandbags, and destroying everything in its wake.

Because of a power outage, the animal labs went dark where the best and brightest researchers search for cures and treatments. The center held specimens critical to NYU scientists' research in heart disease, cancer, and neurodegeneration. Dr. Francis Collins, the head of the NIH, said this: ''The damage is truly appalling. The infrastructure has been essentially obliterated.'' I appreciate how much assistance the NIH has already provided to NYU's researchers, and I will continue to ensure that NYU can be rebuilt.

H.R. 1 also includes Federal funds through FEMA and through the HHS social services block grant to help New York's hospitals. Hurricane Sandy caused 36 health care facilities to be closed completely, including 4 hospitals, 17 nursing homes, and 4 health clinics. It is essential that FEMA and New York State do everything they can to help our health care facilities get back on their feet.

In the blink of an eye, the Atlantic Ocean turned from our greatest natural resource into a nightmarish monster, but with the Senate passage of H.R. 1, New York is on its way to recovery.

TRIBUTES TO DEPARTING SENATORS

RICHARD LUGAR

Ms. MURKOWSKI. Mr. President, I rise today to speak on behalf of my friend and colleague Senator DICK LUGAR, who is retiring from the Senate at the end of this year.

Senator LUGAR has been a good friend to me in the decade we have served together. As the Chamber's most senior Republican he has been a mentor to me, and when I first came to the Senate he was also my Chairman on the Senate Foreign Relations Committee. I have been proud to work with him on a number of foreign policy issues, including those affecting the United States as an Arctic nation like the Law of the Sea Treaty.

We have also worked together on energy issues. Senator LUGAR's Practical Energy Plan is a thoughtful bill to strengthen our energy security. On this bill, as on all other issues throughout his Senate career, Senator LUGAR worked to develop practical solutions to the challenges we face regarding energy.

Senator LUGAR is the longest serving Member of Congress from his home State of Indiana. He graduated first in his class from Shortridge High School in Indianapolis and after attending college, he began his service to our country as an intelligence briefer in the U.S. Navy. He later served as mayor of Indianapolis, on the U.S. Advisory Commission on Intergovernmental Relations, and as President of the National League of Cities before beginning his 36 year Senate career.

He has clearly served the people of Indiana well. Just last month, the Indianapolis Monthly Magazine published ''By the Numbers: Richard Lugar's Legacy,'' which listed many of Senator LUGAR's accomplishments. The article noted that Indianapolis gained 57,000 jobs during Senator LUGAR's tenure as mayor and 7,500 nuclear warheads were deactivated as a result of the Nunn-Lugar program. According to the article, Senator LUGAR has cast more than 13,000 votes in the Senate and worked with 7 different Presidents. He has been recognized for his service with the Guardian of Small Business award, the Spirit of Enterprise award, the Watchdog of the Treasury award, and more than 45 honorary degrees from colleges and universities in 15 States and the District of Columbia. The American Political Science Association got it right when they named him an Outstanding Legislator, and he won his last general election with 87 percent of the vote.

I will miss Senator LUGAR's friendship, commonsense approach to getting things done, and commitment to the

people of Indiana and the people of the United States. I will miss his always congenial personality and his gracious and respectful manner towards others. I will close by noting what I think may be the biggest accomplishment noted by Indianapolis Monthly Magazine, his 56-year marriage to his wife Char. I wish them the best in the coming years.

KAY BAILEY HUTCHISON

Mr. President, I rise today to honor my colleague and friend from the State of Texas, Senator KAY BAILEY HUTCHISON, as she prepares to retire from the Senate after almost 20 years serving her beloved State. I have been honored to serve with Senator HUTCHISON and will truly miss her presence and the guidance she has shared over the last 10 years.

Senator HUTCHISON is a Texan through and through. She is the descendant of Texas pioneers, which might account for the fighting spirit she has displayed here in the Senate. She is a trail blazer, and in finding her own path broke barriers and overcame the challenges she faced early in her career. She was one of only 13 women in a class of nearly 400 who graduated from the University of Texas Law School in 1967. After graduating, she faced a harsh reality of the time as no law firm in Houston would hire a woman; however she did not let this break her spirits. In 1972 she became the first Republican woman elected to the Texas State House, where she learned the value of bipartisanship, working across the aisle to address the inequities and stigma that rape victims faced in the legal system—and carried legislation which would become a model for states across the country. This is one of the many reasons I have come to respect and admire the senior Senator from Texas—her ability to bring people together to benefit those we serve.

After being elected Texas state treasurer in 1990, she again made history in 1993 by becoming the first, and only, woman to be elected to the Senate from Texas. Here in the Senate, she has been a champion for our military forces, serving on the Intelligence and Armed Services Committees, and as chairman and ranking member of the Military Construction and Veterans Affairs Appropriations Subcommittee. In those roles she has worked to ensure our servicemembers and their families have the support they need. She has also made major contributions through her work to expand science and education, consistently advocating for needed improvements so that our students stay competitive. Her commitment to education has led her to play a role in creating a program at the National Science Foundation which will expand training for math and science teachers of tomorrow, and she was a driving force in establishing the Academy of Medicine, Engineering and Science of Texas.

In addition to her legislative accomplishments, Senator HUTCHISON is to be recognized for her efforts to keep the Senate schedule workable for families. KAY's children are now 11 years old and many of us have watched as they have grown. One of my favorite pictures is of Senator HUTCHISON, the only woman in a sea of men, holding the hands of Bailey and Houston as toddlers. Whether it was late nights or flights to catch, KAY reminded the leaders that we have an obligation to our families as well.

Throughout her career Senator HUTCHISON has tackled challenges with grace, resilience, and perseverance. As a tireless advocate for her State, we can learn a lot from Senator HUTCHISON's example of what a public servant should be, and she certainly leaves an impressive legacy here in the Senate. In her book, American Heroines, which chronicles some of the first American women trailblazers, she wrote that she believes America is the best place on earth to be a woman that—the opportunities are endless. These opportunities are due to Senator HUTCHISON and women like her, women whose independence and integrity have set an example for those who will follow in their footsteps. I thank Senator HUTCHISON for her leadership and her friendship, and wish her the best.

OLYMPIA SNOWE

Mr. President, I rise to recognize my colleague and friend, Senator OLYMPIA SNOWE, as she plans to retire from the U.S. Senate. Her nearly four-decade career in Congress has been one of distinction and unwavering public service to Maine and the United States.

Senator SNOWE's achievements are numerous. In 1978, she became the youngest Republican and first Greek-American woman to be elected to the U.S. House of Representatives. In 1994, when she was first elected to the U.S. Senate, she became the fourth woman to serve in both Houses of Congress. She also has the distinction of being the first Republican woman to secure a full-term seat on the Senate Finance Committee. In total, she has won more Federal elections in Maine than any other person since World War II—a testament to how loved she is by her constituency.

Senator SNOWE has worked extensively on a number of issues, including budget and fiscal responsibility, veterans, education, national security, welfare reform, oceans and fisheries issues, and campaign finance reform. It has been my pleasure to work with Senator SNOWE on the Senate Oceans Caucus, where together we have stressed the importance of ocean policy and the crucial role our oceans play in all aspects of life in our respective States and across America.

I also appreciate Senator SNOWE's leadership on the Small Business Committee, where she has been a strong advocate for small businesses in Maine and across the country.

I know that I speak for all the female Senators in the U.S. Senate when I say it is sad to see such a well-respected female colleague retire. Senator SNOWE deserves the highest accolades for her service to this Nation. This is a woman who has done remarkably well by the American people, by her constituents in Maine, and by her colleagues in the U.S. Senate.

I personally admire her efforts to work—always—in a bipartisan manner. Her moderation and willingness to listen to all sides of an issue are examples for us all. I am encouraged that she intends to continue her efforts to advance good public policy by working to help elect those who are unafraid to stand in the middle and work to build consensus.

On behalf of the U.S. Senate, I thank Senator SNOWE for her dedication to her country, and I congratulate her on her retirement. I also want to recognize her husband Jack, who has also been an amazing public servant.

SCOTT BROWN

Mr. President, I rise to recognize Senator SCOTT BROWN's service to the Senate. While we have only had the opportunity to work together for 2 years, I have truly appreciated Senator BROWN's insight, leadership, and friendship.

Senator BROWN moved to Massachusetts as a young boy. He graduated from Wakefield High School, then joined the Massachusetts National Guard when he was 19. After attending Northwestern University and graduating from Tufts University and Boston College Law School, Senator BROWN began serving the people of Massachusetts in 1992, first as a real estate assessor and then as a selectman in Wrentham. In 1998, he was elected to the Massachusetts House of Representatives, and after three terms he was elected to the Massachusetts State Senate. In each of his State Senate reelection bids, he ran unopposed. As a State legislator, he advocated for children's and victims' rights as well as veterans affairs and worked to promote good government initiatives.

Senator BROWN came to the United States Senate in 2010. He quickly found his voice on the Armed Services and Veterans Affairs Committees thanks to more than 30 years of service in the National Guard. I was proud to join more than 30 of my colleagues in cosponsoring his Stolen Valor Act, which would make it a crime to knowingly misrepresent military service if a person wanted to profit from his or her lie.

Senator BROWN also worked on good government initiatives in the Senate, leading bipartisan efforts to repeal a provision of law requiring Federal, State, and local governments to withhold 3 percent of payments due to contractors. I was proud to cosponsor his bill to avoid making infrastructure improvements more costly and business more challenging for healthcare professionals who accept Medicare payments.

I have also been proud to work with Senator BROWN on another commonsense initiative in this Congress, the Prompt Notification of Short Sales

Act. Our bill would improve the housing market by requiring banks to provide a written response to an short sale offer within 75 days of a request from a homeowner. There are neighborhoods across the country full of empty homes and underwater owners who have legitimate offers, but unresponsive banks, and I commit to Senator BROWN that I will continue to work on this issue in the coming year.

Clearly Senator BROWN has served the people of Massachusetts and the people of the United States well, and he will be missed. I wish the best to him, his wife Gail, and their daughters Ayla and Arianna.

JEFF BINGAMAN

Mr. President, today I rise to recognize one of our most distinguished Senators as he prepares to retire from this body after five terms. Senator JEFF BINGAMAN has earned the reputation of being a strong and effective leader during his time in the Senate. He has achieved what all of us try to achieve as advocates of our States—getting results in Washington while staying closely connected to our constituents who sent us here to represent them. I have admired his intelligence, courage, pragmatism, and willingness to solve problems with bipartisan solutions.

Senator BINGAMAN and I have worked together on many issues and projects, and I have never questioned his steadfast commitment to do what he believes is right for New Mexico and this country. During his 30 years in the Senate he has worked tirelessly on a number of committees, including the Armed Services Committee, the Finance Committee, the Health, Education, Labor, and Pensions Committee, and the Committee on Energy and Natural Resources, which he currently chairs.

While most of my work with JEFF has been on energy issues, working with Senator BINGAMAN on the Senate HELP Committee was also a great pleasure. He has been an excellent partner, for example, on issues that are important to our American Indian, Native Hawaiian, and Alaska Native constituents, who often live in communities that face multiple challenges. There have been many times in the HELP Committee when it has been necessary for me to explain why a proposed solution won't work in Alaska. As I begin to explain about the Federal trust responsibility, or tribal sovereignty, the lack of health care and basic infrastructure, or how difficult it is to get and keep teachers, nurses, and others in those communities, there have been times when I have seen my colleagues think—here we go again, the ''It is different in Alaska'' speech. But whether we have been discussing education, health care, job creation, or any one of the innumerable challenges Americans face when they live in Indian Country, JEFF BINGAMAN gets it. He and I have been able to speak with our colleagues on both sides of the aisle with one voice about what will work, what will not work, and why. We can explain the complexities of the Federal trust responsibility and tribal sovereignty as a bipartisan team because whether our constituents live on a reservation in New Mexico or a remote village in Alaska or in one of our larger cities, the challenges they face are often the same, and what will work in other places in America often won't work in our Native communities. That partnership has been so important in making sure that the good work we are trying to do for all Americans works for America's first peoples in every State.

In addition to our work on HELP, our strongest collaboration has been while working together in our leadership roles on the Energy and Natural Resources Committee. Senator BINGAMAN has been tireless in ensuring that our Nation has the energy resources it needs to meet our growing demands well into the 21st century. He was a leader in the development of the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007, both major blueprints for the expansion of all forms of renewable energy, especially biomass, geothermal, and marine hydrokinetic power. I am happy to have had the chance to work closely with Senator BINGAMAN in those efforts. In 2008 and 2009 we also worked to pass a package of major public land legislation that will be a legacy for the Senator for decades to come.

When Senator BINGAMAN announced he was retiring from the Senate, I took note that he vowed to finish out the remainder of Congress with substantive achievements. Since then, he has affirmed this promise and has again driven productive discussions on several issues that will last beyond his time here, such as his efforts to move forward our Nation's program on spent nuclear fuel. The legislation that he introduced is indicative of months of thoughtful and productive discussions aimed to address the back-end of the nuclear fuel cycle. I congratulate him on constantly moving the conversation forward and putting a marker out there toward reaching an equitable goal.

Senator BINGAMAN should be very proud of his nearly four decades of public service as New Mexico's attorney general and U.S. Senator. From fighting for our energy future to standing with the people of New Mexico through difficult economic times, Senator BINGAMAN has been a trusted leader for the people of his State. He has been a champion for his constituents, a powerful voice for Native American concerns, and a leader on science research and energy tax policy.

He has been unfailingly and personally considerate to me, and I extend my gratitude for his service and thank him for his gracious aid on issues of concern to me and my home State. I wish him and his family good health and best wishes in the future and great happiness in whatever he and Anne now decide to do. The Senate has been a better place due to his civilized manner, his wit, and his intelligent solutions for the Nation's problems. We will miss Senator BINGAMAN's presence here in the Senate.

HERB KOHL

Mr. President, I come to the floor to recognize Senator KOHL as he prepares to retire after 24 years in the U.S. Senate.

Senator KOHL was born and raised in Wisconsin, the State he tirelessly represents to this day. He attended public school in Milwaukee and at the University of Wisconsin-Madison before obtaining his MBA from Harvard University in 1958. His business ventures proved incredibly successful and he was acting President of Kohl's grocery and department stores for nearly a decade. In 1988, he took his business and education experience to the U.S. Senate.

I have had the pleasure of serving with Senator KOHL on the Appropriations Committee for the past 4 years. His bipartisan cooperation is outstanding and together we have worked on numerous hearings and bills. He has been an asset on the committee and we will miss his dedication, intuition, and eagerness to work with others to find solutions.

As a mother of two and former PTA member, I also appreciate Senator KOHL's zeal in advocating children's issues. He authored legislation to expand the school breakfast program, strengthened child nutrition programs, and has worked to meet the growing demand for child care. His work on the Appropriations Committee ensured the continuation of important programs such as the Boys and Girls Club and the Families and Schools Together Program. This hard work did not go unrecognized. In 2010, Senator KOHL received the Best of Congress Award from Working Mother Magazine and Corporate Voices for Working Families. I will always admire Senator KOHL for his hard work on behalf of families and children across the U.S.

Senator KOHL's charitable endeavors will also remain an important part of his legacy. In 1990, he established the HERB KOHL Educational Foundation Achievement Award Program. This program provides annual grants to 200 graduating high school seniors, 100 Wisconsin teachers, and 100 schools in his home State.

I cannot thank Senator KOHL enough for his service over the past few decades. I am honored to have worked by his side and wish him the best.

MESSAGE FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 2:39 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 925. An act to designate Mt. Andrea Lawrence.

H.R. 1339. An act to designate the City of Salem, Massachusetts, as the Birthplace of the National Guard of the United States.

H.R. 1845. An act to provide a demonstration project providing Medicare coverage for in-home administration of intravenous immune globulin (IVIG) and to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims.

H.R. 2338. An act to designate the facility of the United States Postal Service located at 600 Florida Avenue in Cocoa, Florida, as the ''Harry T. and Harriette Moore Post Office''.

H.R. 3869. An act to designate the facility of the United States Postal Service located at 600 East Capitol Avenue in Little Rock, Arkansas, as the ''Sidney 'Sid' Sanders McMath Post Office Building''.

H.R. 3892. An act to designate the facility of the United States Postal Service located at 8771 Auburn Folsom Road in Roseville, California, as the ''Lance Corporal Victor A. Dew Post Office''.

H.R. 4053. An act to intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending.

H.R. 4310. An act to authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

H.R. 4389. An act to designate the facility of the United States Postal Service located at 19 East Merced Street in Fowler, California, as the ''Cecil E. Bolt Post Office''.

H.R. 5859. An act to repeal an obsolete provision in title 49, United States Code, requiring motor vehicle insurance cost reporting.

H.R. 5949. An act to extend FISA Amendments Act of 2008 for five years.

H.R. 6260. An act to designate the facility of the United States Postal Service located at 211 Hope Street in Mountain View, California, as the ''Lieutenant Kenneth M. Ballard Memorial Post Office''.

H.R. 6379. An act to designate the facility of the United States Postal Service located at 6239 Savannah Highway in Ravenel, South Carolina, as the ''Representative Curtis B. Inabinett, Sr. Post Office''.

H.R. 6587. An act to designate the facility of the United States Postal Service located at 225 Simi Village Drive in Simi Valley, California, as the ''Postal Inspector Terry Asbury Post Office Building''.

H.R. 6671. An act to amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet.

S.J. Res. 49. Joint resolution providing for the appointment of Barbara Barrett as a citizen regent of the Board of Regents of the Smithsonian Institution.

The enrolled bills, except [S. 925, H.R. 1339, H.R. 1845, H.R. 2338, H.R. 3869, H.R. 3892, H.R. 4053, H.R. 4389, H.R. 5859, H.R. 6260, H.R. 6379. H.R. 6587, H.R. 6671, and S.J. Res. 49] were subsequently signed by the President pro tempore (Mr. LEAHY).

The enrolled bills and joint resolution [S. 925, H.R. 1339, H.R. 1845, H.R. 2338, H.R. 3869, H.R. 3892, H.R. 4053, H.R. 4389, H.R. 5859, H.R. 6260, H.R. 6379. H.R. 6587, H.R. 6671, and S.J. Res. 49] were subsequently signed by the President pro tempore (Mr. LEAHY).

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 459. To require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States, and for other purposes.

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 Mr. MANCHIN:

S. 3714. A bill to alleviate the fiscal cliff, and for other purposes; to the Committee on Finance.

By Mr. HARKIN:

S. 3715. A bill to extend the limited antitrust exemption contained in the Pandemic and All-Hazards Preparedness Act; considered and passed.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MANCHIN:

S. 3714. A bill to alleviate the fiscal cliff, and for other purposes; to the Committee on Finance.

Mr. MANCHIN. Mr. President, I rise today frustrated, embarrassed, and angry. It is absolutely inexcusable that all of us find ourselves in this place at this time standing on the floor of the Senate in front of the American people, hours before we plunge off the fiscal cliff, with no plan and no apparent hope, but here we are, and we have to do something.

If we are as determined to go over the cliff as we seem, we have to do something to soften the landing because at the bottom of the fiscal cliff are immediate and massive tax increases, deep and indiscriminate spending cuts, and the risk of another recession. So, as we come down on the final hours, we have two choices—to do nothing and cause an unbelievable amount of hardship for our fellow Americans or to do something to reduce the suffering inflicted on our citizens by an inflexible political system.

I choose to do something. Today I am introducing the CALM Act, which stands for the Cliff Alleviation at the Last Minute Act. The CALM Act will do three important things: It will soften the financial blow of the fiscal cliff, it will calm our financial markets, and it gives us the certainty of a plan now but allows us, if we ever find the courage, to pursue the fiscal grand bargain that has eluded us so far. Make no mistake, the financial markets are watching us, and they are getting more nervous by the hour. We need to reassure them that we are capable of making big financial decisions.

This bill, the CALM Act, is not something I am excited about or proud to offer. This is not a great plan, but it is merely a better plan than going over the cliff. It should never have come to this. We have known for more than a year that this day was coming. For more than a year, I have asked Congress for a big fix to our Nation's fiscal challenges. I pushed strongly for the Simpson-Bowles framework for deficit reduction. Yet here we are, no closer to a sensible decision on how to bring our $1.1 trillion budget deficit and our $16.1 trillion public debt under control.

Guess what. Time is up. No more games. No more excuses. No more kicking the can down the road. We have to act, and we have to act in a way that puts our fiscal house in order, reassures the financial markets, and puts the people ahead of politics. We have to deal with these tax increases and spending cuts in a humane and tolerable way. The CALM Act does all of that. Just look at what happens to people in need if we go over the cliff and just do nothing. On New Year's Day the lowest income tax rate will jump from 10 percent back to the Clinton-era rate of 15 percent. That is a pretty big financial bite for people in West Virginia, and I know in Ohio, too, sir. These are people who are struggling right now.

Instead of an overnight tax hike of 5 percent, the CALM Act smoothes the transition by phasing in increases over 3 years. So instead of a 5-percent increase, the 10-percent bracket would only go to 11.6 percent the first year. The CALM Act does the same with the other tax rates, phasing them in over 3 years under the same proportions.

The CALM Act also puts the Senate on record in support of comprehensive overhaul of our tax system. We can still work toward a big fix like the Simpson-Bowles framework. If we can do that next year, we could stop the full increase from ever occurring.

Another important feature of the CALM Act is the way it treats sequestration. Again, if we go over the cliff and do nothing, nearly every government program will be hit with the same percentage cut, and that includes social services, education, research, and infrastructure. Those are all the things we need to grow our fragile economy.

The CALM Act gives the Office of Management and Budget discretion and flexibility to recommend what programs, agencies, and accounts to cut. If OMB fails to do the job, then the sequestration across-the-board cuts kick back in. Of course, the final word rests with Congress. OMB's decision can be overridden by a joint resolution.

Every provision of the CALM Act is familiar to the Senate. In fact, at one time or another nearly every feature of this plan has been offered by both Republicans and Democrats, including President Obama and Speaker BOEHNER. All I have done is pull them together to offer them as a compassionate alternative to what happens if we go over the fiscal cliff.

It is true that from the very beginning I have favored a comprehensive solution to put our fiscal house in

order, which was something along the lines of the Bowles-Simpson plan. We don't have that luxury right now. Perhaps the CALM Act will not only soften the blow of the fiscal cliff, but it will also give us a sense of urgency about a grand bargain to repair our financial house.

I am not so naive as to believe everybody is going to check their politics at the door, even at this late hour, but this is not a time for politicking, bickering, or partisan games. To allow the country to plunge over the fiscal cliff without any alternative plans to soften the landing is completely unacceptable. I cannot think of anything more irresponsible than to play games with the lives of Americans in such a callous way and let this great country go over the fiscal cliff. This would jeopardize the financial standing of our country and alarm our financial markets in ways that could trigger another recession.

Something has gone terribly wrong when the biggest threat to the American economy is the American Congress. I repeat: Something has gone terribly wrong when the biggest threat to our American economy is our American Congress.

It does not have to be that way. I am putting something on the table that is fair and balanced. It includes a slow phase-in of the tax increases that are going to happen inevitably if we go over the cliff. It includes a slow phase-in of all the tax increases, it includes targeted spending decreases, and it moves us closer to tax reforms. Everybody helps, and we do it in a way that keeps our country strong and prosperous.

This is one of those moments that the Senate was intended to live up to and provide leadership, find common ground, level with the American people, and be honest with each other. With our debt continuing to soar and too many Americans still looking for jobs, these are times that demand the very best of the Senate.

Everywhere in West Virginia—and, in fact, all over this country—families are making tough choices about how to make ends meet. It is time for Washington to do the same.

Here in the Senate it seems to me that we are always fighting about something. Well, that might not change anytime soon, but more often than not, I believe we can rise to the common ground of great national purpose. I believe with all of my heart that this is one of those times.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3445. Mr. DURBIN (for Mr. CORNYN (for himself, Mr. GRASSLEY, and Mr. LEAHY)) proposed an amendment to the bill S. 3250, to amend the DNA Analysis Backlog Elimination Act of 2000 to provide for Debbie Smith grants for auditing sexual assault evidence backlogs and to establish a Sexual Assault Forensic Evidence Registry, and for other purposes.

SA 3446. Mr. DURBIN (for Mrs. HUTCHISON) proposed an amendment to the bill S. 114, to expand the boundary of the San Antonio Missions National Historical Park.

SA 3447. Mr. DURBIN (for Mrs. HUTCHISON) proposed an amendment to the bill S. 114, supra.

TEXT OF AMENDMENTS

SA 3445. Mr. DURBIN (for Mr. CORNYN (for himself, Mr. GRASSLEY, and Mr. LEAHY)) proposed an amendment to the bill S. 3250, to amend the DNA Analysis Backlog Elimination Act of 2000 to provide for Debbie Smith grants for auditing sexual assault evidence backlogs and to establish a Sexual Assault Forensic Evidence Registry, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sexual Assault Forensic Evidence Reporting Act of 2012'' or the ''SAFER Act of 2012''.

SEC. 2. DEBBIE SMITH GRANTS FOR AUDITING SEXUAL ASSAULT EVIDENCE BACKLOGS.

Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

''(6) To conduct an audit consistent with subsection (n) of the samples of sexual assault evidence that are in the possession of the State or unit of local government and are awaiting testing.

''(7) To ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes, including sexual assault and other violent crimes against persons, is carried out in an appropriate and timely manner and in accordance with the protocols and practices developed under subsection (o)(1).'';

(2) in subsection (c), by adding at the end the following new paragraph:

''(4) ALLOCATION OF GRANT AWARDS FOR AUDITS.—For each of fiscal years 2014 through 2017, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(6), provided that none of the funds required to be distributed under this paragraph shall decrease or otherwise limit the availability of funds required to be awarded to States or units of local government under paragraph (3).''; and

(3) by adding at the end the following new subsections:

''(n) USE OF FUNDS FOR AUDITING SEXUAL ASSAULT EVIDENCE BACKLOGS.—

''(1) ELIGIBILITY.—The Attorney General may award a grant under this section to a State or unit of local government for the purpose described in subsection (a)(6) only if the State or unit of local government—

''(A) submits a plan for performing the audit of samples described in such subsection; and

''(B) includes in such plan a good-faith estimate of the number of such samples.

''(2) GRANT CONDITIONS.—A State or unit of local government receiving a grant for the purpose described in subsection (a)(6)—

''(A) may not enter into any contract or agreement with any non-governmental vendor laboratory to conduct an audit described in subsection (a)(6); and

''(B) shall—

''(i) not later than 1 year after receiving the grant, complete the audit referred to in paragraph (1)(A) in accordance with the plan submitted under such paragraph;

''(ii) not later than 60 days after receiving possession of a sample of sexual assault evidence that was not in the possession of the State or unit of local government at the time of the initiation of an audit under paragraph (1)(A), subject to paragraph (4)(F), include in any required reports under clause (v), the information listed under paragraph (4)(B);

''(iii) for each sample of sexual assault evidence that is identified as awaiting testing as part of the audit referred to in paragraph (1)(A)—

''(I) assign a unique numeric or alphanumeric identifier to each sample of sexual assault evidence that is in the possession of the State or unit of local government and is awaiting testing; and

''(II) identify the date or dates after which the State or unit of local government would be barred by any applicable statutes of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates;

''(iv) provide that—

''(I) the chief law enforcement officer of the State or unit of local government, respectively, is the individual responsible for the compliance of the State or unit of local government, respectively, with the reporting requirements described in clause (v); or

''(II) the designee of such officer may fulfill the responsibility described in subclause (I) so long as such designee is an employee of the State or unit of local government, respectively, and is not an employee of any governmental laboratory or non-governmental vendor laboratory; and

''(v) comply with all grantee reporting requirements described in paragraph (4).

''(3) EXTENSION OF INITIAL DEADLINE.—The Attorney General may grant an extension of the deadline under paragraph (2)(B)(i) to a State or unit of local government that demonstrates that more time is required for compliance with such paragraph.

''(4) SEXUAL ASSAULT FORENSIC EVIDENCE REPORTS.—

''(A) IN GENERAL.—For not less than 12 months after the completion of an initial count of sexual assault evidence that is awaiting testing during an audit referred to in paragraph (1)(A), a State or unit of local government that receives a grant award under subsection (a)(6) shall, not less than every 60 days, submit a report to the Department of Justice, on a form prescribed by the Attorney General, which shall contain the information required under subparagraph (B).

''(B) CONTENTS OF REPORTS.—A report under this paragraph shall contain the following information:

''(i) The name of the State or unit of local government filing the report.

''(ii) The period of dates covered by the report.

''(iii) The cumulative total number of samples of sexual assault evidence that, at the end of the reporting period—

''(I) are in the possession of the State or unit of local government at the reporting period;

''(II) are awaiting testing; and

''(III) the State or unit of local government has determined should undergo DNA or other appropriate forensic analyses.

''(iv) The cumulative total number of samples of sexual assault evidence in the possession of the State or unit of local government that, at the end of the reporting period, the State or unit of local government has determined should not undergo DNA or other appropriate forensic analyses, provided that the reporting form shall allow for the State

or unit of local government, at its sole discretion, to explain the reasoning for this determination in some or all cases.

''(v) The cumulative total number of samples of sexual assault evidence in a total under clause (iii) that have been submitted to a laboratory for DNA or other appropriate forensic analyses.

''(vi) The cumulative total number of samples of sexual assault evidence identified by an audit referred to in paragraph (1)(A) or under paragraph (2)(B)(ii) for which DNA or other appropriate forensic analysis has been completed at the end of the reporting period.

''(vii) The total number of samples of sexual assault evidence identified by the State or unit of local government under paragraph (2)(B)(ii), since the previous reporting period.

''(viii) The cumulative total number of samples of sexual assault evidence described under clause (iii) for which the State or unit of local government will be barred within 12 months by any applicable statute of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates.

''(C) PUBLICATION OF REPORTS.—Not later than 7 days after the submission of a report under this paragraph by a State or unit of local government, the Attorney General shall, subject to subparagraph (D), publish and disseminate a facsimile of the full contents of such report on an appropriate internet website.

''(D) PERSONALLY IDENTIFIABLE INFORMATION.—The Attorney General shall ensure that any information published and disseminated as part of a report under this paragraph, which reports information under this subsection, does not include personally identifiable information or details about a sexual assault that might lead to the identification of the individuals involved.

''(E) OPTIONAL REPORTING.—The Attorney General shall—

''(i) at the discretion of a State or unit of local government required to file a report under subparagraph (A), allow such State or unit of local government, at their sole discretion, to submit such reports on a more frequent basis; and

''(ii) make available to all States and units of local government the reporting form created pursuant to subparagraph (A), whether or not they are required to submit such reports, and allow such States or units of local government, at their sole discretion, to submit such reports for publication.

''(F) SAMPLES EXEMPT FROM REPORTING REQUIREMENT.—The reporting requirements described in paragraph (2) shall not apply to a sample of sexual assault evidence that—

''(i) is not considered criminal evidence (such as a sample collected anonymously from a victim who is unwilling to make a criminal complaint); or

''(ii) relates to a sexual assault for which the prosecution of each perpetrator is barred by a statute of limitations.

''(5) DEFINITIONS.—In this subsection:

''(A) AWAITING TESTING.—The term 'awaiting testing' means, with respect to a sample of sexual assault evidence, that—

''(i) the sample has been collected and is in the possession of a State or unit of local government;

''(ii) DNA and other appropriate forensic analyses have not been performed on such sample; and

''(iii) the sample is related to a criminal case or investigation in which final disposition has not yet been reached.

''(B) FINAL DISPOSITION.—The term 'final disposition' means, with respect to a criminal case or investigation to which a sample of sexual assault evidence relates—

''(i) the conviction or acquittal of all suspected perpetrators of the crime involved;

''(ii) a determination by the State or unit of local government in possession of the sample that the case is unfounded; or

''(iii) a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed.

''(C) POSSESSION.—

''(i) IN GENERAL.—The term 'possession', used with respect to possession of a sample of sexual assault evidence by a State or unit of local government, includes possession by an individual who is acting as an agent of the State or unit of local government for the collection of the sample.

''(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to create or amend any Federal rights or privileges for non-governmental vendor laboratories described in regulations promulgated under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131).

''(o) ESTABLISHMENT OF PROTOCOLS, TECHNICAL ASSISTANCE, AND DEFINITIONS.—

''(1) PROTOCOLS AND PRACTICES.—Not later than 18 months after the date of enactment of the SAFER Act of 2012, the Director, in consultation with Federal, State, and local law enforcement agencies and government laboratories, shall develop and publish a description of protocols and practices the Director considers appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence, including—

''(A) how to determine—

''(i) which evidence is to be collected by law enforcement personnel and forwarded for testing;

''(ii) the preferred order in which evidence from the same case is to be tested; and

''(iii) what information to take into account when establishing the order in which evidence from different cases is to be tested;

''(B) the establishment of a reasonable period of time in which evidence is to be forwarded by emergency response providers, law enforcement personnel, and prosecutors to a laboratory for testing;

''(C) the establishment of reasonable periods of time in which each stage of analytical laboratory testing is to be completed;

''(D) systems to encourage communication within a State or unit of local government among emergency response providers, law enforcement personnel, prosecutors, courts, defense counsel, crime laboratory personnel, and crime victims regarding the status of crime scene evidence to be tested; and

''(E) standards for conducting the audit of the backlog for DNA case work in sexual assault cases required under subsection (n).

''(2) TECHNICAL ASSISTANCE AND TRAINING.—The Director shall make available technical assistance and training to support States and units of local government in adopting and implementing the protocols and practices developed under paragraph (1) on and after the date on which the protocols and practices are published.

''(3) DEFINITIONS.—In this subsection, the terms 'awaiting testing' and 'possession' have the meanings given those terms in subsection (n).''.

SEC. 3. REPORTS TO CONGRESS.

Not later than 90 days after the end of each fiscal year for which a grant is made for the purpose described in section 2(a)(6) of the DNA Analysis Backlog Elimination Act of 2000, as amended by section 2, the Attorney General shall submit to Congress a report that—

(1) lists the States and units of local government that have been awarded such grants and the amount of the grant received by each such State or unit of local government;

(2) states the number of extensions granted by the Attorney General under section 2(n)(3) of the DNA Analysis Backlog Elimination Act of 2000, as added by section 2; and

(3) summarizes the processing status of the samples of sexual assault evidence identified in Sexual Assault Forensic Evidence Reports established under section 2(o)(4) of the DNA Analysis Backlog Act of 2000, including the number of samples that have not been tested.

SEC. 4. REDUCING THE RAPE KIT BACKLOG.

Section 2(c)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(c)(3)) is amended—

(a) in subparagraph (B), by striking ''2014'' and inserting ''2018''; and

(b) by adding at the end the following:

''(3) For each of fiscal years 2014 through 2018, not less than 75 percent of the total grant amounts shall be awarded for a combination of purposes under paragraphs (1), (2), and (3) of subsection (a).''.

SEC. 5. OVERSIGHT AND ACCOUNTABILITY.

All grants awarded by the Department of Justice that are authorized under this Act shall be subject to the following:

(1) AUDIT REQUIREMENT.—Beginning in fiscal year 2013, and each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct audits of recipients of grants under this Act to prevent waste, fraud, and abuse of funds by grantees. The Inspector General shall determine the appropriate number of grantees to be audited each year.

(2) MANDATORY EXCLUSION.—A recipient of grant funds under this Act that is found to have an unresolved audit finding shall not be eligible to receive grant funds under this Act during the 2 fiscal years beginning after the 12-month period described in paragraph (5).

(3) PRIORITY.—In awarding grants under this Act, the Attorney General shall give priority to eligible entities that, during the 3 fiscal years before submitting an application for a grant under this Act, did not have an unresolved audit finding showing a violation in the terms or conditions of a Department of Justice grant program.

(4) REIMBURSEMENT.—If an entity is awarded grant funds under this Act during the 2-fiscal-year period in which the entity is barred from receiving grants under paragraph (2), the Attorney General shall—

(A) deposit an amount equal to the grant funds that were improperly awarded to the grantee into the General Fund of the Treasury; and

(B) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

(5) DEFINED TERM.—In this section, the term ''unresolved audit finding'' means an audit report finding in the final audit report of the Inspector General of the Department of Justice that the grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within a 12-month period beginning on the date when the final audit report is issued.

(6) NONPROFIT ORGANIZATION REQUIREMENTS.—

(A) DEFINITION.—For purposes of this section and the grant programs described in this Act, the term ''nonprofit organization'' means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code.

(B) PROHIBITION.—The Attorney General shall not award a grant under any grant program described in this Act to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986.

(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant under a grant program described in this Act and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision. Upon request, the Attorney General shall make the information disclosed under this subsection available for public inspection.

(7) ADMINISTRATIVE EXPENSES.—Unless otherwise explicitly provided in authorizing legislation, not more than 7.5 percent of the amounts authorized to be appropriated under this Act may be used by the Attorney General for salaries and administrative expenses of the Department of Justice.

(8) CONFERENCE EXPENDITURES.—

(A) LIMITATION.—No amounts authorized to be appropriated to the Department of Justice under this Act may be used by the Attorney General or by any individual or organization awarded discretionary funds through a cooperative agreement under this Act, to host or support any expenditure for conferences that uses more than $20,000 in Department funds, unless the Deputy Attorney General or the appropriate Assistant Attorney General, Director, or principal deputy as the Deputy Attorney General may designate, provides prior written authorization that the funds may be expended to host a conference.

(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) shall include a written estimate of all costs associated with the conference, including the cost of all food and beverages, audio/visual equipment, honoraria for speakers, and any entertainment.

(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved by operation of this paragraph.

(9) PROHIBITION ON LOBBYING ACTIVITY.—

(A) IN GENERAL.—Amounts authorized to be appropriated under this Act may not be utilized by any grant recipient to—

(i) lobby any representative of the Department of Justice regarding the award of grant funding; or

(ii) lobby any representative of a Federal, state, local, or tribal government regarding the award of grant funding.

(B) PENALTY.—If the Attorney General determines that any recipient of a grant under this Act has violated subparagraph (A), the Attorney General shall—

(i) require the grant recipient to repay the grant in full; and

(ii) prohibit the grant recipient from receiving another grant under this Act for not less than 5 years.

SEC. 6. SUNSET.

Effective on December 31, 2018, subsections (a)(6) and (n) of section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(a)(6) and (n)) are repealed.

SA 3446. Mr. DURBIN (for Mrs. HUTCHISON) proposed an amendment to the bill S. 114, to expand the boundary of the San Antonio Missions National Historical Park; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''San Antonio Missions National Historical Park Boundary Expansion Act of 2012''.

SEC. 2. BOUNDARY EXPANSION.

Section 201 of Public Law 95–629 (16 U.S.C. 410ee) is amended—

(1) by striking ''SEC. 201. (a) In order'' and inserting the following:

''SEC. 201. SAN ANTONIO MISSIONS HISTORICAL PARK.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order''; and

(2) in subsection (a)—

(A) in the second sentence, by striking ''The park shall also'' and inserting the following:

''(2) ADDITIONAL LAND.—The park shall also'';

(B) in the third sentence, by striking ''After advising the'' and inserting the following:

''(4) REVISIONS.—After advising the''; and

(C) by inserting after paragraph (2) (as designated by subparagraph (A)) the following:

''(3) BOUNDARY MODIFICATION.—

''(A) IN GENERAL.—The boundary of the park is modified to include approximately 137 acres, as depicted on the map entitled 'San Antonio Missions National Historical Park Proposed Boundary Addition', numbered 472/113,006A, and dated June 2012.

''(B) AVAILABILITY OF MAP.—The map described in subparagraph (A) shall be on file and available for inspection in the appropriate offices of the National Park Service.

''(C) ACQUISITION OF LAND.—The Secretary of the Interior may acquire the land or any interest in the land described in subparagraph (A) by donation or exchange.''.

SA 3447. Mr. DURBIN (for Mrs. HUTCHISON) proposed an amendment to the bill S. 114, to expand the boundary of the San Antonio Missions National Historical Park.

Amend the title so as to read as follows: ''To expand the boundary of the San Antonio Missions National Historical Park.''.

AMENDING THE DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of S. 3250, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3250) to amend the DNA Analysis Backlog Elimination Act of 2000 to provide for Debbie Smith grants for auditing sexual assault evidence backlogs and to establish a Sexual Assault Forensic Evidence Registry, and for other purposes.

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

ON PASSAGE OF S. 3250, THE SAFER ACT

Mr. LEAHY. Mr. President, I am glad that the Senate today will pass the SAFER Act with important amendments I requested to ensure that law enforcement gets the support and funding it needs to make real progress in processing rape kits.

The Debbie Smith DNA Backlog Reduction Program, which was a key part of the bipartisan Justice for All Act that passed in 2004, has been instrumental in reducing the number of untested rape kits in crime laboratories around the country. However, large numbers of additional untested kits have come to light in police departments, many of which never make their way to crime labs at all. It is unacceptable to let victims of these terrible crimes live in fear while evidence languishes in storage and criminals remain on our streets.

I have made fixing this significant problem a priority. I included important new provisions addressing backlogs of rape kits in law enforcement offices in my Justice for All Reauthorization Act, which the Judiciary Committee reported with bipartisan support earlier this year. My bill would provide law enforcement with access to funding to actually reduce their backlogs, along with best practices, training, and technical assistance they have requested to help them do so.

Senator CORNYN and others have attempted to address this same problem through the SAFER Act. The audit provisions included in the SAFER Act can help shed light on the problem, but I believe it is crucial that funding and assistance actually reach law enforcement agencies to help them address their backlogs and get kits tested. That is why it is so important that the provisions from the Justice for All Reauthorization Act doing just that were incorporated into the SAFER Act. I thank Senator CORNYN for working with me and agreeing to this amendment to ensure that this legislation will result in more kits being processed. I also thank Senator GRASSLEY for helping to facilitate this agreement and for adding important accountability measures.

I want to thank Debbie Smith, the courageous survivor after whom the grant program we modify today is named, and her husband Rob, for their continuing tireless work to ensure that others need not experience the ordeal Debbie went through. Their efforts have made a real difference to countless victims all over the country.

The Justice for All Reauthorization Act includes many other significant measures to make the criminal justice system work better for all Americans. I am disappointed that it will not pass this year. I appreciate Senator GRASSLEY's support for the bill when it was reported from committee, and I look forward to working with him and with Senator CORNYN and others to pass the full bill next year.

I am glad we take an important step to help achieve justice for victims of rape and sexual assault. I hope we will go still further and beyond next year.

Mr. DURBIN. I ask unanimous consent that the Cornyn substitute at the desk be agreed to, the bill, as amended,

be read a third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The amendment (No. 3445) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments''.)

The bill (S. 3250), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

EXTENSION OF LIMITED ANTITRUST EXEMPTION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3715 introduced earlier today by Senator HARKIN.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3715) to extend the limited antitrust exemption contained in the Pandemic and All-Hazards Preparedness Act.

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

Mr. DURBIN. I further ask unanimous consent that the bill be read three times and passed, the motion to reconsider be made and laid upon the table, with no intervening action or debate, and any related statements be printed in the RECORD.

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

The bill (S. 3715) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3715

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

SECTION 1. EXTENSION OF LIMITED ANTITRUST EXEMPTION.

Section 405(b) of the Pandemic and All-Hazards Preparedness Act (42 U.S.C. 247d–6a note) is amended by striking ''6-year'' and inserting ''7-year''.

THE CALENDAR

Mr. DURBIN. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of S. 2015 and S. 3563, and the Senate proceed to their consideration, along with the following bills en bloc: H.R. 3263, H.R. 3641, and H.R. 4073, which were received from the House and are at the desk; Calendar No. 268, S. 264; Calendar No. 284, S. 1047; Calendar No. 288, S. 1421; Calendar No. 289, S. 1478; Calendar No. 272, S.499; Calendar No. 266, S. 140; and Calendar No. 265, S. 114.

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

Mr. DURBIN. I ask unanimous consent that where applicable, the committee-reported amendments be considered; that any amendments to those amendments, which are at the desk, be agreed to; that the committee-reported amendments, as amended, if amended, be agreed to; the bills, as amended, if amended, be read a third time and passed en bloc; that a title amendment for S. 114 be agreed to; the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to any of the bills be printed in the RECORD.

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

The Senate proceeded to consider the bills en bloc.

POWELL SHOOTING RANGE LAND CONVEYANCE ACT

The bill (S. 2015) to require the Secretary of the Interior to convey certain Federal land to the Powell Recreation District in the State of Wyoming, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2015

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Powell Shooting Range Land Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) DISTRICT.—The term ''District'' means the Powell Recreation District in the State of Wyoming.

(2) MAP.—The term ''map'' means the map entitled ''Powell, Wyoming Land Conveyance Act'' and dated May 12, 2011.

SEC. 3. CONVEYANCE OF LAND TO THE POWELL RECREATION DISTRICT.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, subject to valid existing rights, the Secretary shall convey to the District, without consideration, all right, title, and interest of the United States in and to the land described in subsection (b).

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 322 acres of land managed by the Bureau of Land Management, Wind River District, Wyoming, as generally depicted on the map as ''Powell Gun Club''.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall finalize the legal description of the parcel to be conveyed under this section.

(2) MINOR ERRORS.—The Secretary may correct any minor error in—

(A) the map; or

(B) the legal description.

(3) AVAILABILITY.—The map and legal description shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(d) USE OF CONVEYED LAND.—The land conveyed under this section shall be used only—

(1) as a shooting range; or

(2) for any other public purpose consistent with uses allowed under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.).

(e) ADMINISTRATIVE COSTS.—The Secretary shall require the District to pay all survey costs and other administrative costs necessary for the preparation and completion of any patents for, and transfers of title to, the land described in subsection (b).

(f) REVERSION.—If the land conveyed under this section ceases to be used for a public purpose in accordance with subsection (d), the land shall, at the discretion of the Secretary, revert to the United States.

(g) CONDITIONS.—As a condition of the conveyance under subsection (a), the District shall agree in writing—

(1) to pay any administrative costs associated with the conveyance including the costs of any environmental, wildlife, cultural, or historical resources studies; and

(2) to release and indemnify the United States from any claims or liabilities that may arise from uses carried out on the land described in subsection (b) on or before the date of enactment of this Act by the United States or any person.

ENERGY POLICY ACT OF 2005

The bill (S. 3563) to amend the Energy Policy Act of 2005 to modify the Pilot Project offices of the Federal Permit Streamlining Pilot Project, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3563

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

SECTION 1. PILOT PROJECT OFFICES OF FEDERAL PERMIT STREAMLINING PILOT PROJECT.

Section 365 of the Energy Policy Act of 2005 (42 U.S.C. 15924) is amended by striking subsection (d) and inserting the following:

''(d) PILOT PROJECT OFFICES.—The following Bureau of Land Management Offices shall serve as the Pilot Project offices:

''(1) Rawlins Field Office, Wyoming.

''(2) Buffalo Field Office, Wyoming.

''(3) Montana/Dakotas State Office, Montana.

''(4) Farmington Field Office, New Mexico.

''(5) Carlsbad Field Office, New Mexico.

''(6) Grand Junction/Glenwood Springs Field Office, Colorado.

''(7) Vernal Field Office, Utah.''.

AUTHORIZING STORAGE AND CONVEYANCE OF NONPROJECT WATER AT NORMAN PROJECT IN OKLAHOMA

The bill (H.R. 3263) to authorize the Secretary of the Interior to allow the storage and conveyance of nonproject water at the Norman project in Oklahoma, and for other purposes, was ordered to a third reading, was read the third time, and passed.

ESTABLISHING PINNACLES NATIONAL PARK

The bill (H.R. 3641) to establish Pinnacles National Park in the State of California as a unit of the National Park System, and for other purposes, was ordered to a third reading, read the third time, and passed.

AUTHORIZING QUITCLAIM, DISCLAIMER, AND RELINQUISHMENT OF RIGHT OF WAY IN EL PASO COUNTY, COLORADO

The bill (H.R. 4073) to authorize the Secretary of Agriculture to accept the

quitclaim, disclaimer, and relinquishment of a railroad right of way within and adjacent to Pike National Forest in El Paso County, Colorado, originally granted to the Mt. Manitou Park and Incline Railway Company pursuant to the Act of March 3, 1875, was ordered to a third reading, was read the third time, and passed.

NATCHEZ TRACE PARKWAY LAND CONVEYANCE ACT

The bill (S. 264) to direct the Secretary of the Interior to convey to the State of Mississippi 2 parcels of surplus land within the boundary of the Natchez Trace Parkway, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment; as follows:

(The part of the bill intended to be stricken is shown in boldface brackets and the part of the bill intended to be inserted is shown in italic.)

S. 264

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Natchez Trace Parkway Land Conveyance Act of 2011''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Natchez Trace Parkway, Proposed Boundary Change'', numbered 604/105392, and dated November 2010.

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

(3) STATE.—The term ''State'' means the State of Mississippi.

[SEC. 3. LAND CONVEYANCE; BOUNDARY ADJUSTMENT.

(a) CONVEYANCE AUTHORITY.—Notwithstanding any other provision of law, the Secretary shall, not later than 60 days after the date of enactment of this Act, convey to the State, by quitclaim deed and without consideration, all right, title, and interest of the United States in and to 2 parcels of land in the city of Natchez, Mississippi, described in subsection (b).

(b) LAND SUBJECT TO CONVEYANCE.—The parcels of land referred to in subsection (a) consist of a total of approximately 67 acres of land that are generally depicted as ''Proposed Conveyance'' on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) BOUNDARY ADJUSTMENTS.—

(1) EXCLUSION OF CONVEYED LAND.—On completion of the conveyance to the State of the land described in subsection (b), the Secretary shall adjust the boundary of the Natchez Trace Parkway to exclude the conveyed land.

(2) INCLUSION OF ADDITIONAL LAND.—Effective on the date of enactment of this Act, the boundary of the Natchez Trace Parkway is adjusted to include the approximately 10 acres of land that are generally depicted as ''Proposed Addition'' on the map.]

SEC. 3. LAND CONVEYANCE.

(a) CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall convey to the State, by quitclaim deed and without consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b).

(2) COMPATIBLE USE.—The deed of conveyance to the parcel of land that is located southeast of U.S. Route 61/84 and which is commonly known as the ''bean field property'' shall reserve an easement to the United States restricting the use of the parcel to only those uses which are compatible with the Natchez Trace Parkway.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are the 2 parcels totaling approximately 67 acres generally depicted as ''Proposed Conveyance'' on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 4. BOUNDARY ADJUSTMENTS.

(a) EXCLUSION OF CONVEYED LAND.—On completion of the conveyance to the State of the land described in section 3(b), the boundary of the Natchez Trace Parkway shall be adjusted to exclude the conveyed land.

(b) INCLUSION OF ADDITIONAL LAND.—

(1) IN GENERAL.—Effective on the date of enactment of this Act, the boundary of the Natchez Trace Parkway is adjusted to include the approximately 10 acres of land that is generally depicted as ''Proposed Addition'' on the map.

(2) ADMINISTRATION.—The land added under paragraph (1) shall be administered by the Secretary as part of the Natchez Trace Parkway.

The committee amendment was agreed to.

The bill (S. 264) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 264

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Natchez Trace Parkway Land Conveyance Act of 2011''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Natchez Trace Parkway, Proposed Boundary Change'', numbered 604/105392, and dated November 2010.

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

(3) STATE.—The term ''State'' means the State of Mississippi.

SEC. 3. LAND CONVEYANCE.

(a) CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall convey to the State, by quitclaim deed and without consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b).

(2) COMPATIBLE USE.—The deed of conveyance to the parcel of land that is located southeast of U.S. Route 61/84 and which is commonly known as the ''bean field property'' shall reserve an easement to the United States restricting the use of the parcel to only those uses which are compatible with the Natchez Trace Parkway.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are the 2 parcels totaling approximately 67 acres generally depicted as ''Proposed Conveyance'' on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 4. BOUNDARY ADJUSTMENTS.

(a) EXCLUSION OF CONVEYED LAND.—On completion of the conveyance to the State of the land described in section 3(b), the boundary of the Natchez Trace Parkway shall be adjusted to exclude the conveyed land.

(b) INCLUSION OF ADDITIONAL LAND.—

(1) IN GENERAL.—Effective on the date of enactment of this Act, the boundary of the Natchez Trace Parkway is adjusted to include the approximately 10 acres of land that is generally depicted as ''Proposed Addition'' on the map.

(2) ADMINISTRATION.—The land added under paragraph (1) shall be administered by the Secretary as part of the Natchez Trace Parkway.

LEADVILLE MINE DRAINAGE TUNNEL ACT OF 2011

The bill (S. 1047) to amend the Reclamation Projects Authorization and Adjustment of 1992 to require the Secretary of the Interior, acting through the Bureau of Reclamation, to take actions to improve environmental conditions in the vicinity of the Leadville Mine Drainage Tunnel in Lake County, Colorado, and for other purposes, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1047

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Leadville Mine Drainage Tunnel Act of 2011''.

SEC. 2. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

Section 703 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4656) is amended to read as follows:

''SEC. 703. TUNNEL MAINTENANCE; OPERATION AND MAINTENANCE.

''(a) LEADVILLE MINE DRAINAGE TUNNEL.—The Secretary shall take any action necessary to maintain the structural integrity of the Leadville Mine Drainage Tunnel—

''(1) to maintain public safety; and

''(2) to prevent an uncontrolled release of water from the tunnel portal.

''(b) WATER TREATMENT PLANT.—

''(1) IN GENERAL.—Subject to section 705, the Secretary shall be responsible for the operation and maintenance of the water treatment plant authorized under section 701, including any sludge disposal authorized under this title.

''(2) AUTHORITY TO OFFER TO ENTER INTO CONTRACTS.—In carrying out paragraph (1), the Secretary may offer to enter into 1 or more contracts with any appropriate individual or entity for the conduct of any service required under paragraph (1).''.

SEC. 3. REIMBURSEMENT.

Section 705 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4656) is amended—

(1) by striking ''The treatment plant'' and inserting the following:

''(a) IN GENERAL.—Except as provided in subsection (b), the treatment plant'';

(2) by striking ''Drainage Tunnel'' and inserting ''Drainage Tunnel (which includes any surface water diverted into the Leadville Mine Drainage Tunnel and water collected by the dewatering relief well installed in June 2008)''; and

(3) by adding at the end the following:

''(b) EXCEPTION.—The Secretary may—

''(1) enter into an agreement with any other entity or government agency to provide funding for an increase in any operation, maintenance, replacement, capital improvement, or expansion cost that is necessary to improve or expand the treatment plant; and

''(2) upon entering into an agreement under paragraph (1), make any necessary capital improvement to or expansion of the treatment plant.''.

SEC. 4. USE OF LEADVILLE MINE DRAINAGE TUNNEL AND TREATMENT PLANT.

Section 708(a) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4657) is amended—

(1) by striking ''(a) The Secretary'' and inserting the following:

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—The Secretary'';

(2) by striking ''Neither'' and inserting the following:

''(2) LIABILITY.—Neither'';

(3) by striking ''The Secretary shall have'' and inserting the following:

''(3) FACILITIES COVERED UNDER OTHER LAWS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall have'';

(4) by inserting after ''Recovery Act.'' the following:

''(B) EXCEPTION.—If the Administrator of the Environmental Protection Agency proposes to amend or issue a new Record of Decision for operable unit 6 of the California Gulch National Priorities List Site, the Administrator shall consult with the Secretary with respect to each feature of the proposed new or amended Record of Decision that may require any alteration to, or otherwise affect the operation and maintenance of—

''(i) the Leadville Mine Drainage Tunnel; or

''(ii) the water treatment plant authorized under section 701.

''(4) AUTHORITY OF SECRETARY.—The Secretary may implement any improvement to the Leadville Mine Drainage Tunnel or improvement to or expansion of the water treatment plant authorized under section 701 as a result of a new or amended Record of Decision for operable unit 6 of the California Gulch National Priorities List Site only upon entering into an agreement with the Administrator of the Environmental Protection Agency or any other entity or government agency to provide funding for the improvement or expansion.''; and

(5) by striking ''For the purpose of'' and inserting the following:

''(5) DEFINITION OF UPPER ARKANSAS RIVER BASIN.—In''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 708(f) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4657) is amended by striking ''sections 707 and 708'' and inserting ''this section and sections 703, 705, and 707''.

SEC. 6. CONFORMING AMENDMENT.

The table of contents of title VII of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4601) is amended by striking the item relating to section 703 and inserting the following:

''Sec. 703. Tunnel maintenance; operation and maintenance.''.

PEACE CORPS COMMEMORATIVE FOUNDATION IN DC ACT

The bill (S. 1421) to authorize the Peace Corps Commemorative Foundation to establish a commemorative work in the District of Columbia and its environs, and for other purposes, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1421

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

SECTION 1. MEMORIAL TO COMMEMORATE AMERICA'S COMMITMENT TO INTERNATIONAL SERVICE AND GLOBAL PROSPERITY.

(a) AUTHORIZATION TO ESTABLISH COMMEMORATIVE WORK.—The Peace Corps Commemorative Foundation may establish a commemorative work on Federal land in the District of Columbia and its environs to commemorate the mission of the Peace Corps and the ideals on which the Peace Corps was founded.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS ACT.—The establishment of the commemorative work under this section shall be in accordance with chapter 89 of title 40, United States Code (commonly known as the ''Commemorative Works Act'').

(c) USE OF FEDERAL FUNDS PROHIBITED.—

(1) IN GENERAL.—Federal funds may not be used to pay any expense of the establishment of the commemorative work under this section.

(2) RESPONSIBILITY OF PEACE CORPS.—The Peace Corps Commemorative Foundation shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the commemorative work under this section.

(d) DEPOSIT OF EXCESS FUNDS.—If, on payment of all expenses for the establishment of the commemorative work under this section (including the maintenance and preservation amount required by section 8906(b)(1) of title 40, United States Code), or on expiration of the authority for the commemorative work under section 8903(e) of title 40, United States Code, there remains a balance of funds received for the establishment of the commemorative work, the Peace Corps Commemorative Foundation shall transmit the amount of the balance to the Secretary of the Interior for deposit in the account provided for in section 8906(b)(3) of title 40, United States Code.

SEC. 2. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

MINUTEMAN MISSILE NATIONAL HISTORIC SITE BOUNDARY MODIFICATION ACT

The bill (S. 1478) to modify the boundary of the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1478

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Minuteman Missile National Historic Site Boundary Modification Act''.

SEC. 2. BOUNDARY MODIFICATION.

Section 3(a) of the Minuteman Missile National Historic Site Establishment Act of 1999 (16 U.S.C. 461 note; Public Law 106–115) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) VISITOR FACILITY AND ADMINISTRATIVE SITE.—

''(A) IN GENERAL.—In addition to the components described in paragraph (2), the historic site shall include a visitor facility and administrative site located on the parcel of land described in subparagraph (B).

''(B) DESCRIPTION OF LAND.—The land referred to in subparagraph (A) consists of—

''(i) approximately 25 acres of land within the Buffalo Gap National Grassland, located north of exit 131 on Interstate 90 in Jackson County, South Dakota, as generally depicted on the map entitled 'Minuteman Missile National Historic Site Boundary Modification', numbered 406/80,011A, and dated January 14, 2011; and

''(ii) approximately 3.65 acres of land located at the Delta 1 Launch Control Facility for the construction and use of a parking lot and for other administrative uses.

''(C) AVAILABILITY OF MAP.—The map described in subparagraph (B) shall be kept on file and available for public inspection in the appropriate offices of the National Park Service.

''(D) TRANSFER OF ADMINISTRATIVE JURISDICTION.—Administrative jurisdiction over the land described in subparagraph (B) is transferred from the Secretary of Agriculture to the Secretary, to be administered as part of the historic site.

''(E) BOUNDARY ADJUSTMENT.—The boundaries of the Buffalo Gap National Grassland are modified to exclude the land transferred under subparagraph (D).''.

BONNEVILLE UNIT CLEAN HYDROPOWER FACILITATION ACT

The bill (S. 499) to authorize the Secretary of the Interior to facilitate the development of hydroelectric power on the Diamond Fork System of the Central Utah Project, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 499

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bonneville Unit Clean Hydropower Facilitation Act''.

SEC. 2. DIAMOND FORK SYSTEM DEFINED.

For the purposes of this Act, the term ''Diamond Fork System'' means the facilities described in chapter 4 of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit.

SEC. 3. COST ALLOCATIONS.

Notwithstanding any other provision of law, in order to facilitate hydropower development on the Diamond Fork System, the amount of reimbursable costs allocated to project power in Chapter 6 of the Power Appendix in the October 2004 Supplement to the 1988 Bonneville Unit Definite Plan Report, with regard to power development within the Diamond Fork System, shall be considered final costs as well as costs in excess of the total maximum repayment obligation as defined in section 211 of the Central Utah Project Completion Act of 1992 (Public Law 102–575), and shall be subject to the same terms and conditions.

SEC. 4. NO PURCHASE OR MARKET OBLIGATION; NO COSTS ASSIGNED TO POWER.

Nothing in this Act shall obligate the Western Area Power Administration to purchase or market any of the power produced

by the Diamond Fork power plant and none of the costs associated with development of transmission facilities to transmit power from the Diamond Fork power plant shall be assigned to power for the purpose of Colorado River Storage Project ratemaking.

SEC. 5. PROHIBITION ON TAX-EXEMPT FINANCING.

No facility for the generation or transmission of hydroelectric power on the Diamond Fork System may be financed or refinanced, in whole or in part, with proceeds of any obligation—

(1) the interest on which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986, or

(2) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of such Code.

SEC. 6. REPORTING REQUIREMENT.

If, 24 months after the date of the enactment of this Act, hydropower production on the Diamond Fork System has not commenced, the Secretary of the Interior shall submit a report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate stating this fact, the reasons such production has not yet commenced, and a detailed timeline for future hydropower production.

SEC. 7. PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SEC. 8. LIMITATION ON THE USE OF FUNDS.

The authority under the provisions of section 301 of the Hoover Power Plant Act of 1984 (Public Law 98–381; 42 U.S.C. 16421a) shall not be used to fund any study or construction of transmission facilities developed as a result of this Act.

SLEEPING BEAR DUNES NATIONAL LAKESHORE CONSERVATION AND RECREATION ACT

The bill (S. 140) to designate as wilderness certain land and inland water within the Sleeping Bear Dunes National Lakeshore in the State of Michigan, and for other purposes, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 140

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sleeping Bear Dunes National Lakeshore Conservation and Recreation Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map consisting of 6 sheets entitled ''Sleeping Bear Dunes National Lakeshore Proposed Wilderness Boundary'', numbered 634/80,083B, and dated November 2010.

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

SEC. 3. SLEEPING BEAR DUNES WILDERNESS.

(a) DESIGNATION.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), certain land and inland water within the Sleeping Bear Dunes National Lakeshore comprising approximately 32,557 acres along the mainland shore of Lake Michigan and on certain nearby islands in Benzie and Leelanau Counties, Michigan, as generally depicted on the map, is designated as wilderness and as a component of the National Wilderness Preservation System, to be known as the ''Sleeping Bear Dunes Wilderness''.

(b) MAP.—

(1) AVAILABILITY.—The map shall be on file and available for public inspection in appropriate offices of the National Park Service.

(2) CORRECTIONS.—The Secretary may correct any clerical or typographical errors in the map.

(3) LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a legal description of the wilderness boundary and submit a copy of the map and legal description to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

(c) ROAD SETBACKS.—The wilderness boundary shall be—

(1) 100 feet from the centerline of adjacent county roads; and

(2) 300 feet from the centerline of adjacent State highways.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—Subject to valid existing rights, the wilderness area designated by section 3(a) shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in the Wilderness Act to the effective date of that Act shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(b) MAINTENANCE OF ROADS OUTSIDE WILDERNESS BOUNDARY.—Nothing in this Act prevents the maintenance and improvement of roads that are located outside the boundary of the wilderness area designated by section 3(a).

(c) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State of Michigan with respect to the management of fish and wildlife, including hunting and fishing within the national lakeshore in accordance with section 5 of Public Law 91–479 (16 U.S.C. 460x–4).

(d) SAVINGS PROVISIONS.—Nothing in this Act modifies, alters, or affects—

(1) any treaty rights; or

(2) any valid private property rights in existence on the day before the date of enactment of this Act.

SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK BOUNDARY EXPANSION ACT OF 2011

The Senate proceeded to consider the bill (S. 114) to authorize the Secretary of the Interior to enter into a cooperative agreement for a park headquarters at San Antonio Missions National Historical Park, to expand the boundary of the Park, to conduct a study of potential land acquisitions, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''San Antonio Missions National Historical Park Boundary Expansion Act of 2011''.

SEC. 2. PARK BOUNDARY STUDY.

Section 201 of Public Law 95–629 (16 U.S.C. 410ee) is amended—

(1) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (e), (f), (g), and (h), respectively;

(2) by inserting after subsection (a) the following:

''(b) STUDY.—

''(1) IN GENERAL.—The Secretary shall conduct a study of land in Bexar and Wilson Counties, Texas, to identify land that would be suitable for inclusion in the park.

''(2) REQUIREMENTS.—In conducting the study under paragraph (1), the Secretary shall examine the natural, cultural, recreational, and scenic values and characteristics of the land.

''(3) REPORT.—Not later than 3 years after the date on which funds are made available for the study under paragraph (1), the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes the findings, conclusions, and recommendations of the study.'';

(3) by inserting after subsection (c) (as redesignated by paragraph (1)) the following:

''(d) INTERPETIVE SERVICES.—The Secretary may assign park employees to provide interpretive services, including visitor information and education, at facilities outside the boundary of the park.''; and

(4) in paragraph (1)(D) of subsection (g) (as redesignated by paragraph (1)), by striking ''subsection (b)(2)'' and inserting ''subsection (c)(2)''.

SEC. 3. BOUNDARY EXPANSION.

Section 201 of Public Law 95–629 (16 U.S.C. 410ee) is amended—

*(1) by striking ''**SEC. 201. (A)** In order'' and insert the following:*

''SEC. 201. SAN ANTONIO MISSIONS HISTORICAL PARK.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order''; and

(2) in subsection (a)—

(A) in the second sentence, by striking ''The park shall also'' and inserting the following:

''(2) ADDITIONAL LAND.—The park shall also'';

(B) in the third sentence, by striking ''After advising the'' and inserting the following:

''(4) REVISIONS.—After advising the''; and

(C) by inserting after paragraph (2) (as designated by subparagraph (A)) the following:

''(3) BOUNDARY MODIFICATION.—

''(A) IN GENERAL.—The boundary of the park is modified to include approximately 151 acres, as depicted on the map entitled 'San Antonio Missions National Historical Park Proposed Boundary Addition', numbered 472-68, 027, and dated November 2009.

''(B) AVAILABILITY OF MAP.—The map described in subparagraph (A) shall be on file and available for inspection in the appropriate offices of the National Park Service.

''(C) ACQUISITION OF LAND.—The Secretary of the Interior may acquire the land or any interest in the land described in in subparagraph (A) by purchase from willing sellers, donation, or exchange.''.

The amendment in the nature of a substitute (No. 3446) was agreed to, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''San Antonio Missions National Historical Park Boundary Expansion Act of 2012''.

SEC. 2. BOUNDARY EXPANSION.

Section 201 of Public Law 95–629 (16 U.S.C. 410ee) is amended—

(1) by striking ''SEC. 201. (a) In order'' and inserting the following:

''SEC. 201. SAN ANTONIO MISSIONS HISTORICAL PARK.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order''; and

(2) in subsection (a)—

(A) in the second sentence, by striking ''The park shall also'' and inserting the following:

''(2) ADDITIONAL LAND.—The park shall also'';

(B) in the third sentence, by striking ''After advising the'' and inserting the following:

''(4) REVISIONS.—After advising the''; and

(C) by inserting after paragraph (2) (as designated by subparagraph (A)) the following:

''(3) BOUNDARY MODIFICATION.—

''(A) IN GENERAL.—The boundary of the park is modified to include approximately 137 acres, as depicted on the map entitled 'San Antonio Missions National Historical Park Proposed Boundary Addition', numbered 472/113,006A, and dated June 2012.

''(B) AVAILABILITY OF MAP.—The map described in subparagraph (A) shall be on file and available for inspection in the appropriate offices of the National Park Service.

''(C) ACQUISITION OF LAND.—The Secretary of the Interior may acquire the land or any interest in the land described in subparagraph (A) by donation or exchange.''.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 114) was ordered to be engrossed for a third reading, was read the third time, and passed.

The amendment (No. 3447) to amend the title was agreed to, as follows:

Amend the title so as to read as follows: ''To expand the boundary of the San Antonio Missions National Historical Park.''.

WHITE CLAY CREEK WILD AND SCENIC RIVER EXPANSION ACT

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 283, S. 970.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 970) to designate additional segments and tributaries of White Clay Creek, in the States of Delaware and Pennsylvania, as a component of the National Wild and Scenic Rivers System.

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

Mr. DURBIN. I do not believe there is any further debate on this bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 970) was passed, as follows:

S. 970

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''White Clay Creek Wild and Scenic River Expansion Act of 2011''.

SEC. 2. DESIGNATION OF SEGMENTS OF WHITE CLAY CREEK, AS SCENIC AND RECREATIONAL RIVERS.

Section 3(a)(163) of the Wild and Scenic Rivers Act (16 U.S. C. 1274(a)(163)) is amended—

(1) in the matter preceding subparagraph (A)—

(A) by striking ''190 miles'' and inserting ''199 miles''; and

(B) by striking ''the recommended designation and classification maps (dated June 2000)'' and inserting ''the map entitled 'White Clay Creek Wild and Scenic River Designated Area Map' and dated July 2008, the map entitled 'White Clay Creek Wild and Scenic River Classification Map' and dated July 2008, and the map entitled 'White Clay Creek National Wild and Scenic River Proposed Additional Designated Segments-July 2008' '';

(2) by striking subparagraph (B) and inserting the following:

''(B) 22.4 miles of the east branch beginning at the southern boundary line of the Borough of Avondale, including Walnut Run, Broad Run, and Egypt Run, outside the boundaries of the White Clay Creek Preserve, as a recreational river.''; and

(3) by striking subparagraph (H) and inserting the following:

''(H) 14.3 miles of the main stem, including Lamborn Run, that flow through the boundaries of the White Clay Creek Preserve, Pennsylvania and Delaware, and White Clay Creek State Park, Delaware beginning at the confluence of the east and middle branches in London Britain Township, Pennsylvania, downstream to the northern boundary line of the City of Newark, Delaware, as a scenic river.''.

SEC. 3. ADMINISTRATION OF WHITE CLAY CREEK.

Sections 4 through 8 of Public Law 106–357 (16 U.S.C. 1274 note; 114 Stat. 1393), shall be applicable to the additional segments of the White Clay Creek designated by the amendments made by section 2.

Mr. DURBIN. I ask unanimous consent the motion to reconsider be laid upon the table.

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

MEASURE READ THE FIRST TIME—H.R. 459

Mr. DURBIN. Mr. President, I understand there is a bill at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 459) to require a full audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks by the Comptroller General of the United States, and for other purposes.

Mr. DURBIN. I now ask for a second reading and in order to place the bill on the calendar under rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will be read for a second time on the next legislative day.

AUTHORITY TO PRINT

Mr. DURBIN. Mr. President, I ask unanimous consent that when tributes to Danny Inouye, late Senator from Hawaii, be printed as a Senate document, and that Members have until 12 p.m. on Tuesday, January 8, 2013, to submit said tributes.

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

ORDERS FOR MONDAY, DECEMBER 31, 2012

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 11 a.m. Monday, December 31, 2012; that following the prayer and pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to a period of morning business until 12 p.m. for debate only, with Senators permitted to speak therein for up to 10 minutes each.

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

RECESS UNTIL 11 A.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent it recess under the previous order.

There being no objection, the Senate, at 7:26 p.m., recessed until Monday, December 31, 2012, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate Sunday, December 30, 2012:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CAROL J. GALANTE, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

DEPARTMENT OF JUSTICE

WILLIAM JOSEPH BAER, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL.