United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, MONDAY, APRIL 21, 2008 No. 63

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, April 22, 2008, at 12:30 p.m.

Senate

MONDAY, APRIL 21, 2008

The Senate met at 3 p.m. and was called to order by the Honorable JIM WEBB, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

O God, our Father, help us to have the right attitude. Keep us from pride that makes us think more highly of ourselves than we should. Save us from false modesty that sometimes moves us in the direction of evading responsibility. Instead, help us to think of ourselves, to think of others, and to think of You as we ought.

Inspire the Members of this body. Let them not be content to wait and see what will happen but give them the determination to make the right things happen. Give them the humility to know that no one has a monopoly on Your truth and that they need each other to discover Your guidance together.

We pray in the Name of the Light of the World. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JIM WEBB led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 21, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM WEBB, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WEBB 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, following my remarks, there will be a period for the transaction of morning business. Senators will be allowed to speak for up to 10 minutes each. There will be no rollcall votes today because of the Passover holiday. Tomorrow at 12 noon, the Senate will vote on the motion to invoke cloture on the motion to proceed to S. 1315, the Veterans' Benefits Enhancement Act.

Tomorrow, in addition to the usual recess for the caucus luncheons from 12:30 p.m. to 2:15 p.m., the Senate will recess from 3:30 p.m. to 4:30 p.m. for the unveiling of Majority Leader Daschle's portrait. This is very traditional. We have done this for each majority leader. That will be from 3:30 p.m. to 4:30 p.m. tomorrow afternoon. I invite all Senators who wish to attend to make themselves available.

On Wednesday, the Senate will recess from 11 a.m. to 12 p.m. for the Dr. DeBakey Gold Medal ceremony in the Rotunda. Also on that same day, Admiral Mullen will brief us from 4 p.m. to 5:30 p.m. We will be in recess from 4 p.m. to 5 p.m. on Wednesday. There will be a briefing in room 407.

Again, tomorrow afternoon, we are going to, hopefully, invoke cloture on the veterans' benefits matter, and we will also have the unveiling of Senator Daschle's portrait. From 3:30 p.m. to 4:30 p.m., we will be in recess. On Wednesday, we will be in recess from 11 a.m. to 12 p.m. for the Dr. DeBakey Gold Medal ceremony and will be in recess from 4 p.m. to 5 p.m. on Wednesday for a Senators-only briefing by Admiral Mullen in room S–407. I hope this has allowed staff in the various offices to follow what we are doing.

BREAST CANCER AND ENVIRONMENTAL RESEARCH ACT

Mr. REID. Mr. President, maybe an hour ago, my wonderful assistant Janice Shelton said: I have bad news. I said: What is it, Janice? Carol Chadburn worked for me for many years. She was my scheduler. She was a wonderful woman. She was so happy. She loved to have parties at her home

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

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for staff. She came from Nevada. She was a legal secretary to my friend who then was an attorney and later became a justice on the Nevada Supreme Court for many years, 18 years. She came back here. Her husband was a labor leader. They moved back here from Nevada. He died within 18 months. He was dead. He was a young man. He just dropped dead. Carol kept their home in Centreville. It was a long drive back and forth for a long time working for me. She was such a hard worker and was so happy.

Many years after her husband died and her daughter returned to Nevada—she raised the girl here—she met a retired colonel, and they were married and moved to Florida. She had a wonderful—I don't know how many years it has been, maybe 8 years. Time goes fast. I don't know how long it has been.

Janice said to me: I was going to tell you last week that she had breast cancer and you should give her a call. She said she died yesterday. I feel very bad about that. She was such a good woman and worked so hard and found happiness. She was not an old woman—maybe 58, 59. I don't really know how old she was.

Every year, hundreds of thousands of women just like Carol are diagnosed with breast cancer. Breast cancer will strike approximately one in eight American women, and a new case is diagnosed every 2 minutes. We have made progress in breast cancer diagnosis and treatment, but we still do not know the cause. We do not know the cause. I don't really know if Carol died from lung cancer or breast cancer, but I want to direct my attention today to breast cancer.

Scientists have identified some risk factors. Those risk factors explain fewer than 30 percent of the cases. The Breast Cancer and Environmental Research Act that I started with Lincoln Chafee, a former Senator from Rhode Island, to establish a national strategy to study the possible connection between breast cancer and the environment would authorize funding for research.

Many people believe these cases of breast cancer have something to do with the changing environment. The resulting discoveries of this research could be critical to improving our knowledge of this complex illness, which could lead to better prevention, treatment, and maybe even one day a cure.

Although we first introduced this legislation in 2000, despite strong bipartisan support, Congress has yet to act and send this bill to President Bush. In the last session of Congress, the bill was reported out of the Health, Education, Labor and Pensions Committee, but one of our colleagues prevented final passage. This session, we worked in good faith to address concerns that may have been raised about this legislation. As a result, this legislation, the Breast Cancer and Environmental Research Act, was once again reported out of the HELP Committee and cosponsored by two-thirds of the Senators, Democrats and Republicans.

It is long past time for the Senate to take up this broadly supported bipartisan legislation. Too many women and their families have waited for so long. I agree with them, they waited far too long.

There are examples we can all give, as I talked about Carol, who died yesterday of cancer. In January 2007, Nevada lost a lifelong resident, somebody who worked so hard on this issue. Her name was Deanna Wright Jensen. She was a lobbyist without pay. She just thought something should be done. She thought something in the environment was causing this illness. I don't know if she was right, but we should find out. Many people agree with her. Scientists agree with her. Even as she was enduring a grueling regimen of radiation and chemotherapy, she continued to remind me and my staff through e-mails and letters about the importance of this legislation. In Deanna's words, passing the Breast Cancer and Environmental Research Act is a real opportunity for Congress to ''step up for women and breast cancer.'' For her, it is too late. She did not want others to have a similar fate.

One person, one Senator is holding up this legislation. That is why I will be asking unanimous consent—I am not going to do it now. We do not have a Republican on the floor. But I told staff I am going to come back at 3:30 p.m. or thereafter. The Republicans have had adequate notice. I cannot make the entire Senate schedule convenient for one Senator who is objecting, causing this problem for all the Senate.

It is time to offer more than words of encouragement to those affected by breast cancers. Our wives, sisters, mothers, daughters, and friends have waited far too long. I am going to come back maybe at 3:30 p.m., maybe at 3:45 p.m., but I am going to come back and ask unanimous consent to take up this bill, and the Republicans are going to have to object to it if they are going to follow the lead of one person holding up this legislation.

Why, Mr. President? Why can't we take up this bill? Why wouldn't the minority go along with this effort? That is my concern.

VETERANS' BENEFITS ENHANCEMENT ACT

Mr. REID. Mr. President, in a similar vein, 9 months ago, in August of last year, the Senate Veterans' Affairs Committee reported the Veterans' Benefits Enhancement Act to the Senate floor.

Today, there are about 150,000 young Americans serving, sacrificing, and suffering in Iraq. This legislation, which is on the Senate floor today—we are trying to get it so we can debate this bill—would provide much needed and long overdue benefits for veterans young and old.

This legislation on which we had to file cloture—here it is: Republican filibusters, 66 and still counting. They are going up, it seems, a couple times a week. It is hard to comprehend, but we have had to file cloture on allowing the Senate to proceed to debate on an issue of this importance. We should have gone to it Thursday night. No, we had to file cloture on it. We are going to vote on cloture tomorrow, and then, if we get cloture, they will make us use the 30 hours, waste the 30 hours, just eat up time.

This bill has 38 provisions and 8 titles, all extremely important. It expands eligibility for traumatic injury insurance, extends eligibility for specially adapted housing benefits to veterans who have been burned severely. As the Presiding Officer knows, those improvised explosive devices cause infernos, and people are burned often. The bill increases benefits for veterans pursuing apprenticeships or on-the-job training programs. It restores veteran status to Filipino veterans who served under U.S. command during World War II. As I mentioned last Friday, all one needs to do is watch the Tom Hanks World War II series, and you can see what the Filipinos did for us side by side in fighting the Japanese during World War II. We want them to have the benefits that are so long overdue.

We have had to file cloture and break filibusters 66 times. The prior record was 57 or 58 in a single Congress; that is 2 years. They broke that before Christmas last year. They did it in far less than a year. They broke the 2-year record.

America's commitment to the men and women who have served in uniform must never waver. At a time when one in five young men and women returns from Iraq and Afghanistan with post-traumatic stress disorders and other psychological problems, this legislation should have come to the Senate floor with no delay. At a time when tens of thousands of our troops are returning from war with wounds, many of them grievous, this legislation should have passed overwhelmingly, if not unanimously.

On many days, there is a tour guide in the Capitol who, when he spots a veteran in one of the tours, talks with them, and he has a little thing that we sign, and many times he brings them by my office.

I have seen, at Walter Reed and in my office, what this war has done to our troops' bodies. I have had a chance to visit with these young men and women, after they have been to war and come back, out of Walter Reed—sometimes temporarily, sometimes permanently. They are still teenagers. I have seen their scars. I have heard how their lives have been changed. I asked them, talked to them in detail: How did you get hurt?

The last one who was in, I said: How long were you in the vehicle?

He said: Twenty seconds. Went from the house, jumped in the vehicle—it blew up almost immediately.

He is hurt; lost his leg above his knee. He had scars that you could see on the one where he has a whole leg. He showed me the scars on that. He said it causes him more trouble than the one that is missing.

No matter what position we take on the war in Iraq, we should all agree on providing for these veterans and those who wore the uniform before them. That is a solemn responsibility we have now. This act we are trying to get on the Senate floor now helps fulfill the responsibility we have as Senators.

Every Senator has a right to oppose this legislation or try to change it. In my time as majority leader, I have tried to work with the Republican leader to reach consensus on legislation on which minority Members have objections. I have made repeated efforts to try to do so on the Veterans Benefits Enhancement Act. I am told my Republican counterparts—if the Republican side of the aisle doesn't like this, let's legislate it and take parts of it out. Unfortunately, the Republican leader has not responded positively. As a result, I was forced Thursday night to file cloture on the motion to proceed simply so we could start debating this legislation.

I would have preferred not to have had to file cloture. I wish we could just move forward on it, as we have wanted to do 65 other times. But when legislation to honor and care for our veterans languishes for 9 months because Republicans are unwilling to work with us or just simply legislate, I have no other choice. As dedicated Government watchers and C–SPAN watchers know, this is far from the first time the Republican minority has rejected our good-faith efforts on reaching compromise. Time and time again they have chosen obstruction over negotiation.

It seems to me what the Republicans want is a graveyard of no progress. We are going to continue to fight. We are going to do everything we can to get this legislation passed. We believe there should be progress; filing cloture as we have had to do is going to help us get progress. It is going to be slow, but we are going to continue doing it.

It seems in times like this our Republican friends would rather we accomplish nothing. Maybe they see political advantage in slow-walking. But the American people are left to suffer for their actions.

Some may not like provisions in the Veterans Benefits Enhancement Act. Let them move to change them. Some say: If it weren't for the Filipino veterans, we would allow you to move to this bill. Filipino veterans—they fought alongside U.S. troops during World War II. I do not think the valor of these Filipino troops should be questioned. These troops may have been born on foreign soil, but they served shoulder to shoulder under one flag, our flag, the American flag. It is our moral obligation to recognize the reward they are due. It is long past time we do so.

It is time for our Republican colleagues to choose. Will they stand in lockstep with an obstinate few, intent on dragging their heels on the care and support our veterans need? I hope not. We need just nine Republicans to join with us.

As you know, Mr. President, there are 51 of us. We need 9 of them to get to 60. I hope there are surely nine Republicans willing to stand on the side of our veterans, our troops. Tomorrow we will have a chance to pass the Veterans Benefits Extension Act. I extend my hand once more to the Republican leader and all my colleagues in the minority. If they would end their needless obstruction, we could get on this legislation today. We would deliver an important victory to the men and women who have served us—and will serve us today—with courage, valor, and distinction.

UNANIMOUS-CONSENT REQUEST—S. 579

Mr. REID. I know there are some of my Republican friends on the floor, so I am going to ask unanimous consent now on the request I made, the Breast Cancer and Environmental Research Act.

Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 628, S. 579, the Breast Cancer Environmental Research Act, the committee-reported substitute be agreed to, the bill, as amended, be read three times, passed, the motion to reconsider be laid on the table, and any statements be printed at the appropriate place in the RECORD as if read, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there objection? The Senator from Arizona is recognized.

Mr. KYL. Mr. President, on behalf of Senator COBURN, there is objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. I now ask unanimous consent the Senate proceed to consideration of the same legislation, S. 579, the Breast Cancer and Environmental Research Act, at a time to be determined by the majority leader, following consultation with the Republican leader, and the bill be considered under the following limitations: that other than the committee-reported substitute, the only first-degree amendments be four amendments, two for each leader; these amendments be relevant to the provisions of the underlying bill and substitute, there be a time limit of 1 hour for general debate on the bill, and 1 hour on each amendment with all time equally divided and controlled between the leaders or their designees; that upon the disposition of all amendments, the use or yielding back of time, the substitute, as amended, if amended, be agreed to, and the bill, as amended, be read a third time with no further intervening action or debate, and the Senate proceed to vote on passage of the bill as amended, if amended.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. KYL. Mr. President, on behalf of Senator COBURN, there is an objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The Senator from North Carolina is recognized.

VETERANS BENEFITS ENHANCEMENT ACT

Mr. BURR. Mr. President, I would like to ask the majority leader before he leaves the floor—I know he has a very busy schedule—the majority leader alluded to a bill on which we will take up a cloture motion tomorrow. I want the majority leader to know before he leaves the floor that the only thing that is contentious in the veterans bill that he has referred to is a new special pension that has been created in this bill of $300 to Filipino veterans who live in the Philippines, who have no service-connected injuries. If that were stripped from the bill, then this bill is one that I believe we could pass by unanimous consent on the Senate floor.

In the absence of that——

Mr. REID. Will the Senator yield for a question?

Mr. BURR. I am happy to yield for a question.

Mr. REID. I say to my friend, the distinguished Senator from North Carolina, I understand. I mentioned that in my prepared remarks, that people have a problem with that. But I say to my friend, we should go on the bill. If people don't like that, offer an amendment, and we will debate that, vote on it, and go about our way. I think that would be such a good way to do this.

Some of us feel very strongly about these Filipino veterans, as you know. I have mentioned this before. They fought valiantly. All you need to do to prove that is to see what happened in the Tom Hanks movie.

I would also say to my friend that we need to do something about this. The average age of one of these Filipinos is about 84 years now. It is not as if we are breaking the bank to help these people who fought side by side with us. I understand the concern of my friend, but I suggest, let's move to the bill, offer an amendment, it can be the first amendment. We will have you offer the first amendment, or whoever wants to.

Mr. BURR. Let me assure the majority leader, as ranking member of the committee, I do not intend to vote against cloture. I intend to proceed to the bill. I intend to offer an amendment that strips out the provision of $300 of a special pension that I think prioritizes that group above our veterans who are coming back. My amendment would hold everything else in Senator AKAKA's bill in place, but we would also make additions by using that $21 million for additional funding for our troops who are coming out of Afghanistan and Iraq.

I hope the majority leader would at least consider voting for my amendment when it comes up. We have a rich history on this issue. It starts with the conclusion of the Second World War, when the United States made some very important gifts to the Philippines—the total of two hospitals, equipment, grants to rebuild the Philippines—to make sure those who served were in fact taken care of.

I might also add for the majority leader, incorporated into Senator AKAKA's bill, which is a very good bill on balance, there is only one area that we have any problems with. We hold intact those Filipino veterans who are in the United States receiving full VA benefits. Those who are outside the United States, living in the Philippines but with service-connected injuries, they receive compensation. It is those who live outside the United States, in the Philippines, with no service-connected injury whatsoever, that creating a special pension is not the right thing to do, as we have troops who are coming back at this time.

I pledge to the majority leader my willingness to move forward to consideration of the bill—to have a spirited debate, I am sure, but clearly to try to address what I think are the priorities, or should be the priorities, of this Senate, and that is to focus on our troops.

Mr. REID. Mr. President, if I could just say to my friend, I do not in any way question the seriousness of my friend's concern. The Senator asked me would I consider it? Sure, I will be happy to consider it. But let me just say this: Part of mine is basic frustration; that is, why in the world would we have to file cloture on a motion to proceed to this bill? It happens so many times. It is something that has not happened very much in the past, and now it happens on every piece of legislation.

Again, it sounds like we agree on this legislation. Why could we not just move to it and save the 30 hours and all the wasted time on filing this motion?

Understand, I am not at all upset at my friend for having a concern about this bill—not whatsoever. I just am frustrated with the need to have to file cloture to proceed to the bill.

Mr. BURR. I share the leader's frustration and do not think, in that case, cloture was necessary. But with the restrictions that are placed on me as ranking member, that I can only agree to a bill if there are no amendments and there is a limit set of debate time and I have to speak for 48 others who might not share that limited debate time or a set amount of amendments, I think the leader knows that is something that is impossible for me to do and impossible for me to suggest to my leadership.

Mr. REID. Mr. President, I would just go back and say what I said earlier. We have suggested over the 9 months there be limited amendments, there be relevant amendments. We are not there. We cannot go back where we want to be. We are where we are.

I hope we would not even need to do the vote tomorrow at 12 noon. I hope maybe you can talk to your folks and we can start legislating this bill in the morning. That would be the best thing to do because we have a lot to do. I ask my friend to check that out and maybe that is something we can do.

Anyway, I am glad you are here. I appreciate your concern for the bill—part of it. I know you are not the only person who is concerned about that. I know that. But I repeat, there is a thing we call offering an amendment. You have one ready to go, and I will look forward to debating that amendment.

Mr. BURR. I have had the amendment ready to go for months. I think it is a shame the majority in the committee was not willing to talk about any changes to the bill. Now I think we are to a point where it is healthy for the Senate in total to debate the merits and priorities of our country.

Were Filipino veterans promised a VA benefit? According to all the information I have researched and the information provided in 1998 at a congressional hearing with the Department of the Army—it examined its holdings of the Douglas MacArthur and President Franklin Roosevelt papers and found no references by either of those wartime leaders to postwar benefits for Filipino veterans.

Let me be very specific. This bill, S. 1315, does two things: No. 1, it enhances some benefits for our veterans.

I think that receives unanimous support in the Senate. But, two, it diverts $221 million over the next 10 years to create a special pension for a very specific slice of Filipino veterans, those who live in the Philippines, those who had no service-connected injury, those who have gone post the war with the understanding that the United States stepped in by gifting two hospitals, by gifting medical equipment, by gifting everything, and rebuilding the Philippines.

At a time of war where we are fighting on two fronts, Afghanistan and Iraq, I believe the important thing and prudent thing is to take the $221 million, over 10 years, and devote it to our men and women who are coming out of combat. S. 1315 has the wrong priorities. So I put together a substitute proposal, S. 2640. I will offer that as an amendment at the appropriate point in the debate.

In that bill, we do one specific thing: We increase what is in S. 1315, minus the special pensions, and we propose increasing housing grants for profoundly disabled veterans who need their homes modified to accommodate their disabilities; we increase the auto grants for profoundly disabled veterans who need that freedom of the platform, the platform for mobility to live independently; it improves the education benefits for our Guard and Reserves; it increases the burial benefits to lessen the financial burden on families of deceased veterans.

I did not come over today to debate the merits of S. 1350. I see the chairman, Chairman AKAKA, is here. The chairman has known since last year that I had problems with that portion of the bill, and we have tried to work out the differences. But as I said earlier, for it to be communicated that we have reached this point because of stall and delay and because we are against things, it is flatly wrong. I am for 99 percent of the bill. Drop the part that prioritizes someone else in front of our veterans, and I am ready to go forward, I am ready to pass it by unanimous consent.

But by the same token, I believe when given the responsibility to make sure our veterans are taken care of, to make sure that those with severe disabilities are taken care of, to devote $221 million to a new special pension, I believe, is the wrong priority at this point in time.

I believe we should look at the history and find out: Did we make a commitment? Well, I cannot find that. I cannot find where we promised somebody something we have not fulfilled. Tomorrow, I will take the opportunity to go through a very indepth bit of research, not just done by me but done over the years that goes back to 1946 in great detail; looks at what the promises were that were made by the United States; but, more importantly, again, the generosity already displayed by this country to the Philippines to reward them for their participation, and, by the way, our help to liberate their country from the siege of an enemy.

I am convinced the right thing to do is to prioritize that $221 million for our troops, for our kids from Afghanistan, for our kids from Iraq, to make sure that those who have paid a sacrifice, and in some cases the ultimate sacrifice, are the beneficiaries of this money.

I am committed to come to the floor and debate, as I have made a promise to the chairman. I am not going to block the motion to proceed. By the same token, I am not going to vote for limiting the amount of time Members want to spend on this because I think it is too important. Our veterans deserve as much time as it takes for us to debate where our priorities on money are. If at the end of the day this body votes we send it in the form of a special pension to Filipinos in the Philippines who have no service-connected injury, I will live with that.

But I will not live with it by agreeing to less than the amount of time that is needed to debate an issue about the future of our kids, our service personnel, the men and women who put on a uniform and risk their lives every day. I believe they should sit at the top of the list. And S. 1315 does not put them there. S. 1315 puts at the top of the list a new special pension program for people who have never had a service-connected injury.

I am as sympathetic to those who fall into the category of having helped us. I might mention again, the Filipinos who live in the United States who fought in the Philippines for us, we take care of; we have integrated them fully into the Veterans' Administration. They receive every service our veterans do. To those Filipinos who live in the Philippines who have service-connected injuries, we have made sure compensation is in this bill to take care of them.

But for those who do not have service-connected injuries, I cannot see where they fit at the top of the list of $221 million and our kids go below it, as it relates to what they need for the severely disabled injuries they have been faced with.

I have a number of soldiers in North Carolina, at least they are stationed in North Carolina, that fall into this category. When we see Eric Edmundson's family spend $47,000 on a van, and $14,000 of that comes out-of-pocket, I have to ask: Where are our priorities? Where are the priorities of the Congress in defense of these kids? Well, they are in $221 million getting ready to go to the Philippines. That is where they are. That is the debate we are going to have over the next several days. If it takes a week or if it takes a month, then we will have that debate. At some point, we will take a vote. I believe the American people will see the advantage, the need, to make sure the No. 1 priority is our kids in uniform, our veterans who come back who will be serviced by this very important piece of legislation.

I am committed to Chairman AKAKA that once we can dispose of the issue of this special pension, I am more than willing to vote for the rest of the bill because it is a good bill. It brings some needed benefits to our veterans.

It never should have been locked up for the length of period this was. But make no mistake about it, no matter how good a bill is, if you want to structure it in a way that debate does not flourish in the Senate, then we have done an injustice to the American people. The most deliberative body in the world is supposed to be one that you are not corralled into agreeing to a certain amount of time to debate on an issue; it is where everybody's voice is heard, it is where every bit of information about an issue can be presented. It is where charts can display what words cannot explain.

That is what the next several days will be about with S. 1315. I am convinced that at the end of this process, not only will Members in this body be enlightened by what we are able to talk about, but the American people will be enlightened, and hopefully this body will vote, hopefully in the majority way, that the priority, the No. 1 priority is our men and women in uniform when they come home.

VETERANS BENEFITS ENHANCEMENT ACT OF 2007

Mr. AKAKA. Mr. President, I urge my colleagues to support consideration of S. 1315, as reported by the Committee on Veterans' Affairs, the proposed Veterans Benefits Enhancement Act of 2007. This is a comprehensive bill that would improve benefits and services for veterans, both young and old, and it should be debated and voted on.

I believe that a brief recap of how we came to seek cloture on this veterans bill would be helpful in assisting my colleagues in their deliberation on cloture.

Last June the committee held a markup during which the then-ranking member, the Senator from Idaho, offered an amendment that would have modified a provision of the bill relating to Filipino veterans of World War II. This amendment would have reduced the amount of pension that Filipino veterans residing in the Philippines would receive.

I stress that the amendment was not to eliminate pension benefits for these veterans from the bill entirely—it was merely to reduce the benefit in line with what the Senator from Idaho viewed as appropriate. I disagreed with his assessment and we debated the issue. Ultimately, his amendment was not adopted.

As that markup concluded, the Senator from Idaho noted that he intended to bring his amendment regarding the pension issue to the floor during consideration of S. 1315, a step I certainly understood and accepted.

The report on S. 1315 was filed in August and I expected that it would come to the floor in September. However, there was an unexpected change in the committee's Republican leadership in early September, with the Senator from Idaho being replaced by the Senator from North Carolina. I did not push for consideration of S. 1315 while the new ranking member took over the responsibilities of the position.

When in October, committee staff began, at my direction, to seek agreement for the bill to be brought to the floor, those efforts were not successful.

Later in the fall, despite his suggestion that there was need for debate, the former ranking member curiously objected to my attempt to gain unanimous consent to debate the bill. I wrote to my colleague in an attempt to find a middle ground between the level of pension benefits in the bill as reported, and the level that he had sought during the June markup.

On December 13, 2007, I received a letter from the former ranking member that indicated that he did not feel that we were far apart from finding a compromise on the bill, and that he looked forward to working with me to gain final passage.

However, my optimism was shortlived. On that same day, the majority staff received a counteroffer from the minority staff, on behalf of the committee's new ranking member, the Senator from North Carolina, which proposed to entirely eliminate pension benefits for Filipino veterans residing in the Philippines from the bill.

Shortly thereafter, I was surprised to learn that this counteroffer was embraced by the committee's former ranking member—rendering his offer to negotiate null and void.

Additional efforts earlier this year to find a compromise or, at a minimum, to enter into an agreement for debate, were again rejected.

Now, after over 7 months of obstruction in bringing this bill to the floor, we have to resort to a cloture vote on the motion to proceed to the bill, an action unprecedented in the history of the Veterans' Affairs Committee.

I am dismayed that, along with the Filipino veterans provisions included in the bill, a number of other worthy provisions have not been enacted because of obstruction by the minority.

Among other things, S. 1315, as reported, would: Establish a new program of insurance for service-connected veterans; expand eligibility for retroactive benefits from traumatic injury protection coverage under the Servicemembers' Group Life Insurance program; increase the maximum amount of veterans mortgage life insurance that a service-connected disabled veteran may purchase; recognize that individuals with severe burn injuries need specially adapted housing benefits; and extend for 2 years the monthly educational assistance allowance for apprenticeship or other on-the-job training.

This is by no means a comprehensive recitation of the 8 titles and 38 provisions that are in this omnibus legislation. However, I hope it gives our colleagues an overview of the types of benefits that servicemembers and veterans stand to gain by passage of this legislation.

I ask our colleagues to vote in favor of cloture so as to bring this measure to the floor.

The ACTING PRESIDENT pro tempore. The Republican whip.

SADDAM HUSSEIN AND AL-QAIDA

Mr. KYL. Mr. President, it has been commonplace for critics of the war in Iraq to minimize, if not actually dismiss entirely, the links between Saddam Hussein and terrorists generally and al-Qaida specifically. This is part of a systematic effort by some, especially now that there are irrefutable signs of progress from the military

surge in Iraq, to change the narrative on the war. Instead of debating the way forward, they prefer instead to relitigate the past. In fact, earlier this month the distinguished majority leader stated:

Prior to the invasion of Iraq, there was not a terrorist in Iraq. And now, of course, there are lots of them.

It is true that there are a lot of terrorists in Iraq which, of course, is the reason why we are still there fighting them and need to stay there until they are defeated. But it is not true that there were no terrorists in Iraq prior to our invasion. In fact, Saddam's ties to terrorists are well known and were confirmed yet again in a recent report commissioned by the Pentagon's Joint Forces Command. This report found that Saddam Hussein actively supported and financed terrorist activities during the years he controlled Iraq. The report, entitled ''Iraqi Perspectives Project: Saddam and Terrorism: Emerging Insights from Captured Iraqi Documents,'' was released on March 13. It was the product of the analysis of over 600,000 documents captured in Iraq since 2003. It concluded that Saddam's security forces and Osama bin Laden's terrorist network ''operated with similar aims (at least in the short term).''

According to the report:

Though the execution of Iraqi terror plots was not always successful, evidence shows that Saddam's use of terrorist tactics and his support for terrorist groups remained strong up until the collapse of his regime.

The report found that Saddam Hussein worked with several different terrorist groups, including groups with direct ties to al-Qaida. Many were engaged in a jihad against the United States and its allies. It wasn't necessary to read with excruciating detail the entire 1,600-page report to find proof of these links; all of the above was available for all to see in the brief abstract that accompanied the report.

Stephen Hayes offers extensive analysis of the entire report by the Joint Forces Command in the Weekly Standard magazine on March 24, 2008.

I ask unanimous consent to have his article printed in the RECORD.

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

[From the Weekly Standard, Mar. 24, 2008]

SADDAM'S DANGEROUS FRIENDS: WHAT A PENTAGON REVIEW OF 600,000 IRAQI DOCUMENTS TELLS US

(By Stephen F. Hayes)

This ought to be big news. Throughout the early and mid-1990s, Saddam Hussein actively supported an influential terrorist group headed by the man who is now al Qaeda's second-in-command, according to an exhaustive study issued last week by the Pentagon. ''Saddam supported groups that either associated directly with al Qaeda (such as the Egyptian Islamic Jihad, led at one time by bin Laden's deputy, Ayman al-Zawahiri) or that generally shared al Qaeda's stated goals and objectives.'' According to the Pentagon study, Egyptian Islamic Jihad was one of many jihadist groups that Iraq's former dictator funded, trained, equipped, and armed.

The study was commissioned by the Joint Forces Command in Norfolk, Virginia, and produced by analysts at the Institute for Defense Analyses, a federally funded military think tank. It is entitled ''Iraqi Perspectives Project: Saddam and Terrorism: Emerging Insights from Captured Iraqi Documents.'' The study is based on a review of some 600,000 documents captured in postwar Iraq. Those ''documents'' include letters, memos, computer files, audiotapes, and videotapes produced by Saddam Hussein's regime, especially his intelligence services. The analysis section of the study covers 59 pages. The appendices, which include copies of some of the captured documents and translations, put the entire study at approximately 1,600 pages.

An abstract that describes the study reads, in part:

Because Saddam's security organizations and Osama bin Laden's terrorist network operated with similar aims (at least in the short term), considerable overlap was inevitable when monitoring, contacting, financing, and training the same outside groups. This created both the appearance of and, in some way, a 'de facto' link between the organizations. At times, these organizations would work together in pursuit of shared goals but still maintain their autonomy and independence because of innate caution and mutual distrust. Though the execution of Iraqi terror plots was not always successful, evidence shows that Saddam's use of terrorist tactics and his support for terrorist groups remained strong up until the collapse of the regime.''

Among the study's other notable findings:

In 1993, as Osama bin Laden's fighters battled Americans in Somalia, Saddam Hussein personally ordered the formation of an Iraqi terrorist group to join the battle there.

For more than two decades, the Iraqi regime trained non-Iraqi jihadists in training camps throughout Iraq.

According to a 1993 internal Iraqi intelligence memo, the regime was supporting a secret Islamic Palestinian organization dedicated to ''armed jihad against the Americans and Western interests.''

In the 1990s, Iraq's military intelligence directorate trained and equipped ''Sudanese fighters.''

In 1998, the Iraqi regime offered ''financial and moral support'' to a new group of jihadists in Kurdish-controlled northern Iraq.

In 2002, the year before the war began, the Iraqi regime hosted in Iraq a series of 13 conferences for non-Iraqi jihadist groups.

That same year, a branch of the Iraqi Intelligence Service (IIS) issued hundreds of Iraqi passports for known terrorists.

There is much, much more. Documents reveal that the regime stockpiled bombmaking materials in Iraqi embassies around the world and targeted Western journalists for assassination. In July 2001, an Iraqi Intelligence agent described an al Qaeda affiliate in Bahrain, the Army of Muhammad, as ''under the wings of bin Laden.'' Although the organization ''is an offshoot of bin Laden,'' the fact that it has a different name ''can be a way of camouflaging the organization.'' The agent is told to deal with the al Qaeda group according to ''priorities previously established.''

In describing the relations between the Army of Muhammad and the Iraqi regime, the authors of the Pentagon study come to this conclusion: ''Captured documents reveal that the regime was willing to co-opt or support organizations it knew to be part of al Qaeda—as long as that organization's near-term goals supported Saddam's long-term vision.''

As I said, this ought to be big news. And, in a way, it was. A headline in the New York Times, a cursory item in the Washington Post, and stories on NPR and ABC News reported that the study showed no links between al Qaeda and Saddam Hussein.

How can a study offering an unprecedented look into the closed regime of a brutal dictator, with over 1,600 pages of ''strong evidence that links the regime of Saddam Hussein to regional and global terrorism,'' in the words of its authors, receive a wave-of-the-hand dismissal from America's most prestigious news outlets? All it took was a leak to a gullible reporter, one misleading line in the study's executive summary, a boneheaded Pentagon press office, an incompetent White House, and widespread journalistic negligence.

On Monday, March 10, 2008, Warren P. Strobel, a reporter from the McClatchy News Service first reported that the new Pentagon study was coming. ''An exhaustive review of more than 600,000 Iraqi documents that were captured after the 2003 U.S. invasion has found no evidence that Saddam Hussein's regime had any operational links with Osama bin Laden's al Qaida terrorist network.'' McClatchy is a newspaper chain that serves many of America's largest cities. The national security reporters in its Washington bureau have earned a reputation as reliable outlets for anti-Bush administration spin on intelligence. Strobel quoted a ''U.S. official familiar with the report'' who told him that the search of Iraqi documents yielded no evidence of a ''direct operational link'' between Iraq and al Qaeda. Strobel used the rest of the article to attempt to demonstrate that this undermined the Bush administration's prewar claims with regard to Iraq and terrorism.

With the study not scheduled for release for two more days, this article shaped subsequent coverage, which was no doubt the leaker's purpose. Stories from other media outlets tracked McClatchy very closely but began to incorporate a highly misleading phrase taken from the executive summary: ''This study found no 'smoking gun' (i.e. direct connection) between Saddam's Iraq and al Qaeda.'' This is how the Washington Post wrote it up:

An examination of more than 600,000 Iraqi documents, audio and video records collected by U.S. forces since the March 2003 invasion has concluded that there is 'no smoking gun' supporting the Bush administration's prewar assertion of an 'operational relationship' between Saddam Hussein and the al-Qaeda terrorist network, sources familiar with the study said.''

Much of the confusion might have been avoided if the Bush administration had done anything to promote the study. An early version of the Pentagon study was provided to National Security Adviser Steve Hadley more than a year ago, before November 2006. In recent weeks, as the Pentagon handled the rollout of the study, Hadley was tasked with briefing President Bush and Vice President Dick Cheney. It's unclear whether he shared the study with President Bush, and NSC officials did not respond to repeated requests for comment. But sources close to Cheney say the vice president was blindsided.

After the erroneous report from McClatchy, two officials involved with the study became very concerned about the misreporting of its contents. One of them said in an interview that he found the media coverage of the study ''disappointing.'' Another, James Lacey, expressed his concern in an email to Karen Finn in the Pentagon press office, who was handling the rollout of the study. On Tuesday, the day before it was scheduled for release, Lacey wrote: ''1. The story has been leaked. 2. ABC News is doing a story based on the executive summary tonight. 3. The Washington Post is doing a

story based on rumors they heard from ABC News. The document is being misrepresented. I recommend we put [it] out and on a website immediately.''

Finn declined, saying that members of Congress had not been told the study was coming. ''Despite the leak, there are Congressional notifications and then an official public release. This should not be posted on the web until these actions are complete.''

Still under the misimpression that the Pentagon study undermined the case for war, McClatchy's Warren Strobel saw this bureaucratic infighting as a conspiracy to suppress the study:

The Pentagon on Wednesday canceled plans for broad public release of a study that found no pre-Iraq war link between late Iraqi President Saddam Hussein and the al Qaida terrorist network. . . . The reversal highlighted the politically sensitive nature of its conclusions, which were first reported Monday by McClatchy.

In making their case for invading Iraq in 2002 and 2003, President Bush and his top national security aides claimed that Saddam's regime had ties to Osama bin Laden's al Qaida terrorist network.

But the study, based on more than 600,000 captured documents, including audio and video files, found that while Saddam sponsored terrorism, particularly against opponents of his regime and against Israel, there was no evidence of an al Qaida link.

An examination of the rest of the study makes the White House decision to ignore the Pentagon study even more curious. The first section explores ''Terror as an Instrument of State Power'' and describes documents detailing Fedayeen Saddam terrorist training camps in Iraq. Graduates of the terror training camps would be dispatched to sensitive sites to carry out their assassinations and bombings. In May 1999, the regime plotted an operation code named ''Blessed July'' in which the top graduates of the terrorist training courses would be sent to London, Iran, and Kurdistan to conduct assassinations and bombings.

A separate set of documents presents, according to the Pentagon study, ''evidence of logistical preparation for terrorist operations in other nations, including those in the West.'' In one letter, a director of the Iraqi Intelligence Service (IIS) responds to a request from Saddam for an inventory of weapons stockpiled in Iraqi embassies throughout the world. The terrorist tools include missile launchers and missiles, ''American missile launchers,'' explosive materials, TNT, plastic explosive charges, Kalashnikov rifles, and ''booby-trapped suitcases.''

The July 2002 Iraqi memo describes how these weapons were distributed to the operatives in embassies.

Between the year 2000 and 2002 explosive materials were transported to embassies outside Iraq for special work, upon the approval of the Director of the Iraqi Intelligence Service. The responsibility for these materials is in the hands of heads of stations. Some of these materials were transported in the political mail carriers [Diplomatic Pouch]. Some of these materials were transported by car in booby-trapped briefcases.

Saddam also recruited non-Iraqi jihadists to serve as suicide bombers on behalf of the Iraqi regime. According to the study, captured documents ''indicate that as early as January 1998, the scheduling of suicide volunteers was routine enough to warrant not only a national-level policy letter but a formal schedule—during summer vacation—built around maximizing availability of Arab citizens in Iraq on Saddam-funded scholarships.''

The second section of the Pentagon study concerns ''State Relationships with Terrorist Groups.'' An IIS document dated March 18, 1993, lists nine terrorist ''organizations that our agency [IIS] cooperates with and have relations with various elements in many parts of the Arab world and who also have the expertise to carry out assignments'' on behalf of the regime. Several well-known Palestinian terrorist organizations make the list, including Abu Nidal's Fatah-Revolutionary Council and Abu Abbas's Palestinian Liberation Front. Another group, the secret ''Renewal and Jihad Organization'' is described this way in the Iraqi memo:

It believes in armed jihad against the Americans and Western interests. They also believe our leader [Saddam Hussein], may God protect him, is the true leader in the war against the infidels. The organization's leaders live in Jordan when they visited Iraq two months ago they demonstrated a willingness to carry out operations against American interests at any time.''

Other groups listed in the Iraqi memo include the ''Islamic Scholars Group'' and the ''Pakistan Scholars Group.''

There are two terrorist organizations on the Iraqi Intelligence list that deserve special consideration: the Afghani Islamic Party of Gulbuddin Hekmatyar and the Egyptian Islamic Jihad of Ayman al Zawahiri.

This IIS document provides this description of the Afghani Islamic Party:

It was founded in 1974 when its leader [Gulbuddin Hekmatyar] escaped from Afghanistan to Pakistan. It is considered one of the extreme political religious movements against the West, and one of the strongest Sunni parties in Afghanistan. The organization relies on financial support from Iraq and we have had good relations with Hikmatyar since 1989.

In his book Holy War, Inc., Peter Bergen, a terrorism analyst who has long been skeptical of Iraq-al Qaeda connections, describes Hekmatyar as Osama bin Laden's ''alter ego.'' Bergen writes: ''Bin Laden and Hekmatyar worked closely together. During the early 1990s al-Qaeda's training camps in the Khost region of eastern Afghanistan were situated in an area controlled by Hekmatyar's party.''

It's worth dwelling for a moment on that set of facts. An internal Iraqi Intelligence document reports that Iraqis have ''good relations'' with Hekmatyar and that his organization ''relies on financial support from Iraq.'' At precisely the same time, Hekmatyar ''worked closely'' with Osama bin Laden and his Afghani Islamic Party hosted ''al Qaeda's terrorist training camps'' in eastern Afghanistan.

The IIS document also reveals that Saddam was funding another close ally of bin Laden, the EIJ organization of Ayman al Zawahiri.

In a meeting in the Sudan we agreed to renew our relations with the Islamic Jihad Organization in Egypt. Our information on the group is as follows:

It was established in 1979.

Its goal is to apply the Islamic shari'a law and establish Islamic rule.

It is considered one of the most brutal Egyptian organizations. It carried out numerous successful operations, including the assassination of [Egyptian President Anwar] Sadat.

We have previously met with the organization's representative and we agreed on a plan to carry out commando operations against the Egyptian regime.

Zawahiri arrived in Afghanistan in the mid–1980s, and ''from the start he concentrated his efforts on getting close to bin Laden,'' according to Lawrence Wright, in The Looming Tower. The leaders of EIJ quickly became leaders of bin Laden's organizations. ''He soon succeeded in placing trusted members of Islamic Jihad in key positions around bin Laden,'' Wright reported in the definitive profile of Zawahiri, published in the New Yorker in September 2002. ''According to the Islamist attorney Montasser al-Zayat, 'Zawahiri completely controlled bin Laden. The largest share of bin Laden's financial support went to Zawahiri and the Jihad organization.''

Later, Wright describes the founding of al Qaeda.

Toward the end of 1989, a meeting took place in the Afghan town of Khost at a mujahideen camp. A Sudanese fighter named Jamal al-Fadl was among the participants, and he later testified about the event in a New York courtroom during one of the trials connected with the 1998 bombing of the American embassies in East Africa. According to Fadl, the meeting was attended by ten men—four or five of them Egyptians, including Zawahiri. Fadl told the court that the chairman of the meeting, an Iraqi known as Abu Ayoub, proposed the formation of a new organization that would wage jihad beyond the borders of Afghanistan. There was some dispute about the name, but ultimately the new organization came to be called Al Qaeda—the Base. The alliance was conceived as a loose affiliation among individual mujahideen and established groups, and was dominated by Egyptian Islamic Jihad. The ultimate boss, however, was Osama bin Laden, who held the checkbook.

Once again, it's worth dwelling on these facts for a moment. In 1989, Ayman al Zawahiri attended the founding meeting of al Qaeda. He was literally present at the creation, and his EIJ ''dominated'' the new organization headed by Osama bin Laden.

In the early 1990s, Zawahiri and bin Laden moved their operations to Sudan. After a fundraising trip to the United States in the spring of 1993, Zawahiri returned to Sudan where, again according to Wright, he ''began working more closely with bin Laden, and most of the Egyptian members of Islamic Jihad went on the Al Qaeda payroll.'' Although some members of EIJ were skeptical of bin Laden and his global aspirations, Zawahiri sought a de facto merger with al Qaeda. One of his top assistants would later say Zawahiri had told him that ''joining with bin Laden [was] the only solution to keeping the Jihad organization alive.''

Again, at precisely the same time Zawahiri was ''joining with bin Laden,'' the spring of 1993, he was being funded by Saddam Hussein's Iraq. As Zawahiri's jihadists trained in al Qaeda camps in Sudan, his representative to Iraq was planning ''commando operations'' against the Egyptian government with the IIS.

Another captured Iraqi document from early 1993 ''reports on contact with a large number of terrorist groups in the region, including those that maintained an office or liaison in Iraq.'' In the same folder is a memo from Saddam Hussein to a member of his Revolutionary Council ordering the formation of ''a group to start hunting Americans present on Arab soil, especially Somalia.'' A second memo to the director of the IIS, instructs him to revise the plan for ''operations inside Somalia.''

More recently, captured ''annual reports'' of the IIS reveal support for terrorist organizations in the months leading up the U.S. invasion in March 2003. According to the Pentagon study, ''the IIS hosted thirteen conferences in 2002 for a number of Palestinian and other organizations, including delegations from the Islamic Jihad Movement and the Director General for the Popular Movement for the Liberation of al-Ahwaz.'' The same annual report ''also notes that among the 699 passports, renewals and other official

documentation that the IIS issued, many were issued to known members of terrorist organizations.''

The Pentagon study goes on to describe captured documents that instruct the IIS to maintain contact with all manner of Arab movement and others that ''reveal that later IIS activities went beyond just maintaining contact.'' Throughout the 1990s, the Iraqi regime's General Military Intelligence Directorate ''was training Sudanese fighters inside Iraq.''

The second section of the Pentagon study also discusses captured documents related to the Islamic Resistance organization in Kurdistan from 1998 and 1999. The documents show that the Iraqi regime provided ''financial and moral support'' to members of the group, which would later become part of the al Qaeda affiliate in the region, Ansar al Islam.

The third section of the Pentagon study is called ''Iraq and Terrorism: Three Cases.'' One of the cases is that of the Army of Muhammad, the al Qaeda affiliate in Bahrain. A series of memoranda order an Iraqi Intelligence operative in Bahrain to explore a relationship with its leaders. On July 9, 2001, the agent reports back: ''Information available to us is that the group is under the wings of bin Laden. They receive their directions from Yemen. Their objectives are the same as bin Laden.'' Later, he lists the organization's objectives.

Jihad in the name of God.

Striking the embassies and other Jewish and American interests anywhere in the world.

Attacking the American and British military bases in the Arab land.

Striking American embassies and interests unless the Americans pull out their forces from the Arab lands and discontinue their support for Israel.

Disrupting oil exports [to] the Americans from Arab countries and threatening tankers carrying oil to them.

A separate memo reveals that the Army of Muhammad has requested assistance from Iraq. The study authors summarize the response by writing, ''the local IIS station has been told to deal with them in accordance with priorities previously established. The IIS agent goes on to inform the Director that this organization is an offshoot of bin Laden, but that their objectives are similar but with different names that can be a way of camouflaging the organization.''

We never learn what those ''previous priorities'' were and thus what, if anything, came of these talks. But it is instructive that the operative in Bahrain understood the importance of disguising relations with al Qaeda and that the director of IIS, knowing that the group was affiliated with bin Laden and sought to attack Americans, seemed more interested in continuing the relationship than in ending it.

The fourth and final section of the Pentagon study is called ''The Business of Terror.'' The authors write: ''An example of indirect cooperation is the movement led by Osama bin Laden. During the 1990s, both Saddam and bin Laden wanted the West, particularly the United States, out of Muslim lands (or in the view of Saddam, the ''Arab nation''). . . . In pursuit of their own separate but surprisingly 'parallel' visions, Saddam and bin Laden often found a common enemy in the United States.''

They further note that Saddam's security organizations and bin Laden's network were recruiting within the same demographic, spouting much of the same rhetoric, and promoting a common historical narrative that promised a return to a glorious past. That these movements (pan-Arab and pan-Islamic) had many similarities and strategic parallels does not mean they saw themselves in that light. Nevertheless, these similarities created more than just the appearance of cooperation. Common interests, even without common cause, increased the aggregate terror threat.

As much as we have learned from this impressive collection of documents, it is only a fraction of what we will know in 10, 20, or 50 years. The authors themselves acknowledge the limits of their work.

In fact, there are several captured Iraqi documents that have been authenticated by the U.S. government that were not included in the study but add to the picture it sketches. One document, authenticated by the Defense Intelligence Agency and first reported on 60 Minutes, is dated March 28, 1992. It describes Osama bin Laden as an Iraqi intelligence asset ''in good contact'' with the IIS station in Syria.

Another Iraqi document, this one from the mid-1990s, was first reported in the New York Times on June 25, 2004. Authenticated by a Pentagon and intelligence working group, the document was titled ''Iraqi Effort to Cooperate with Saudi Opposition Groups and Individuals.'' The working group concluded that it ''corroborates and expands on previous reporting'' on contacts between Iraq and al Qaeda. It revealed that a Sudanese government official met with Uday Hussein and the director of the IIS in 1994 and reported that bin Laden was willing to meet in Sudan. Bin Laden, according to the Iraqi document, was then ''approached by our side'' after ''presidential approval'' for the liaison was given. The former head of Iraqi Intelligence Directorate 4 met with bin Laden on February 19, 1995. The document further states that bin Laden ''had some reservations about being labeled an Iraqi operative''—a comment that suggests the possibility had been discussed.

Bin Laden requested that Iraq's state-run television network broadcast anti-Saudi propaganda, and the document indicates that the Iraqis agreed to do this. The al Qaeda leader also proposed ''joint operations against foreign forces'' in Saudi Arabia. There is no Iraqi response provided in the documents. When bin Laden left Sudan for Afghanistan in May 1996, the Iraqis sought ''other channels through which to handle the relationship, in light of his current location.'' The IIS memo directs that ''cooperation between the two organizations should be allowed to develop freely through discussion and agreement.''

In another instance, the new Pentagon study makes reference to captured documents detailing the Iraqi relationship with Abu Sayyaf, the al Qaeda affiliate in the Philippines founded by Osama bin Laden's brother-in-law. But the Pentagon study does not mention the most significant element of those documents, first reported in these pages. In a memo from Ambassador Salah Samarmad to the Secondary Policy Directorate of the Iraqi Foreign Ministry, we learn that the Iraqi regime had been funding and equipping Abu Sayyaf, which had been responsible for a series of high-profile kidnappings. The Iraqi operative informs Baghdad that such support had been suspended. ''The kidnappers were formerly (from the previous year) receiving money and purchasing combat weapons. From now on we (IIS) are not giving them this opportunity and are not on speaking terms with them.'' That support would resume soon enough, and shortly before the war a high-ranking Iraqi diplomat named Hisham Hussein would be expelled from the Philippines after his cell phone number appeared on an Abu Sayyaf cell phone used to detonate a bomb.

What's happening here is obvious. Military historians and terrorism analysts are engaged in a good faith effort to review the captured documents from the Iraqi regime and provide a dispassionate, fact-based examination of Saddam Hussein's long support of jihadist terrorism. Most reporters don't care. They are trapped in a world where the Bush administration lied to the country about an Iraq-al Qaeda connection, and no amount of evidence to the contrary—not even the words of the fallen Iraqi regime itself—can convince them to reexamine their mistaken assumptions.

Bush administration officials, meanwhile, tell us that the Iraq war is the central front in the war on terror and that American national security depends on winning there. And yet they are too busy or too tired or too lazy to correct these fundamental misperceptions about the case for war, the most important decision of the Bush presidency.

What good is the truth if nobody knows it?

Mr. KYL. The Joint Forces Command report sheds light on the relationship between Saddam Hussein and Ayman al-Zawahiri, Osama bin Laden's second in command.

I quote:

> Saddam supported groups either associated directly with al Qaeda (such as the Egyptian Islamic Jihad (EIJ), led at one time by bin Laden's deputy Ayman al-Zawahiri) or that generally shared al Qaeda's stated goals and objectives.

Mr. Hayes notes in his article that Zawahiri's organization was being financed by Saddam Hussein at the very time Zawahiri was working almost exclusively with bin Laden. In fact, Zawahiri had been working with al-Qaida from its inception in late 1989. By 1993, Zawahiri, as the leader of the EIJ, sought to merge the organization with al-Qaida and, in fact, the two terrorist organizations eventually merged in 1998.

The Standard further reported that:

> Captured documents revealed that the regime was willing to co-opt support organizations it knew to be part of al Qaeda as long as that organization's near-term goals supported Saddam's long-term vision.

The more than 600,000 documents likely revealed only a fraction of what we will ultimately know of the true relationship between bin Laden, the global jihad, and Saddam Hussein. Given this information, it is a surprise that many in the mainstream media have concluded only that there was no smoking gun linking al-Qaida and Saddam Hussein, thus failing to report the key findings in the report to the American people.

I am not one who supports relitigating why it was necessary for the United States to remove Saddam Hussein from power. But for those who find themselves stuck in the past, the Iraqi Perspective Project provides yet another substantial body of evidence, adding to that which was before the Congress when we authorized the Iraq mission. I want to refer to one item in that body of evidence, a letter, dated October 7, 2002, from CIA Director George Tenet to the Honorable Bob Graham, then chairman of the Select Committee on intelligence. Among the things he writes in this letter, these are the items that were available to us

before we authorized the invasion of Iraq. He refers to a question by Senator BAYH about Iraqi links to al-Qaida. He says Senators could draw the following points from unclassified documents. There was, of course, much more that was classified. I will quote this brief portion of his letter:

Our understanding of relationship between Iraq and al-Qa'ida is evolving and is based on sources of varying reliability. Some of the information we have received comes from detainees, including some of high rank.

We have solid reporting of senior level contacts between Iraq and al-Qa'ida going back a decade.

Credible information indicates that Iraq and al-Qa'ida have discussed safe haven and reciprocal non-aggression.

Since Operation Enduring Freedom, we have solid evidence of the presence in Iraq of al-Qa'ida members, including some that have been in Baghdad.

We have credible reporting that al-Qa'ida leaders sought contacts in Iraq who could help them acquire WMD capabilities. The reporting also stated that Iraq has provided training to al-Qa'ida members in the areas of poisons and gases and making conventional bombs.

Iraq's increasing support to extremist Palestinians, coupled with growing indications of a relationship with al-Qa'ida, suggest that Baghdad's links to terrorists will increase, even absent US military action.

I commend the Joint Forces Command for its ongoing, exhaustive review of this record of intelligence collected in Iraq. I urge all colleagues to take the time to educate themselves on its findings. I urge the administration to undertake a serious effort to correct the misimpressions formed in recent years about this important issue.

There can be no doubt. Saddam Hussein was a threat. He actively supported terrorists both in and outside of Iraq, and the world is a safer place for him having been removed from power.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

EQUAL PAY DAY

Mr. HARKIN. Mr. President, tomorrow is Equal Pay Day. What is Equal Pay Day? That is the day that symbolizes how far into the year a woman must work from the previous year on average to earn as much as a man earned by December 31 of last year. It is unbelievable to me that more than four decades after passage of the Equal Pay Act and the Civil Rights Act, women are still making only 77 cents on the dollar to what a man makes. In Iowa, it is even worse. The Iowa Workforce Development Agency found that across all industries, women in my State make less than 62 percent of what men make.

Discrimination takes many forms. Sometimes it is brazen and in your face, like Jim Crow and apartheid. Sometimes discrimination is silent and insidious. That is what is happening in workplaces across America today. Millions of female-dominated jobs—social workers, teachers, childcare workers, nurses, so many more—are equivalent to male-dominated jobs, but they pay dramatically less. The Census Bureau has compiled data on hundreds of job categories, but it found only five job categories where women typically earn as much as a man. Defenders of this status quo offer all manner of bogus explanations on why women make less. How many times have you heard the fairy tale that women work for fulfillment and men work to support their families? Of course, this ignores the great majority of single women who work to support themselves and married women whose paycheck is all that allows their families to make ends meet, to put a little bit of money away for a rainy day or perhaps to send a child to college.

It ignores the harsh reality that so many women face in the workplace where they have to work twice as hard to be taken seriously or, say, get pushed into being a cashier when they had applied for a better paying sales job. These pervasive acts of discrimination deny women fair pay and they also deny women basic dignity.

Let me cite one example of the discrimination I am talking about. Last year in a hearing in our Health, Education, Labor, and Pensions Committee, we heard remarkable testimony from Dr. Philip Cohen of the University of North Carolina. Dr. Cohen compared nurses' aides, who are overwhelmingly women, and truck drivers who are overwhelmingly men. In both groups, the average age is 43. Both require ''medium'' amounts of strength. Nurses' aides on average have more education and training. But nurses' aides make less than 60 percent of what truck drivers make.

Given that this discrimination is so obvious and pervasive, you would expect that women would have no trouble at all obtaining simple justice in our court system. But in a major decision last June, in the case of Ledbetter v. Goodyear Tire & Rubber Company, the Supreme Court actually took us backward. In a 5-to-4 ruling, the Court made it extremely difficult for women to go to court to pursue claims of pay discrimination, even in cases where the discrimination is flagrant.

A jury acknowledged that Lilly Ledbetter, a former supervisor at Goodyear, had been paid $6,000 less than her lowest paid male counterpart. But the Supreme Court rejected her discrimination claim. Why? The Court held that women workers must file a discrimination claim within 180 days of their pay being set, even if they were not aware at the time that their pay was significantly lower than their male counterparts.

Justice Ginsburg said, in a forceful dissent, this is totally out of touch with the real world of the workplace. In the real world, pay scales are often kept secret and employees are in the dark about their coworkers' salaries. Lacking such information, it is difficult to determine when pay discrimination begins. Furthermore, vast discrepancies are often a function of time. If your original pay was a little bit lower than your colleague's pay, and then over 20 years you get smaller raises every year, you end up with a huge gap after 20 years. But if you can only sue for the most recent pay determination, this misses 20 years of discrimination. As a result, in Ms. Ledbetter's case, she is going to get a dramatically smaller pension for the rest of her life based upon that lower pay level.

Ms. Ledbetter, who testified before our committee last year, is injured twice: Over 20 years of flagrant discrimination in the workplace and getting paid less, and now for the remainder of her life, as a retired person, she will get less pension because of that discrimination. Twice she is injured.

What the Ledbetter decision means is that once the 180-day window for bringing a lawsuit is passed, the discrimination gets grandfathered in. This creates a free harbor for employers who have paid female workers less than men over a long period of time. Basically it gives the worst offenders a free pass to continue their gender discrimination.

Ledbetter was a bad decision, but there is one thing we can do with Supreme Court decisions. We can pass legislation to fix them. So I have joined with Senator KENNEDY and others to reverse the damage done by that decision. Our bill would establish that the ''unlawful employment practice'' under the Civil Rights Act is the payment of a discriminatory salary, not the original setting of the pay level.

Well, this is a good start, but it is not enough. It is not good enough to go back to the way the law worked last year because women, as I said, are still making less than 77 cents on the dollar as compared to men. That is intolerable. Moreover, if pay scales are still kept secret, if there is not transparency, how can women know if they are being discriminated against?

That is why we need to pass my Fair Pay Act, a bill which I have introduced in every Congress going back to 1996. I just keep introducing it every Congress. Here is what it does. It is very simple. In addition to requiring that employers provide equal pay for equivalent jobs, my bill would require disclosure of pay scales and rates for all job categories in a given company. Now, I did not say they had to disclose every single person's pay, I said pay scales for categories of jobs. Now, this would give women the information they need to identify discriminatory pay practices, and this could reduce the need for costly litigation in the first place.

When Lilly Ledbetter testified before our committee last year, I asked her—I told her about the bill; I told her what kind of information it would provide—I asked her if she had that information, could she have, 20 years ago, negotiated for better pay and avoided litigation? She answered: Of course.

Well, there are countless more Lilly Ledbetters out there who are paid less

than their male coworkers, but they will never know about it unless we get them this information.

My Fair Pay Act amends the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on the basis of sex, race, or national origin. Most importantly, it requires each individual employer to provide equal pay for jobs that are comparable in skill, effort, responsibility, and working conditions—skill, effort, responsibility, and working conditions.

Now, you might say: Haven't we already passed the Equal Pay Act? Yes, but the Equal Pay Act only says you have to be paid the same if you are doing exactly the same job. Well, what about if you are doing a job like a nurse's aide, in which you require medium strength, in which you require training, and you compare it to what a truckdriver does? Why should a truckdriver get 60 percent more than someone who is taking care of you when you are ill or your mother or your grandmother or grandparents in assisted living or in a nursing home or in hospice care or a number of other things where nurses' aides are vitally important?

You might say: Well, has this ever been done? The fact is, 20 States—20 State governments—right now have fair pay laws and policies in place for their employees, including my State of Iowa. I point out that Iowa had a Republican legislature and Republican Governor in 1985 when this bill was passed into law. So ending wage discrimination against women should not be a partisan issue.

I am just saying let's take what 20 State governments have done and let's extend it to the private sector. Well, some would say we do not need any more laws; market forces will take care of the wage gap. Well, maybe so, but we all know from basic economics 101 that for a free market to work there has to be not only a number of players where they have equivalent purchasing power—not an employer-employee situation—secondly, what else is most important for a market to work? Transparency, knowledge, knowing what the game is, openness. But when pay scales are kept secret and you do not know what they are, how can market forces ever, ever close this wage gap?

Experience also shows there are some injustices market forces cannot rectify. That is why we passed the Equal Pay Act, the Civil Rights Acts, the Family Medical Leave Act, and here, in 1990, the Americans with Disabilities Act. Market forces did not break down the barriers of discrimination against people with disabilities in our country. But that is what we did with the Americans with Disabilities Act. We broke the barriers down and let people with disabilities not only get educated, not only travel—go out to restaurants and things—but also get jobs in which we can look not at their disabilities but at their abilities.

Mr. President, I would like to close with a story of a woman from my State named Angie. She was employed as a field office manager at a temp firm. The employees there were not allowed to talk about pay with their coworkers. Only inadvertently did she discover that a male office manager at a similar branch, who had less education and less experience, was earning more than she was. In this case, the story did end happily. She cited this information in negotiations with her employer, and she was able to get a raise.

But I think there is a twofold lesson in this story. The first lesson is that if we give women information about what their male colleagues are getting, they can negotiate a better deal for themselves in the workplace. The second lesson is that pay discrimination is a harsh reality in the workplace. It is not only unfair, but it is demeaning, it is demoralizing, and it is pervasive—pervasive—throughout our society. Individual women should not have to do battle in order to win equal pay. We need more inclusive national laws to make equal pay for equal work—equal pay for equivalent work—a basic standard and a legal right in the American workplace.

So it is time, after all these years, to pass the Fair Pay Act. Do not confuse it with the Paycheck Protection Act. I am also a cosponsor of the Paycheck Protection Act. That legislation will improve the enforcement of the laws we already have on the books. But we already know those laws are not sufficient, as the Ledbetter case shows us. So in order to really open the marketplace for women to earn what they should be earning and to make the equivalent of what their male counterparts are making, we need to pass the Fair Pay Act.

Tomorrow, when we recognize Equal Pay Day—just think about it: Equal Pay Day tomorrow, April 22. So it took women all the way from January, February, March, and April, on average, to earn as much as a man did by December 31 of last year. That is just grossly unfair. It is also time to start paying women equivalent pay to what their male counterparts are making, when their job requires the same skill, effort, responsibility, and working conditions.

When you take all those factors into account, there is no reason why we should not pass the Fair Pay Act. Let's do for the private sector what 20 States have already done in their governments. With that, maybe we will start getting some justice in the workplace for American women.

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

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

EQUAL PAY FOR EQUAL WORK

Mr. KENNEDY. Mr. President, I welcome the opportunity to address the Senate on a matter of fundamental fairness to millions of our fellow citizens: to women, working women in our society, and to do it at a time when we know those who are working are hard pressed in the economy. We are all familiar with the anxiety among working families—working fathers and working mothers. Today I will address what underlies the efforts in which many of us are involved in what we call the Ledbetter case.

It is legislation to override a 5-to-4 Supreme Court decision named after Lilly Ledbetter, an extraordinary woman who had worked for a tire company for a number of years and had been discriminated against in her pay and had received judgments to make up for the damages she had experienced over a period of years. The Supreme Court then undermined the previous courts and effectively left her without any remedy at all, in effect saying unscrupulous employers could discriminate against an employee, and if they do not get caught within 100 days, they are free and clear and they can continue to discriminate against that individual.

That is not only against women, which is the Ledbetter case, but it is also true if they had done the same with regard to African Americans or Latino Americans or if they discriminated against the disabled or if they discriminated on the basis of religion or national origin—all of those cases with a simple 5-to-4 decision, the rights of those workers, people who are working, working hard, are virtually out the window.

I wish to take a few minutes to review what this Senate has done with regard to what we will call the equal pay issue over a period of time. It is an extraordinary record. It is a record of progress and fairness.

It will be amazing to me when my friends and colleagues on the other side rise to oppose this simple act of fairness and equity this situation demands. For over 40 years, this Senate has gone on record time and again saying that we will not discriminate against our fellow citizens on the basis of pay. Nonetheless, the Supreme Court has reached a different conclusion, and we will have the opportunity on Wednesday to change that conclusion and restore the record of the Senate to what it has been over the last 40 years.

This chart shows the different laws that have been passed in Congress to establish equal pay for equal work. The Equal Pay Act under President Kennedy was done by a voice vote. It was pointed out at that time that women were getting 60 cents on the dollar. That was wrong. We ought to strive for equal pay for equal work. That legislation was passed at that time.

We thought we had made progress on that legislative effort, but we had not made as much progress as we thought.

So in 1964, the great Civil Rights Act, known because of the public accommodations provisions, included in title VII a provision that provided equal pay, nondiscrimination on the basis of race, religion, and national origin, signed by President Johnson. It passed 73 to 27.

Then we had the Age Discrimination in Employment Act because there were many forms of discrimination in our country on the basis of people's age. We wanted to free ourselves of discriminating against the elderly in our country, those who contributed so much to our Nation, so we passed the Age Discrimination Act. There was much support for that effort. It was passed under the Johnson administration by voice vote.

We had the Rehabilitation Act that dealt with the disabled. Make no mistake about it, under the current Supreme Court holding, if you have a disabled person who is able to perform a job as well as somebody who does not have that disability, if the employer discriminates against that individual, that individual will be covered by the existing Supreme Court decision, and we may very well see those individuals discriminated against because they are disabled, even though they are able to perform the work, and they are being denied a remedy.

We debated those issues back with the Rehabilitation Act of 1973 and said we were not going to permit that.

Then the Civil Rights Restoration Act of 1988 under President Reagan and the Americans with Disabilities Act restated those goals. Look at the votes: 92 to 6 and 93 to 5.

All of this legislation, from early 1963 all the way to 1991, provided the kinds of protections that we are including in this legislation that will be before the Senate on Wednesday, called the Ledbetter legislation, named after Lilly Ledbetter who was discriminated against.

Mr. President, I mentioned those pieces of legislation. Look at this chart. Pay discrimination hurts all kinds of American workers. In 2007, EEOC received more than 7,000 pay discrimination charges: on the basis of disability, 480 cases; on the basis of national origin, 760; on the basis of age discrimination, 978; on the basis of race, 2,352; and on the basis of gender, some 2,470.

These were individuals who were working hard but finally found out they were being discriminated against—7,000 cases. So we can ask: What had been the law previously when we had those kinds of situations? This chart reflects what the law was. The paycheck accrual rule was the law of the land. That meant if people discriminated against those individuals and the individuals found out about it and brought a case, they were able to gain damages or they were able to get remedies by the EEOC. This was under Republican and Democratic administrations alike. That has been the law of the land, with the exception of three States. That was the law of the land. That is what we want to return to, and we will have the opportunity to return to it.

Some will say if we return to it, it will mean a lot of burdensome bureaucracy and expenditures on the employers. Look what CBO says. CBO agrees that ''the Fair Pay Restoration Act would not establish a new cause of action for claims of pay discrimination. . . . CBO expects that the bill would not significantly affect the number of filings with the Equal Employment Opportunity Commission.''

So this argument that it is going to make it much more cumbersome and much more troublesome and much more expensive is not true. What it will do is provide protections.

What are we basically talking about with Lilly Ledbetter? She was a hardworking woman. Here is what Lilly Ledbetter received: $5,000 less than the lowest paid male coworker during her last year at Goodyear. That was $44,000. The lowest paid male was $51,000, and the highest paid male, who did virtually the same job, was paid $62,000. This is a year. She was doing exactly the same as this paid worker; the only difference was she was a woman.

What did the courts say, even though she was awarded the damages? You didn't bring the case in the first 180 days. You didn't bring the case and, therefore, you don't have the case at all.

How was Lilly Ledbetter supposed to know she had a case? The payroll was kept secret from all the workers. How was she supposed to know? How in the world was she supposed to know? She couldn't know; she didn't know. It took her years to find out that she was the subject of this kind of discrimination, and the Supreme Court says: We don't care; we don't mind if the employers are going to keep that payroll all locked up and keep it secret. Lilly Ledbetter should have known what was in that secret safe of that employer.

Come on. Come on. That is a system of justice in the United States of America? They were able to get five votes for that theory over in the Supreme Court of the United States? It defies common sense, of reasonableness and equity for people in this country, and that is what we are striving for.

This is all against an extraordinary background of what is happening to working women at the present time. Look at what is happening to working women now. For women who are employed now, their earnings are falling faster. Women who are working now are experiencing unemployment two or three times faster than men in our economy. Their earnings are going down faster than men in our economy. Incidents of foreclosure for women are a good deal higher than men in our economy, and they are, at the present time, still only earning, for the same job, 77 cents out of every dollar. So they are already facing an uphill battle in our economy, the difficult economy we are facing at the present time, and this Supreme Court decision is just going to make it all that more complicated and more difficult.

This issue, as I said, is one of fundamental fairness.

We have an extraordinary group supporting us in terms of the disability groups—the American Association of People with Disabilities; the elderly groups—the AARP, they know they can experience the same kinds of discrimination; Business and Professional Women; the NAACP—because of what this can mean in discriminating against minorities, Blacks; the auto workers, because we can see the discrimination that could be against other workers; the National Congress of Black Women; the Religious Action Center—there was an excellent letter they sent pointing out the moral issues raised about this; and then the U.S. Women's Chamber of Commerce—understanding this is plainly simply wrong. It is wrong in our society. It was wrong at any other time.

This is an issue that cries out for a remedy. It should not take the Ledbetter legislation—which passed overwhelmingly. It passed with Republican support in the House of Representatives and strong Democratic support. We have a number of our Republican friends and colleagues who are a part of this effort. This is a very simple and fundamental issue: Are we going to permit discrimination against women in the workplace to continue? That is what it is.

We have to understand, as a practical matter, employers are going to keep the payroll confidential and secret. They do that. They have done it and will do it in the future. What the Supreme Court says is that is too bad, too bad you don't know, but if you do not do it within 180 days you will lose your rights. They can effectively discriminate against you for the rest of your life if you are working in that company. They can go ahead, completely freely, without any threat of any kind of lawsuit, go ahead and discriminate for the rest of your life, if you are working there. Tell me what the common sense of that proposal is. Where is the justice on that issue? Where is it?

We have addressed that issue and similar issues over a long period of time under a variety of Presidents, under Democratic Presidents and Republican Presidents—President Nixon, President Reagan, the two Presidents Bush. Look at the vote on these, 91 to 6, and 93 to 5, with virtually similar issues that are presented here.

We should not have to spend the time other than having a rollcall on this issue, it is so compelling. We await eagerly those who support the current Supreme Court decision. We await them out here on the floor of the Senate. We awaited them last week to come out and tell us what their rationale is, what their excuse is, what their reasons are for denying fairness and equity in the workplace to millions of

our fellow citizens who happen to be women. What is their right? What is their purpose? What is their justification—whether those individuals are disabled, whether they are elderly, whether they are being discriminated against on the basis of religion—we are going to continue to permit that here in the United States when we have the opportunity to overturn it? That is what is going to be before the Senate on Wednesday.

It is simple; it is fundamental; it is basic. It is a defining issue of fairness in this country and we will have more to say about this tomorrow and on Wednesday as well.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. STABENOW). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

LEDBETTER FAIR PAY ACT OF 2007—MOTION TO PROCEED

CLOTURE MOTION

Mr. REID. Madam President, I would move to Calendar No. 325, H.R. 2831. I indicated to the minority that I would do that now. As a result of their indicating they would not be in agreement to do that, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 325, H.R. 2831, the Fair Pay Act.

Harry Reid, Daniel K. Inouye, Barbara Boxer, Patty Murray, Byron L. Dorgan, Edward M. Kennedy, Christopher J. Dodd, Daniel K. Akaka, Benjamin L. Cardin, Patrick J. Leahy, Bernard Sanders, Sherrod Brown, Amy Klobuchar, Richard Durbin, Ken Salazar, Sheldon Whitehouse, Max Baucus.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum be waived.

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

Mr. REID. This is an important piece of legislation that we talked about moving to. It deals with fair pay. In the morning we are going to have the morning hour. We are going to have a number of Senators, and a lot of female Senators, come and speak on this issue because this is certainly an issue that is important to women all over America today. We are anxious to get to this. We hope the Republicans will let us proceed to it.

MORNING BUSINESS

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

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

NOTICE OF PROPOSED RULEMAKING

Mr. BYRD. Madam President, I ask unanimous consent that the attached from the Office of Compliance be printed in the RECORD today, pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

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

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

NOTICE OF PROPOSED RULEMAKING, AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

New proposed regulations implementing certain substantive employment rights and protections for veterans, as required by 2 U.S.C. 1316, The Congressional Accountability Act of 1995, as amended (''CAA'').

BACKGROUND

The purpose of this Notice is to issue proposed substantive regulations which will implement Section 206 of the CAA which applies certain veterans' employment and reemployment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations?

The authority under the CAA for these proposed substantive regulations is found in two sections of the CAA. Section 206 of the CAA, 2 U.S.C. §1316, applies certain provisions of the Uniformed Services Employment and Reemployment Rights Act (''USERRA''), Title 38, Chapter 43 of the United States Code. Section 1316 of the CAA provides protections to eligible employees in the uniformed services from discrimination, denial of reemployment rights, and denial of employee benefits. Subsection 1316(c) requires the Board not only to issue regulations to implement these protections, but to issue regulations which are ''the same as the most relevant substantive regulations promulgated by the Secretary of Labor . . .'' This section provides that the Board may only modify the Department of Labor regulations if it can establish good cause as to why a modification would be more effective for application of the protections to the legislative branch.

The second section that provides authority to the Board to propose these regulations is found in section 1384. Section 1384 provides procedures for the rulemaking process in general.

Will these regulations, if approved, apply to all employees otherwise covered by the CAA?

Yes. USERRA's provisions, as applied by Section 206 of the CAA, prohibit discrimination and retaliation against eligible employees, who are defined by the CAA as covered employees performing service in the uniformed services. Section 207(a) of the CAA prohibits retaliation against covered employees under the CAA, regardless of whether they have performed service in the uniformed services. The distinction between eligible employees and covered employees is the performance of service in the uniformed services: eligible employees have performed service in the uniformed services; covered employees have not.

Do other veterans' employment rights apply via the CAA to the legislative branch employing offices and covered employees?

No. However, another statutory scheme regarding uniformed service members' employment rights is incorporated, in part, through section 1316a of the CAA. Section 1316a applies sections 2108, 3309 through 3312 of the Veterans Employment Opportunities Act (''VEOA''), and subchapter I of chapter 35 of Title 5. These provisions accord certain hiring and retention rights to veterans of the uniformed services. The VEOA language of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the most relevant substantive regulations (applicable with respect to the executive branch) which are promulgated to implement the provisions of VEOA. After engaging in extensive discussions with various stakeholders across Congress and the legislative branch to determine how best to address certain provisions within the regulations, the Board adopted the VEOA regulations and submitted them to Congress on March 21, 2008. Section 1316a of the CAA becomes effective once the regulations for this section are passed by Congress.

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

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

The selected statutory provisions which Congress incorporated into the CAA and determined ''shall apply'' to eligible employees in the legislative branch include nine sections: sections 4303(13), 4304, 4311(a)(b), 4312, 4313, 4316, 4317, 4318, and paragraphs (1), (2)(A), and (3) of 4323(c) of title 38.

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

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

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

Sections 4316, 4317, and 4318 provide language on the benefits given to eligible employees. The language in these sections is largely statutory and has been altered very little by the Board.

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

No. The Board has issued to the Speaker of the House and the President Pro Tempore of

the Senate its Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval for VEOA. The Board awaits Congressional approval of those regulations.

PROCEDURAL SUMMARY

How are substantive regulations proposed and approved under the CAA?

Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for proposing and approving such substantive regulations provides that:

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

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

(3) after consideration of comments by the Board of Directors, the Board adopt regulations and transmit notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President [P]ro [T]empore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the Senate and the Deputy Executive Director for the House of Representatives.

Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316?

No.

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedure as enumerated above and as required by statute. Once these regulations are proposed, the Board anticipates engaging in extensive discussion with stakeholders to ensure that the regulations contemplate and reflect the practices and policies particular to the legislative branch.

What responsibilities would employing offices have in effectively implementing these regulations?

The Board charges the employing offices with the responsibility to implement the applicable USERRA provisions, including the prohibitions on discrimination and retaliation, the obligation to reemploy service members who timely apply for reemployment, and to provide the eligible, covered employee with the employment benefits to which he or she is entitled under USERRA, as applied by the CAA.

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

No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed substantive regulations available to persons with disabilities in an alternate format?

This Notice of Proposed Regulations is available on the Office of Compliance web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Annie Leftwood, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9250; TDD: 202–426–1912; FAX: 202–426–1913.

30-DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the proposed regulations of the Office of Compliance set forth in this Notice are invited for a period of thirty (30) days following the date of the appearance of this Notice in the Congressional Record.

How do I submit comments?

Comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided either on an accompanying computer disk or e-mailed to the Office of Compliance via its web site. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission.

Am I allowed to view copies of submitted comments by others?

Yes. Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information:

The Congressional Accountability Act of 1995, PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of 12 federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Included among those rights are the protections provided, in Section 206 of the CAA, to employees performing service in the uniformed services. These protections are the subject of these regulations.

Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the legislative branch.

MORE DETAILED DISCUSSION OF THE TEXT OF THE PROPOSED REGULATIONS

Please note in the accompanying regulations that USERRA is applied by the CAA almost in its entirety. The subparts on eligibility and reemployment rights (subparts C, D, and E) were applied with minimal, if any, changes by the Board. The Board relied heavily on Section 1316(c) of the CAA which requires that these regulations be the same as those promulgated by the Secretary of Labor unless the Board finds and demonstrates good cause as to why a modification is needed to be more effective for implementation in the legislative branch. Where the Board determined that good cause existed to require a modification, the Board so modified. Otherwise, pursuant to Section 1316(c) of the CAA, the Board made no changes to the Department of Labor regulations.

SUBPART A—INTRODUCTION TO THE REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 GENERAL PROVISIONS

The purpose of subpart A

This subpart gives an introduction to USERRA as applied by the CAA and clarifies the rights and benefits USERRA establishes for employees, and the duties it places on employing offices. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services.

It is noted that nothing in these regulations shall be construed to require an employing office to reduce any returning service members' employment and reemployment rights and protections that the office may currently afford to eligible employees. Nor does USERRA serve to place an eligible employee in a better position than he or she would have been in had he or she not performed service in the uniformed services.

It is also important to note that Section 1316(d)(2) of the CAA applies these protections to the Government Accountability Office and the Library of Congress. Should Congress extend Board jurisdiction over the Government Printing Office (''GPO'') in the future, Congress should take GPO's existing veterans' preference policies into account, which may be based on independent statutory mandates.

USERRA is not new law

USERRA, as applied by the CAA, became effective as of January 23, 1996. Its purpose was to strengthen previous veterans' rights laws, such as the Veterans' Reemployment Rights Act (''VRRA''), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. The Department of Labor issued its USERRA regulations, effective January 18, 2006.

Role of the Executive Director of the Office of Compliance

The role of the Executive Director of the Office of Compliance, under USERRA as applied by the CAA, differs from the role of the Secretary of Labor under the DOL regulations. The Executive Director provides a program of education and information to employees and employing offices regarding the application of the USERRA provisions and the Office of Compliance, and the Executive Director provides administrative procedures for the consideration of alleged violations. Because the Office of Compliance is an entity of the legislative branch, the Executive Director is not guided by Secretary's order 1–83, which allows the Secretary of Labor to delegate authority for the administration of the veterans reemployment rights program. (Memorandum of April 22, 2002 (67 FR 31827) Nor is the Executive Director responsible for carrying out the same functional authority vested in the Secretary of Labor, pursuant to USERRA. Similarly, unlike the Secretary of Labor, the Board of Directors of the Office of Compliance has rulemaking authority, not the Executive Director.

Applicable definitions

Section 206 of the CAA specifically makes applicable only one definition from USERRA to the CAA: service in the uniformed services. Rules of construction found in Section 225 (f)(1) of the CAA allow that except where inconsistent with definitions and exemptions provided elsewhere in the CAA, the definitions and exemptions found in USERRA will

apply. Therefore, the definitions that are provided in these regulations are derived either from USERRA or from similar definitions under the CAA.

Types of service in the uniformed services that are covered by USERRA

Because the definition of ''service in the uniformed services'' was applied directly to the legislative branch as it was written in USERRA, the types of service which receive protection under the CAA are the same types of service which receive protection under DOL regulations: all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war; persons serving in the active components of the Armed Forces; and certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System. However, the CAA limits protections to covered employees who are deemed eligible under Section 206(a).

USERRA vis-a-vis other laws, public contracts, and employing office practices

This subpart underscores the fact that USERRA allows an employing office to provide rights and benefits that are greater than those required by USERRA, but not lesser. It clarifies that an employing office is not required to place an eligible employee in a better place than he/she would have been had he/she not served in the uniformed services. It clarifies that USERRA supersedes any State law, contract, agreement, policy, plan, practice, or other matter that reduces any right or benefit provided by USERRA. It does not, however, supersede, nullify, or diminish any Federal or State law, contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than that provided under USERRA.

SUBPART B—ANTI-DISCRIMINATION AND ANTI-RETALIATION; PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

This subpart provides protections for eligible employees against discrimination, as well as protections for both eligible and covered employees against retaliation. The Board has maintained the general application of this subpart and has determined that the prohibitions against discrimination and retaliation apply to all positions. Also consistent with DOL regulations, the Board maintains that reemployment rights and benefits do not apply to brief, nonrecurrent positions. The Board found good cause, however, to differentiate from the DOL regulations in certain sections of this subpart. Consequently, the Board has modified this subpart to be more effective for implementation in the legislative branch.

Unlike DOL, the Board makes a distinction between discrimination and retaliation. By not including in the CAA the USERRA standard to establish a violation of this subpart, Congress specifically excluded the ''but for'' standard which is applied in DOL's USERRA regulations. Notably, the Board chose a different standard for 207(a) retaliation in its decision in Britton v. Office of the Architect of the Capitol, 02–AC–20 (CV, RP). In Britton, the Board considered Congress' intentional exclusion of the ''but for'' standard in USERRA. As a result, the Board applied the McDonnell Douglas three-part standard, which it applies to 207 claims of retaliation.

Because Congress adopted a uniform remedy for most retaliation claims under the CAA, the Board has rejected an ad hoc approach and has chosen to apply this Britton standard to all claims of retaliation brought under Section 207(a) of the CAA. The Board also has chosen to apply the Britton standard for cases of retaliation brought under section 206. The Board does not propose a particular standard for claims of discrimination or retaliation brought by eligible employees under section 206.

As the Board has found good cause to make significant changes to this subpart, the numbering of the particular sections contained therein differs from those found in DOL's regulations. To aid in a comparative review of the two sets of regulations, the Board has included an index, comparing DOL's numbering and the Board's numbering within each subpart.

USERRA's discrimination protections

This subpart sets out that basic non-discrimination and non-retaliation protections of USERRA are applied to the legislative branch through these regulations. An employing office may not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

USERRA's retaliation protections

An employing office may not take any adverse employment action that is reasonably likely to deter future protected activity because of an eligible employee's service in the uniformed services or an eligible or covered employee's exercise of their rights under the statute. These protections are similar to those found in DOL's regulations, except that they are broadened to include retaliation protections as found in section 207(a) of the CAA.

USERRA's application to covered employees who do not actually perform service in the uniformed services

The CAA makes the protections under Section 206 of the CAA strictly applicable to ''eligible employees.'' Such ''eligible employees'' are defined as those performing service in the uniformed services as defined by USERRA. Section 207 of the CAA provides protections against retaliation to those employees who are not eligible but who are otherwise covered by the CAA. So, there are three types of protection an ''eligible employee'' may receive under the CAA: Discrimination protection as provided by Section 206 of the CAA, retaliation protection as provided by Section 206 of the CAA, and retaliation protection as provided by Section 207 of the CAA. Those employees who are not eligible for protection under Section 206 because they have not performed service in the uniformed services, but who otherwise are covered by the CAA, receive retaliation protections as provided by Section 207 of the CAA.

SUBPART C—ELIGIBILITY FOR REEMPLOYMENT

This subpart closely follows the Department of Labor regulations, as well as Section 4316 of USERRA. The Board saw no good cause to modify the regulations from those promulgated by the Secretary of Labor.

One item to note, however, is the multi-employer language, The Board recognizes that it is possible for an employee to work for two employing offices of the legislative branch, although it is not permitted for an employee to work for a Member office and a Committee at the same time. However, Section 1002.101 was included to discuss the five-year service limit requirement.

SUBPART D—RIGHTS, BENEFITS, AND OBLIGATIONS OF PERSONS ABSENT FROM EMPLOYMENT DUE TO SERVICE IN THE UNIFORMED SERVICES

This subpart closely follows the Department of Labor regulations, as well as Section 4316 of USERRA. The Board saw no good cause to modify the regulations from those promulgated by the Secretary of Labor.

SUBPART E—REEMPLOYMENT RIGHTS AND BENEFITS

This subpart closely follows the Department of Labor regulations, as well as Section 4316 of USERRA. The Board saw no good cause to modify the regulations from those promulgated by the Secretary of Labor, with the exception of deleting language regarding assistance to employees from the Office of Personnel Management.

The DOL regulations explain that the Office of Personnel Management would assist an agency in obtaining suitable employment for a returning employee who was unable to qualify for the pre-service position or any other position. The corresponding statutory section is not one of the sections Congress applied to the legislative branch through Section 1316 of the CAA. Therefore, this language was removed from the text of the proposed regulations.

SUBPART F—COMPLIANCE ASSISTANCE, ENFORCEMENT AND REMEDIES

Compliance assistance

This section discusses the role of the Office of Compliance in providing assistance to the covered community regarding the rights and benefits under USERRA, as applied by the CAA. The Board found ''good cause'' to modify the regulations in this subpart. The DOL regulations delineate the responsibilities of the Veterans' Employment and Training Service (''VETS'') in providing assistance to persons and entities regarding their rights and benefits under USERRA. The Board realizes that this service is available to all service members by virtue of their service in the uniformed services and section 225(d)(2) of the CAA specifies that eligible employees may utilize any provisions of chapter 43 of title 38, USERRA, that are applicable.

The CAA, however, limits the application of USERRA to certain provisions, and provides a unique enforcement mechanism for eligible covered employees to remedy violations of USERRA, as applied by the CAA. Section 301(h) of the CAA charges the Office with providing a program of education and information for covered employees and employing offices. This subpart clarifies that covered employees and employing offices may seek education and information on USERRA, as applied by the CAA, from the Office of Compliance pursuant to section 301(h) of the CAA.

Initiating a claim

The Board, in this subpart, sets out the procedures available for consideration of an allegation of a violation of USERRA brought under the CAA. The procedures are substantially the same as those followed by an employee who initiates a claim of discrimination under the CAA.

Enforcement of rights and benefits against an employing office

The Board makes clear that eligible covered employees must utilize the procedures outlined in the CAA to bring a USERRA claim against a covered employing office. The Board modified these regulations where the CAA gives standing to bring an action under section 206 only to ''eligible employees.'' The Board makes clear that covered employees who are not also eligible, as defined in Subpart A, are protected from retaliation under section 207 of the CAA.

With respect to a necessary party in an action under CAA's USERRA provisions, the Board found that only a covered employing office may be a necessary party respondent and that the confidentiality requirements of the CAA provide good cause to modify the regulation to disallow interested parties to

intervene in an action at the hearing stage. However, the hearing officer has authority to require the filing of briefs, memoranda of law and the presentation of oral argument, as well as order the production of evidence and the appearance of witnesses.

The Board found that DOL regulations permitting an award of fees and court costs for an individual who has obtained counsel and prevailed in their claim against their employer is consistent with Section 225(a) of the CAA that permits a prevailing covered employee to be awarded reasonable fees and costs. However, to be more fully consistent with the CAA, the Board modified the language removing the requirement that the individual retain private counsel as a condition of such an award. The Board saw no cause to modify the USERRA regulation that does not permit costs to be assessed against an individual who has made a claim under USERRA, regardless of whether or not they prevailed in their claim.

The Board clarifies that while USERRA does not have a statute of limitations, the procedures for bringing a claim under part A of subchapter II which incorporates USERRA, requires that an action be commenced by requesting counseling by the Office of Compliance not later than 180 days after the date of the alleged violation.

The Board found that the remedies available under USERRA, as applied by the CAA, are the same as those available to other claimants under USERRA because the CAA adopts USERRA's equitable and legal remedies and directs the hearing officer to award such remedies as are provided in the statute. In order to vest this authority in the hearing officer, the Board found that the authority of the hearing officer under the CAA is the same as the authority of the court under the DOL regulations in that the hearing officer, and not the Board, has the responsibility and authority to develop the record of proceedings and issue a decision that is the final agency decision, unless it is appealed to the Board. The Board's authority to review a hearing officer's decision is limited to a review of the record.

The Board deleted from its regulations the section on initiating actions in the name of the United States because such actions are not permissible under the CAA. And, in the final section of this subpart, the Board found no cause to modify the equity powers permitted under USERRA, as they are consistent with the authority permitted under the CAA, as stated above.

DOL'S SECTIONS

SUBPART A

Sec. 1002.1 What is the purpose of this subpart?

Sec. 1002.2 Is USERRA new law?

Sec. 1002.3 When did USERRA become effective?

Sec. 1002.4 What is the role of the Secretary of Labor under USERRA?

Sec. 1002.5 What definitions apply to USERRA?

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

Sec. 1002.7 How does USERRA relate to other laws, public and private contracts, and employer practices?

SUBPART B

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

Sec. 1002.19 What activity is protected from employer retaliation by USERRA?

Sec. 1002.20 Does USERRA protect an individual who does not actually perform service in the uniformed services?

Sec. 1002.21 Do the Act's prohibitions against discrimination and retaliation apply to all employment positions?

Sec. 1002.22 Who has the burden of proving discrimination or retaliation in violation of USERRA?

Sec. 1002.23 What must the individual show to carry the burden of proving that the employer discriminated or retaliated against him or her?

SUBPART C

Sections 1002.34–1002.139 are the same in both sets of regulations.

SUBPART D

Sections 1002.149–171 are the same in both sets of regulations.

SUBPART E

Sections 1002.180–267 are the same in both sets of regulations.

SUBPART F

Section 1002.277 What assistance does the Department of Labor provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

Section 1002.288 How does an individual file a USERRA complaint?

Section 1002.289 How will VETS investigate a USERRA complaint?

Section 1002.290 Does VETS have the authority to order compliance with USERRA?

Section 1002.291 What actions may an individual take if the complaint is not resolved by VETS?

Section 1002.292 What can the Attorney General do about the complaint?

Section 1002.303 Is an individual required to file his or her complaint with VETS?

Section 1002.304 If an individual files a complaint with VETS and VETS' efforts do not resolve the complaint, can the individual pursue the claim on his or her own?

Section 1002.305 What court has jurisdiction in an action against a State or private employer?

Section 1002.306 Is a National Guard civilian technician considered a State or Federal employee for purposes of USERRA?

Section 1002.307 What is the proper venue in an action against a State or private employer?

Section 1002.308 Who has legal standing to bring an action under USERRA?

Section 1002.309 Who is a necessary party in an action under USERRA?

Section 1002.310 How are fees and court costs charged or taxed in an action under USERRA?

Section 1002.311 Is there a statute of limitations in an action under USERRA?

Section 1002.312 What remedies may be awarded for a violation of USERRA?

Section 1002.313 Deleted by Board

Section 1002.314 May a court use its equity powers in an action or proceeding under the Act?

OOC'S SECTIONS

SUBPART A

Sec. 1002.1 What is the purpose of this subpart?

Sec. 1002.2 Is USERRA new law?

Sec. 1002.3 When did USERRA become effective?

Sec. 1002.4 What is the role of the Executive Director of the Office of Compliance under the USERRA provisions of the CAA?

Sec. 1002.5 What definitions apply to USERRA?

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

Sec. 1002.7 How does USERRA relate to other laws, public and private contracts, and employer practices?

SUBPART B

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

Sec. 1002.19 What activity is protected from employer retaliation by USERRA?

Sec. 1002.20 Do the Act's prohibitions against discrimination and retaliation apply to all employment positions?

Sec. 1002.21 Does USERRA protect an individual who does not actually perform service in the uniformed services?

Sections 1002.22–23 deleted by Board.

SUBPART C

Sections 1002.34–1002.139 are the same in both sets of regulations.

SUBPART D

Sections 1002.149–171 are the same in both sets of regulations.

SUBPART E

Sections 1002.180–267 are the same in both sets of regulations.

SUBPART F

Section 1002.277 What assistance does the Office of Compliance provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

Section 1002.288 How does a covered employee initiate a claim alleging a violation of USERRA under the CAA?

Sections 1002.289–292 deleted by Board.

Section 1002.303 Is a covered employee required to bring his or her claim to the Office of Compliance?

Sections 1002.24-.307 deleted by Board.

Section 1002.308 Who has legal standing to bring an action under USERRA?

Section 1002.309 Who is a necessary party in an action under USERRA?

Section 1002.310 How are fees and court costs charged or taxed in an action under USERRA?

Section 1002.311 Is there a statute of limitations in an action under USERRA?

Section 1002.312 What remedies may be awarded for a violation of USERRA?

Section 1002.313 Deleted by Board.

Section 1002.314 May a court use its equity powers in an action or proceeding under the Act?

TEXT OF PROPOSED UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT REGULATIONS

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994 General Provisions

§ 1002.1 What is the purpose of this part?

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

§ 1002.2 Is USERRA a new law?

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

§ 1002.3 When did USERRA become effective?

USERRA, as applied by the CAA, became effective for employing offices of the legislative branch on January 23, 1996. These regulations will become effective upon approval by Congress.

§ 1002.4 What is the role of the Executive Director of the Office of Compliance under the USERRA provisions of the CAA?

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

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

§ 1002.5 What definitions apply to these USERRA regulations?

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

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

(c) Board means Board of Directors of the Office of Compliance.

(d) CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C.§§ 301–1438).

(e) Covered employee means any employee, including an applicant for employment, of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board or the Capitol Guide Service; (4) the Capitol Police Board or the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Government Accountability Office; (9) the Library of Congress; and (10) the Office of Compliance.

(f) Eligible employee means a covered employee performing service in the uniformed services, as defined in 1002.5 (u) of this subpart, whose service has not been terminated upon occurrence of any of the events enumerated in section 1002.135 of these regulations.

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

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

(i) Employee of the House of Representatives includes an individual occupying a position for which the pay is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (2) through (10) of paragraph (e) above.

(j) Employee of the Senate includes an individual occupying a position for which the pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (1) and (3) through (10) of paragraph (e) above.

(k) Employing office means (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives; (4) any other office headed by a person with the final authority to appoint, or be directed by a Member of Congress to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; (5) the Capitol Guide Board; (6) the Capitol Police Board; (7) the Congressional Budget Office; (8) the Office of the Architect of the Capitol; (9) the Office of the Attending Physician; (10) the Government Accountability Office; (11) the Library of Congress; (12) or the Office of Compliance.

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

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

(n) Office means the Office of Compliance.

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

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

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

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

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

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

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

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

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

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

The definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain

types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

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

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

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

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

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

Subpart B—Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

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

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

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

An employing office must not retaliate against an individual by taking any adverse employment action against him or her because the individual has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation; exercised a right provided for by USERRA; or is performing service in the uniformed services within the meaning of 1002.5 of Subpart A of these regulations.

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

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

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

USERRA's provisions, as applied by Section 206 of the CAA, prohibit discrimination and retaliation against eligible employees. Section 207(a) of the CAA prohibits retaliation against those non-eligible, covered employees under the CAA who have not performed service in the uniformed services.

Subpart C—Eligibility For Reemployment

GENERAL ELIGIBILITY REQUIREMENTS FOR REEMPLOYMENT

§ 1002.32 What criteria must the employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if the employee has been absent from a position of civilian employment by reason of service in the uniformed services, he or she will be eligible for reemployment under USERRA by meeting the following criteria:

(1) The employer had advance notice of the employee's service;

(2) The employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employer;

(3) The employee timely returns to work or applies for reemployment; and,

(4) The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in §§ 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for reemployment unless the employer establishes one of the defenses described in § 1002.139. The employment position to which the employee is entitled is described in §§ 1002.191 through 1002.199.

§ 1002.33 Does the covered employee have to prove that the employing office discriminated against him or her in order to be eligible for reemployment?

No. The covered employee is not required to prove that the employing office discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§ 1002.34 Which employing offices are covered by these regulations?

(a) USERRA applies to all covered employing offices of the legislative branch as defined in Subpart A, section 1002.5, subsection (e) of these regulations.

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The definition of employer in the USERRA provision as applied by the CAA includes an employing office that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employing office need not actually employ an individual to be his or her ''employer'' under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employing office would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the employing office denying employment is an employer for purposes of USERRA. Similarly, if an employing office withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the employing office withdrawing the employment offer is an employer for purposes of USERRA.

§ 1002.41 Does an employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employing office is not required to reemploy an employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employing office bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an employee have under USERRA if he or she is on layoff or on a leave of absence?

(a) If an employee is laid off with recall rights, or on a leave of absence, he or she is an employee for purposes of USERRA. If the employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employing office would have recalled the employee to employment during the period of service. Similar principles apply if the employee is on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service, even if he or she did not respond to the recall notice.

(c) If the employee is laid off before or during service in the uniformed services, and the employing office would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is a covered employee. Reemployment rights under USERRA cannot put the employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all covered employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

(a) No. USERRA, as applied by the CAA, does not provide protections for an independent contractor.

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

§ 1002.54 Are all military fitness examinations considered ''service in the uniformed services?''

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered ''service in the uniformed services?''

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered ''service in the uniformed services?''

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

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

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

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

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

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

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

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

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

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

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

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

Yes, under certain conditions:

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

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

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

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

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

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

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

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

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

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

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

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

REQUIREMENT OF NOTICE

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

(a) Yes. The employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employing office that the employee intends to leave the employment position to

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

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

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

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

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

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

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

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

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

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

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

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

PERIOD OF SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and, (ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPLICATION FOR REEMPLOYMENT

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

Yes. Upon completing service in the uniformed services, the employee must notify the pre-service employing office of his or her intent to return to the employment position by either reporting to work or submitting a timely application for reemployment. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The reemployment application is timely;

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

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

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

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

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

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

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

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

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

(4) Certificate of completion from military training school;

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

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

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

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of

these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

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

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

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

REEMPLOYMENT RIGHTS ARE TERMINATED IF THE EMPLOYEE IS:

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

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

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

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

§ 1002.136 Who determines the characterization of service?

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

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

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

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

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

EMPLOYER STATUTORY DEFENSES

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

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

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

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

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

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

FURLOUGH AND LEAVE OF ABSENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HEALTH PLAN COVERAGE

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

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

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by State or local governments or religious organizations for their employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) No notice of service and no election of continuation coverage:

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

(b) Notice of service but no election of continuing coverage:

Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employing office provides employment-based health coverage to an employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

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

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

(c) Election of continuation coverage without timely payment:

Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

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

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

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

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

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

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

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

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

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

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

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

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

Subpart E—Reemployment Rights and Benefits

PROMPT REEMPLOYMENT

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

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

§1002.181 How is ''prompt reemployment'' defined?

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

REEMPLOYMENT POSITION

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

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

§1002.192 How is the specific reemployment position determined?

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

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

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

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

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

Yes. The Act does not prohibit lawful adverse job consequences that result from the employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an employee to be reemployed in a higher or lower position, laid off, or even terminated.

For example, if an employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employing office to assess what would have happened to such factors as the employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§1002.195 What other factors can determine the reemployment position?

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

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

(b) The employee's qualifications; and,

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

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

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

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

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

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

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

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

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

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

qualified to perform the duties of this position. The employing office must make reasonable efforts to help the employee become qualified to perform the duties of this position.

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

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

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

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

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

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

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

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

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

(v) The terms of a collective bargaining agreement;

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

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

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

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

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

SENIORITY RIGHTS AND BENEFITS

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

The employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. The employee is not entitled to any benefits to which he or she would not have been entitled had the employee been continuously employed with the employing office. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employing office and those required by statute.

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

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

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

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

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

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

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

(c) Whether it is the employing office's actual custom or practice to provide or withhold the right or benefit as a reward for length of service.

Provisions of an employment contract or policies in the employee handbook are not controlling if the employing office's actual custom or practice is different from what is written in the contract or handbook.

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

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

DISABLED EMPLOYEES

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

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

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

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status, and pay.

A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

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

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

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

RATE OF PAY

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

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

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

the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employing office may examine the returning employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position.

For example, if the employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the employee missed during service is based on a skills test or examination, then the employing office should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an employee to adjust to reemployment before scheduling a makeup test or examination, an employing office may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the employee's employment not been interrupted by uniformed service.

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

PROTECTION AGAINST DISCHARGE

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

It depends. If the employee's most recent period of service in the uniformed services was more than 30 days, a discharge without cause may create a rebuttable presumption that there has been a violation of USERRA—

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

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

§ 1002.248 What constitutes cause for discharge under USERRA?

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

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

(b) If, based on the application of other legitimate nondiscriminatory reasons, the employee's job position is eliminated, or the employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employing office bears the burden of proving that the employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

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

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

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

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

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. Any such plan maintained by the employing office is covered under USERRA. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by a State, government entity, or church for its employees.

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

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

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

§ 1002.262 When is the employing office required to make the plan contribution that is attributable to the employee's period of uniformed service?

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

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

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

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

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

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

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

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

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

Yes, provided the plan is a defined benefit plan. If the employee received a distribution

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

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

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

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

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

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

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

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

(a) The last employer that employed the employee before the period of service is responsible for making the employer contribution to the multi-employer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the employee.

(b) An employer that contributes to a multi-employer plan and that reemploys the employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30–day period within which the reemploying employer must provide written notice to the multi-employer plan pursuant to this subsection does not begin until the employer has knowledge that the employee was re-employed pursuant to USERRA.

(c) The employee is entitled to the same employer contribution whether he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b)(1) Where the rate of pay the employee would have received is not reasonably certain, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F—Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Office of Compliance provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Office of Compliance provides assistance to any person or entity who is covered by the CAA with respect to employment and reemployment rights and benefits under USERRA as applied by the CAA. This assistance includes responding to inquiries, and providing a program of education and information on matters relating to USERRA.

INVESTIGATION AND REFERRAL

§ 1002.288 How does a covered employee initiate a claim alleging a violation of USERRA under the CAA?

(a) If an individual is claiming entitlement to employment rights or benefits or reemployment rights or benefits and alleges that an employing office has failed or refused, or is about to fail or refuse, to comply with the Act, the individual may file a complaint with the Office of Compliance, after a required period of counseling and mediation.

(b) To commence a proceeding, a covered employee alleging a violation of the rights and protections of USERRA must request counseling by the Office of Compliance no later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the claim may be time barred under the CAA.

(c) The following procedures are available under subchapter IV of the CAA for covered employees who believe their rights under USERRA as made applicable by the CAA have been violated:

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint filed with the Office of Compliance (which must meet the requirements as set forth in the Office of Compliance Procedural Rules, Section 5.01(c)), and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(d) Regulations of the Office of Compliance describing and governing these procedures can be found at 141 Cong. Rec. H15645–H15655 (December 22, 1995) and 141 Cong. Rec. 19239, 143 Cong. Rec. H8316–H8317 (as amended, applying USERRA to the Government Accountability Office and the Library of Congress).

ENFORCEMENT OF RIGHTS AND BENEFITS AGAINST AN EMPLOYING OFFICE

§ 1002.303 Is a covered employee required to bring his or her claim to the Office of Compliance?

Yes. All covered employees who file claims under Part A of subchapter II of the CAA, which includes USERRA, are required to go through counseling and mediation before electing to file a civil action or a complaint with the Office of Compliance.

§ 1002.308 Who has legal standing to bring a USERRA claim under the CAA?

An action under Section 206 of the CAA may be brought by an eligible employee, as defined by Section 1002.5 (f) of Subpart A of these regulations. An action under 207(a) of the CAA may be brought by a covered employee, as defined by section 1002.5 (e) of Subpart A of these regulations. An employing office, prospective employing office or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA, only the covered employing office or a potential covered employing office, as the case may be, is a necessary party respondent. Under the Office of Compliance Procedural Rules, a hearing officer has authority to require the filing of briefs, memoranda of law, and the presentation of oral argument. A hearing officer also may order the production of evidence and the appearance of witnesses.

§ 1002.310 How are fees and court costs charged or taxed in an action under USERRA?

No fees or court costs may be charged or taxed against an individual if he or she is claiming rights under the Act. If a covered employee is a prevailing party with respect to any claim under USERRA, the hearing officer, Board, or court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations. However, Section 402 of the CAA requires an individual to bring a request for counseling alleging a violation of the CAA no later than 180 days after the date of the alleged violation. A claim alleging a USERRA violation as applied by the CAA would follow this requirement.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the following relief may be awarded:

(a) The court and/or hearing officer may require the employing office to comply with the provisions of the Act;

(b) The court and/or hearing officer may require the employing office to compensate the individual for any loss of wages or benefits suffered by reason of the employing office's failure to comply with the Act;

(c) The court and/or hearing officer may require the employing office to pay the individual an amount equal to the amount of lost wages and benefits as liquidated damages, if the court and/or hearing officer determines that the employing office's failure

to comply with the Act was willful. A violation shall be considered to be willful if the employing office either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employing office).

§ 1002.314 May a court and/or hearing officer use its equity powers in an action or proceeding under the Act?

Yes. A court and/or hearing officer may use its full equity powers, including the issuance of temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate the rights or benefits guaranteed under the Act.

ADDITIONAL STATEMENTS

COMMEMORATING THE LIFE AND WORK OF ALDO LEOPOLD

• Mr. BINGAMAN. Madam President, today I commemorate the life and work of Aldo Leopold, who is remembered as a pivotal figure in the conservation movement of the early 20th century. Today marks the 60th anniversary of Leopold's death, and it offers us an opportunity to reflect on the lasting contributions that he made to our country.

Born in Burlington, IA, in 1887, Aldo Leopold was raised near the Mississippi River surrounded by a vibrant ecosystem that sustained abundant waterfowl and other wildlife. Early on, Leopold developed a keen interest in the natural world, devoting much of his spare time to cataloguing his observations. Graduating from Yale in 1909 with a master of forestry degree, he soon joined the nascent U.S. Forest Service with his first field assignments in the American Southwest. His career with the Forest Service brought him to my home State of New Mexico, spending time working in the Gila National Forest in the southwest part of the State before subsequently moving north to the Carson National Forest, where he reached the post of forest supervisor on the Carson.

Leopold felt that preservation had been neglected on the national forests. He foresaw the importance of preserving the biological diversity and natural systems giving way to development. He argued against the proposed expansion of a road system into the back country of the Gila National Forest. And in Albuquerque in 1922, he proposed instead that a large area be left roadless and preserved for wilderness recreation. He defined this new concept as ''a continuous stretch of country preserved in its natural state, open to lawful hunting and fishing, big enough to absorb a 2 week's pack trip, and kept devoid of roads, artificial trails, cottages, or other works of man.'' On June 3, 1924, the Forest Service gave its final approval and designated 755,000 acres of national forest land as the Gila Wilderness. This unprecedented act took place 40 years prior to passage of the Wilderness Act and was the first such designation in the world.

Leopold once wrote that ''a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community.'' Today the Gila Wilderness is inhabited by bear, wolf, deer, elk, beaver, bobcat, mountain lion, antelope, and wild turkey. It is a favorite destination for hikers, backpackers, hunters and anglers who enjoy its miles of fishing streams. The Gila Wilderness contains the cliff dwellings of the ancient Mogollon civilization as well as the campsites and battlegrounds of the Apache and the U.S. Cavalry. In fact, John Murray wrote in his book, ''The Gila Wilderness: A Hiking Guide,'' that ''no other wilderness area in the Southwest so much embodies and reflects this national history and natural philosophy as does the Gila.''

Aldo Leopold's concept of wilderness evolved over time and heavily influenced policy makers and the growing conservation community. He wrote, ''Wilderness is the raw material out of which man has hammered the artifact called civilization. . . . To the laborer in the sweat of his labor, the raw stuff on his anvil is an adversary to be conquered. So was wilderness an adversary to the pioneer. But to the laborer in repose, able for the moment to cast a philosophical eye on his world, that same raw stuff is something to be loved and cherished, because it gives definition and meaning to his life.'' One person who shared that definition and meaning with Aldo Leopold was former New Mexico Senator Clinton P. Anderson. In fact, due in large part to the conversations he had with Leopold 40 years earlier, Senator Anderson led the effort in Congress to pass the Wilderness Act of 1964.

On April 21, 1948, at the age of 61, Aldo Leopold died of a heart attack while helping his neighbors fight a brush fire near his farm. Just 1 week earlier, Leopold had received word that his book of essays had finally found a publisher. Published over a year after his death, ''A Sand County Almanac'' remains one of Aldo Leopold's greatest legacies to the conservation movement.

Leopold laments in ''A Sand County Almanac'' that progress in conservation is slow—a fact that hasn't changed much in modern times. ''Despite nearly a century of propaganda,'' he wrote, ''conservation still proceeds at a snail's pace; progress still consists largely of letterhead pieties and convention oratory. On the back forty we still slip two steps backward for each forward stride.'' On this anniversary of Aldo Leopold death, I am pleased that the Senate is once again making progress on protecting wilderness, through bills such as the Wild Sky Wilderness Act that passed last week, and upcoming bills that are making their way through the Committee on Energy and Natural Resources. These bills are effective steps to preserve our heritage for future generations, consistent with the values for which Leopold advocated so eloquently during his life, and I am pleased that so many Senators, on both sides of the aisle, have supported them.•

TRIBUTE TO GLENNA GOODACRE

• Mr. DOMENICI. Madam President, I wish to pay tribute to Glenna Goodacre, who was recently named the Notable New Mexican of 2008 by the Albuquerque Museum Foundation. Glenna is a nationally acclaimed sculptor whose works include designing the Sacagawea dollar coin and sculpting the Vietnam Women's Memorial here in Washington, DC.

A resident of New Mexico since 1983, Glenna was born in Lubbock, TX. She graduated from Colorado College in Colorado Springs, CO. While obtaining her undergraduate degree, Glenna first showed her strong ability to persevere in spite of defeatist-minded individuals. She pursued her dream to become a sculptor despite the discouragement she faced from her professor. At her graduation, she gave a commencement address titled, ''Success Is the Greatest Revenge,'' a speech which reflected back on to the opposition she once faced.

Throughout her career, Glenna has created many awe-inspiring bronze sculptures. Her most ambitious piece, the Irish Memorial installed at Penn's Landing in Philadelphia, contains 35 life-size figures. She is also credited with the creation of two 8-foot standing figures of Ronald Reagan. One stands in the Reagan Library in California and the other at the National Cowboy and Western Heritage Museum in Oklahoma City.

Glenna's countless accomplishments have won her the recognition of the New Mexico Governor's Award for Excellence in the Arts and the Texas Medal of Arts. In addition to these honors, she has also been inducted into the Cowgirl Hall of Fame in Fort Worth. Although a fall in early 2007 threatened to end her dreams, Glenna bounced back to make excellent progress in her rehabilitation and recovery. Her experience even inspired her to dedicate her piece titled ''Crossing the Prairie'' to St. Vincent Regional Medical Center, a facility which was credited with saving her life.

The Notable New Mexican program celebrates the extraordinary accomplishments of people like Glenna. Every year since 2001, the Albuquerque Museum Foundation honors a Notable for his or her high achievements, strong ties to New Mexico, and contributions to the public good. This year, Glenna will join the ranks of former Notables such as artists Wilson Hurley and Georgia O'Keeffe, authors Tony Hillerman and Rudolfo Anaya, and former Governor Bruce King.

It is with great honor that I speak before you today, Mr. President, to

commemorate the countless accomplishments of Glenna Goodacre. Again, I congratulate her on being named the Notable New Mexican of 2008.●

RETIREMENT OF JOHN DRUMMOND

● Mr. GRAHAM. Madam President, today I ask the Senate to join me in recognizing State Senator John W. Drummond on the occasion of his retirement from the South Carolina State Senate. As a decorated military hero, a successful businessman, and a respected public figure, Senator Drummond has left an indelible mark on the Palmetto State. He is a true public servant, guided not by desire for recognition but by the desire to achieve great good for the state he serves.

Born in Greenwood, SC, John Drummond was the fourth of Jim and Fannie Drummond's seven children. His father worked for the Greenwood Cotton Mill for many years before moving his family to a new mill village in Ninety Six, where he excelled in academics and athletics. Eager to expand his horizons, he seized the opportunity to serve in the military by joining the 263rd South Carolina Coast Artillery Regiment based in Charleston.

Senator Drummond distinguished himself in his training and landed a post as a bomber-fighter pilot in the 405th Fighter Group. The group reported for duty in the European theater of the war in March 1944. In his initial months of service, Drummond provided air interdiction and close air support, including involvement in a successful attack on a SS mess hall identified by information from the French Resistance.

After attaining the rank of captain, Drummond led his squadron while providing air coverage for the Allied armada from German artillery positions on D-day and for ground troops in the months that followed.

On July 29, 1944, Drummond's plane was downed by antiaircraft fire. He was badly injured after parachuting out at a low level and was captured by Germans and imprisoned for 10 months in a POW camp in Barth, Germany.

Finally freed by the Russian army after V–E Day, Drummond's valor earned him the Distinguished Flying Cross, two Purple Hearts, nine Air Medals, three Battle Stars, and a Presidential Citation.

Following a jubilant homecoming, Drummond gradually transitioned to civilian life, marrying a hometown girl, Holly Self, and starting his young family which eventually included three sons.

After inheriting the Greenwood Petroleum Company, his aptitude for business led him to the establishment of the Drummond Oil Company. Senator Drummond still serves as president of both of these successful enterprises.

Senator Drummond and his wife, fondly known as ''Ms. Holly,'' have long played a leading role in the civic affairs of Greenwood County and the town of Ninety Six. Both were devoted church members, and Ms. Holly is remembered for her dedication to the missions of the Ninety-Six Baptist Church as well as for her role as an enthusiastic advocate of town preservation.

Interested in the economic prosperity of Greenwood, Senator Drummond devoted his considerable talents as a respected business leader to the issues of business development and rural electrification affecting its citizens.

After serving 2 years in the South Carolina House of Representatives, Senator Drummond campaigned and won a seat in the State Senate, a position he has held for over forty years.

The longest serving State Senator in South Carolina history, his time in the legislature will be remembered for his ability to forge relationships across racial, gender, and political lines, and his sincere desire to provide excellent representation and service for the people of Greenwood County.

He has been widely described as a statesman, a position that is reflected by his current position as the senate's President Pro Tempore Emeritus.

As further proof of his remarkable leadership, he has been honored by the establishment of the Drummond Center, an institute at Erskine College dedicated to promoting civil discourse across party lines for the benefit of all South Carolinians.

Throughout his career, he has been the recipient of countless legislative achievement and appreciation awards from a wide range of groups and individuals, including the Order of the Palmetto, the highest civilian honor awarded by the Governor.

John Drummond has served his State and Nation. His legacy is one of unparalleled commitment to his fellow citizens, and his influence will be felt for many years to come.

I thank him sincerely for his service and leadership and wish him the very best in his retirement. I ask that the Senate join me in honoring my friend, Senator John W. Drummond.●

RECOGNIZING SHANNON RENAE VAUX

● Mr. THUNE. Madam President, today I recognize Shannon Renae Vaux, an intern in my Aberdeen, SD office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several months.

Shannon is a graduate of Central High School in Aberdeen, SD. Currently she is attending Northern State University, where she is majoring in biology. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Shannon for all of the fine work she has done and wish her continued success in the years to come.●

RECOGNIZING CATHERINE ALM

● Mr. THUNE. Madam President, today I recognize Catherine Alm, an intern in my Sioux Falls, SD office, for all of the hard work she has done for me, my staff, and the State of South Dakota over the past several months.

Catherine is a graduate of Eastview High School in Apple Valley, MN. Currently she is attending Augustana College, where she is majoring in government and spanish. She is a hard worker who has been dedicated to getting the most out of her internship experience.

I would like to extend my sincere thanks and appreciation to Catherine for all of the fine work she has done and wish her continued success in the years to come.●

THANKING LOUISIANA VOLUNTEERS

● Mr. VITTER. Madam President, today I wish to acknowledge the volunteers of St. Francis Medical Center and St. Francis North Hospital in Monroe, LA. On Monday, April 28, they will hold their annual Volunteer Spring Banquet to honor its 120 active volunteers and recognize their hard work and dedication to helping others. I would like to spend a few moments highlighting their achievements.

The St. Francis Medical Center and St. Francis North Hospital volunteers combined for a total of 19,207.5 volunteer service hours for 2007. Several of these volunteers will be receiving individual awards highlighting their accomplishments and all that they do to improve their communities. I would like to recognize 11 women in particular who will receive the President's Call to Service Award for 4,000 hours or more of volunteer service in one's lifetime. These women are: Joy Beaver, Ruth Beavers, Bettye Bennett, Angie Bruscato, Lucille Calk, Ann Clayton, Ruby Coats, Eva Fowler, Talma Turrentine, Anita Tempalski, and Patsy Welch. These ladies have volunteered a total of 80,695 hours of service.

In addition, three St. Francis volunteers will receive the Daily Point of Light Award which is administered through the Points of Light Foundation on behalf of the White House. This award is designed to honor those who have made a commitment to connect Americans through service to help meet critical needs in their communities. This prestigious award is given each weekday in honor of recipients who exemplify the best in volunteerism. St. Francis is the only organization within the State of Louisiana to have three individuals honored with this award. They are: Angie Bruscato, Talma Turrentine, and Lucille Calk. These Daily Point of Light winners have been placed in the Presidential Greeter program for a possible visit from President George W. Bush in the near future.

I applaud all of the volunteers of St. Francis Medical Center and St. Francis

North Hospital in Monroe for their continued service to the citizens of their community. Their hard work and dedication is something we all appreciate and celebrate as we recognize their success.●

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5858. A communication from the Director, Office of Management, Department of Energy, transmitting, pursuant to law, a report relative to acquisitions made by the agency from foreign entities during fiscal year 2007; to the Committee on Appropriations.

EC–5859. A communication from the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, transmitting, pursuant to law, a report relative to the distribution of the Department's depot maintenance workloads; to the Committee on Armed Services.

EC–5860. A communication from the Assistant Secretary of Defense (Special Operations/Low-Intensity Conflict and Interdependent Capabilities), transmitting, pursuant to law, a report relative to the training of the U.S. Special Operations Forces with friendly foreign forces during fiscal year 2007; to the Committee on Armed Services.

EC–5861. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Michael A. Hamel, United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–5862. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Lieutenant General Claude V. Christianson, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC–5863. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Contractor Personnel Authorized to Accompany U.S. Armed Forces'' (DFARS Case 2005–D013) received on April 17, 2008; to the Committee on Armed Services.

EC–5864. A communication from the Senior Counsel for Regulatory Affairs, Office of Investment Security, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Regulations Pertaining to Mergers, Acquisitions and Takeovers'' (31 CFR part 800) received on April 17, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–5865. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes'' ((RIN2120–AA64) (Docket No. 2007–NM–010)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5866. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Learjet Model 45 Airplanes'' ((RIN2120–AA64) (Docket No. 2005–NM–007)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5867. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Model ERJ 170 and ERJ 190 Airplanes'' ((RIN2120–AA64) (Docket No. 2007–NM–219)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5868. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; BAE Systems Limited Model BAe 146 and Avro 146–RJ Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–126)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5869. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; EMBRAER Model EMB–135BJ Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–099)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5870. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A310 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–220)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5871. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–098)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5872. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Limited Model PC–12, PC–12/45, and PC–12/47 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–082)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5873. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eclipse Aviation Corporation Model EA500 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–078)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5874. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; GARMIN International GSM 85 Servo Gearbox Units'' ((RIN2120–AA64)(Docket No. 2007–CE–063)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5875. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes Equipped with Rolls-Royce RB211–TRENT 800 Series Engines'' ((RIN2120–AA64)(Docket No. 2005–NM–263)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5876. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A300 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes'' ((RIN2120–AA64)(Docket No. 2006–NM–050)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5877. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; General Electric Company CF6–50, –80A1/A3, and –80C2A Series Turbofan Engines'' ((RIN2120–AA64)(Docket No. 98–ANE–54)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5878. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–015)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5879. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–075)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5880. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–205)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5881. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Cessna Aircraft Company 172 and 182 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–079)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5882. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 727 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–116)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5883. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes; Boeing Model 757 Airplanes; and Boeing Model 767 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–118)) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5884. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final 2008 Specifications for the Atlantic Bluefish Fishery'' (RIN0648–XB94) received

on April 17, 2008; to the Committee on Commerce , Science, and Transportation.

EC–5885. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Rule Amending the Halibut Individual Fishing Quota Program Processing Restrictions'' (RIN0648–AU85) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5886. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Regulatory Amendment to Adjust the Seasonal Timing for Trip Limits for Migratory Group Spanish Mackerel'' (RIN0648–AV17) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5887. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Annual Specifications for the 2007/2008 Pacific Mackerel Fishing Season'' (RIN0648–XB01) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5888. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Bycatch Management'' (RIN0648–AV96) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5889. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XG59) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5890. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XG17) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5891. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program'' (RIN0648–XF29) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5892. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Inseason Closure of the Commercial Fishery for Gulf Group King Mackerel in the Florida East Coast Subzone for the 2007–2008 Fishing Year'' (RIN0648–XF68) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5893. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XF55) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5894. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska'' (RIN0648–XG28) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5895. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska'' (RIN0648–XG19) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5896. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–XF95) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5897. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska'' (RIN0648–XG09) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5898. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska'' (RIN0648–XG12) received on April 17, 2008; to the Committee on Commerce, Science, and Transportation.

EC–5899. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Oil and Gas and Sulphur Operations and Leasing in the Outer Continental Shelf—Corrections and Amendments'' (RIN1010–AD49) received on April 17, 2008; to the Committee on Energy and Natural Resources.

EC–5900. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Oil and Gas and Sulphur Operations and Leasing in the Outer Continental Shelf—Incorporate American Petroleum Institute Hurricane Bulletins'' (RIN1010–AD48) received on April 17, 2008; to the Committee on Energy and Natural Resources.

EC–5901. A communication from the Director, Office of Enforcement, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines'' (RIN1902–AD26) received on April 17, 2008; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 2894. An original bill to establish requirements for private lenders to protect student borrowers receiving private educational loans, and for other purposes (Rept. No. 110–327).

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1810. A bill to amend the Public Health Service Act to increase the provision of scientifically sound information and support services to patients receiving a positive test diagnosis for Down syndrome or other prenatally and postnatally diagnosed conditions.

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. DODD:

S. 2894. An original bill to establish requirements for private lenders to protect student borrowers receiving private educational loans, and for other purposes; from the Committee on Banking, Housing, and Urban Affairs; placed on the calendar.

By Mr. DODD (for himself, Mr. KENNEDY, Mr. BROWN, Mrs. MURRAY, Mr. SANDERS, and Mrs. CLINTON):

S. 2895. A bill to amend the Higher Education Act of 1965 to maintain eligibility, for Federal PLUS loans, of borrowers who are 90 or more days delinquent on mortgage loan payments, or for whom foreclosure proceedings have been initiated, with respect to their primary residence; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE:

S. 2896. A bill to amend the Internal Revenue Code of 1986 to provide for a temporary reduction in the tax imposed on diesel fuel; to the Committee on Finance.

By Mr. INOUYE:

S. 2897. A bill for the relief of Ross E. Lay of Haiku, Hawaii; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN (for himself, Mr. LUGAR, Mrs. CLINTON, Mr. OBAMA, and Mr. MCCAIN):

S. Res. 523. A resolution expressing the strong support of the Senate for the declaration of the North Atlantic Treaty Organization at the Bucharest Summit that Ukraine and Georgia will become members of the alliance; to the Committee on Foreign Relations.

By Mr. CASEY (for himself and Mr. SPECTER):

S. Con. Res. 77. A concurrent resolution supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month 2008; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 41

At the request of Mr. BAUCUS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 41, a bill to amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

S. 186

At the request of Mr. SPECTER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 186, a bill to provide appropriate protection to attorney-client privileged communications and attorney work product.

S. 358

At the request of Ms. SNOWE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 358, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

S. 561

At the request of Mr. BUNNING, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 561, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the expansion of the adoption credit and adoption assistance programs.

S. 625

At the request of Mr. KENNEDY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 625, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 667

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 667, a bill to expand programs of early childhood home visitation that increase school readiness, child abuse and neglect prevention, and early identification of developmental and health delays, including potential mental health concerns, and for other purposes.

S. 911

At the request of Mr. REED, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 911, a bill to amend the Public Health Service Act to advance medical research and treatments into pediatric cancers, ensure patients and families have access to the current treatments and information regarding pediatric cancers, establish a population-based national childhood cancer database, and promote public awareness of pediatric cancers.

S. 979

At the request of Mr. WYDEN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 979, a bill to establish a Vote by Mail grant program.

S. 988

At the request of Ms. MIKULSKI, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 988, a bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers.

S. 1120

At the request of Mr. HARKIN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1120, a bill to amend the Public Health Service Act to provide grants for the training of graduate medical residents in preventive medicine and public health.

S. 1361

At the request of Mr. CONRAD, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1361, a bill to amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period for the depreciation of certain leasehold improvements and to modify the depreciation rules relating to such leasehold improvements for purposes of computing earnings and profits.

S. 1605

At the request of Mr. CONRAD, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1605, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1760

At the request of Mr. BROWN, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1760, a bill to amend the Public Health Service Act with respect to the Healthy Start Initiative.

S. 1963

At the request of Mr. ROCKEFELLER, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 1963, a bill to amend the Internal Revenue Code of 1986 to allow bonds guaranteed by the Federal home loan banks to be treated as tax exempt bonds.

S. 2130

At the request of Mr. CASEY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2130, a bill to express the sense of the Senate on the need for a comprehensive diplomatic offensive to help broker national reconciliation efforts in Iraq and lay the foundation for the eventual redeployment of United States combat forces.

S. 2170

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2170, a bill to amend the Internal Revenue Code of 1986 to modify the treatment of qualified restaurant property as 15-year property for purposes of the depreciation deduction.

S. 2314

At the request of Mr. SALAZAR, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2314, a bill to amend the Internal Revenue Code of 1986 to make geothermal heat pump systems eligible for the energy credit and the residential energy efficient property credit, and for other purposes.

S. 2510

At the request of Ms. LANDRIEU, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2510, a bill to amend the Public Health Service Act to provide revised standards for quality assurance in screening and evaluation of gynecologic cytology preparations, and for other purposes.

S. 2577

At the request of Mr. LAUTENBERG, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2577, a bill to establish background check procedures for gun shows.

S. 2579

At the request of Mr. INOUYE, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Virginia (Mr. WEBB) were added as cosponsors of S. 2579, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the United States Army in 1775, to honor the American soldier of both today and yesterday, in wartime and in peace, and to commemorate the traditions, history, and heritage of the United States Army and its role in American society, from the colonial period to today.

S. 2619

At the request of Mr. COBURN, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2619, a bill to protect innocent Americans from violent crime in national parks.

S. 2668

At the request of Mr. KERRY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2668, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 2723

At the request of Mr. BROWN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2723, a bill to expand the dental workforce and improve dental access, prevention, and data reporting, and for other purposes.

S. 2738

At the request of Mr. COBURN, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Louisiana (Mr. VITTER), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 2738, a bill to identify and remove criminal aliens incarcerated in correctional facilities in the United States and for other purposes.

S. 2766

At the request of Mr. NELSON of Florida, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2766, a bill to amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

S. 2785

At the request of Ms. STABENOW, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2785, a bill to amend title XVIII of the Security Act to preserve access to physicians' services under the Medicare program.

S. 2819

At the request of Mr. ROCKEFELLER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 2819, a bill to preserve access to Medicaid and the State Children's Health Insurance Program during an economic downturn, and for other purposes.

S. 2836

At the request of Mr. CHAMBLISS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2836, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of non-regular service retired pay.

S. 2840

At the request of Mr. SCHUMER, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2840, a bill to establish a liaison with the Federal Bureau of Investigation in United States Citizenship and Immigration Services to expedite naturalization applications filed by members of the Armed Forces and to establish a deadline for processing such applications.

S. 2867

At the request of Mr. BINGAMAN, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2867, a bill to authorize additional resources to identify and eliminate illicit sources of firearms smuggled into Mexico for use by violent drug trafficking organizations, and for other purposes.

S. RES. 510

At the request of Mrs. MURRAY, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. Res. 510, a resolution supporting the goals and ideals of National Cystic Fibrosis Awareness Month.

S. RES. 518

At the request of Mr. DODD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Res. 518, a resolution designating the third week of April 2008 as ''National Shaken Baby Syndrome Awareness Week''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD (for himself, Mr. KENNEDY, Mr. BROWN, Mrs. MURRAY, Mr. SANDERS, and Mrs. CLINTON):

S. 2895. A bill to amend the Higher Education Act of 1965 to maintain eligibility, for Federal PLUS loans, of borrowers who are 90 or more days delinquent on mortgage loan payments, or for whom foreclosure proceedings have been initiated, with respect to their primary residence; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today with Senator KENNEDY, Senator BROWN, Senator MURRAY, Senator SANDERS, and Senator CLINTON to introduce the PLUS Loan Borrower Protection Act of 2008. This bill is designed to ensure that students and parents can get access to PLUS Loans even if they have been caught up in the subprime mortgage crisis.

In recent months there have been indications that students may face a challenge getting access to some Federal Stafford loans and private education loans because of the growing credit crisis in the financial markets. While I am unaware of an instance to date when a student has been unable to secure a loan, the withdrawal of certain lenders, the ongoing turmoil in U.S. credit markets and the absence of liquidity in the student loan market have fueled concerns that a potential student loan credit crunch may be looming. One which could leave millions of students in a last-minute dash to secure the financial assistance they need to attend college this academic year.

Last week I held a hearing in the Senate Banking Committee to examine this issue and consider how to address this situation. Based on what I heard in that hearing I have contacted Treasury Secretary Paulson and Federal Reserve Board Chairman Bernanke to urge each of them to utilize all existing tools, including options allowing federally-backed and AAA-rated private student loans to be used as collateral at the Fed's temporary secured lending facility, TSLF, and using the Federal Financing Bank under Treasury to help prime the pump of liquidity, in order to help avert a funding crisis in the student loan market. I have also cosponsored the Strengthening Student Aid for All Act to bring stability and certainty to several Federal financial aid programs. Sen. KENNEDY took the lead in introducing that legislation and I am proud to support him.

But during the hearing another element of this issue came to my attention—Federal PLUS loans. PLUS loans are supposed to be available to individuals who do not meet the financial needs tests of other Federal financial aid programs. But current law and regulation prevent individuals who have been more than 90 days delinquent on a mortgage payment or who have gone through a foreclosure within the previous 5 years from getting a PLUS loan. Normally that is a good standard to have—it helps ensure that individuals do not get themselves so much into debt that they cannot get out. But with our recent history in the subprime mortgage market and the ensuing credit crisis, this requirement can have a much broader and more damaging result—denying college education to the next generation. Individuals who may need PLUS loans more than ever this fall because other sources of aid and lending may be unavailable, might be denied this aid because of the mismanagement of our housing market. This is unacceptable.

Ensuring that students have available and affordable access to a college education should be among our highest priorities. Our world is growing more complex by the day. Never has higher education been more crucial to the success of our people and our country. Today, 60 percent of the new jobs being created by our economy require at least some post-secondary education. Compare that to a half-century ago, when only 15 per cent of new jobs required some amount of college. If our children are to achieve their highest aspirations, and if our Nation's economic backbone is to continue to remain strong, then we must ensure that the doors of higher education remain open for all who have the desire and ability to walk through them.

That is why we are introducing the PLUS Loan Borrower Protection Act of 2008 today. It would eliminate delinquency and foreclosures during this tumultuous time from being a disqualifying factor in awarding PLUS loans. Lenders would still be able to make judgments about the credit of a PLUS loan borrower on the basis of other parts of their credit history. But if the only mark against a borrower is being caught up in the current mortgage crisis, the lender could not disqualify them. Given the current upheaval in our economy, this is a simple and necessary step to make sure our children can still get a needed education.

As the Congress moves to address access to student loans and the current credit crisis, I will work to include this bill in our response. I want to thank Senators KENNEDY, BROWN, MURRAY, SANDERS, and CLINTON for joining with me on this bill and I urge my other colleagues to cosponsor this important legislation and join me in this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2895

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 ''PLUS Loan Borrower Protection Act of 2008''.

SEC. 2. SPECIAL RULES FOR FEDERAL PLUS LOANS.

Section 428B(a)(3) of the Higher Education Act of 1965 (20 U.S.C. 1078–2(a)(3)) is amended—

(1) by striking ''Whenever'' and inserting the following:

''(A) PARENT BORROWERS.—Whenever''; and

(2) by adding at the end the following:

''(B) EXTENUATING CIRCUMSTANCES.—

''(i) IN GENERAL.—For purposes of determining if a borrower has an adverse credit history under paragraph (1)(A) on the basis of a delinquency or foreclosure related to a mortgage loan, an extenuating circumstance exists if, during the period beginning January 1, 2007 and ending December 31, 2012, the borrower is 90 or more days delinquent on mortgage loan payments, or foreclosure proceedings have been initiated, with respect to the primary residence of the borrower.

''(ii) DEFINITION.—The term 'mortgage loan' means an extension of credit that is secured by the primary residence of the borrower.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 523—EXPRESSING THE STRONG SUPPORT OF THE SENATE FOR THE DECLARATION OF THE NORTH ATLANTIC TREATY ORGANIZATION AT THE BUCHAREST SUMMIT THAT UKRAINE AND GEORGIA WILL BECOME MEMBERS OF THE ALLIANCE

Mr. BIDEN (for himself, Mr. LUGAR, Mrs. CLINTON, Mr. OBAMA, and Mr. MCCAIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 523

Whereas, prior to the Bucharest Summit in April 2008, the Government of Georgia and the Government of Ukraine each expressed the desire to join the North Atlantic Treaty Organization (NATO), have committed their countries to programs of reforms consistent with membership in the Euro-Atlantic community, and have worked consistently for membership in NATO; and

Whereas, in April 2008 at the Bucharest Summit, the assembled leaders of NATO issued the following statement: ''NATO welcomes Ukraine's and Georgia's Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO. Both nations have made valuable contributions to Alliance operations. We welcome the democratic reforms in Ukraine and Georgia and look forward to free and fair parliamentary elections in Georgia in May. MAP is the next step for Ukraine and Georgia on their direct way to membership. Today we make clear that we support these countries' applications for MAP. Therefore we will now begin a period of intensive engagement with both at a high political level to address the questions still outstanding pertaining to their MAP applications. We have asked Foreign Ministers to make a first assessment of progress at their December 2008 meeting. Foreign Ministers have the authority to decide on the MAP applications of Ukraine and Georgia.'': Now, therefore, be it

Resolved, That the Senate—

(1) supports the declaration of the Bucharest Summit, which stated that Ukraine and Georgia will become members of NATO;

(2) reiterates its support for the commitment to further enlargement of NATO to include democratic governments that are able and willing to meet the responsibilities of membership; and

(3) urges the foreign ministers of NATO member states at their meeting in December 2008 to consider favorably the applications of the governments of Ukraine and Georgia for Membership Action Plans.

SENATE CONCURRENT RESOLUTION 77—SUPPORTING THE GOALS AND IDEALS OF NATIONAL SEXUAL ASSAULT AWARENESS AND PREVENTION MONTH 2008

Mr. CASEY (for himself and Mr. SPECTER) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 77

Whereas, on average, a person is sexually assaulted in the United States every 2½ minutes;

Whereas the Department of Justice reports that 191,670 people in the United States were sexually assaulted in 2005;

Whereas 1 in 6 women and 1 in 33 men have been victims of rape or attempted rape;

Whereas the Department of Defense received 2,688 reports of sexual assault involving members of the Armed Forces in fiscal year 2007;

Whereas children and young adults are most at risk of sexual assault, as 44 percent of sexual assault victims are under the age of 18, and 80 percent are under the age of 30;

Whereas sexual assault affects women, men, and children of all racial, social, religious, age, ethnic, and economic groups in the United States;

Whereas only 41 percent of sexual assault victims pursue prosecution by reporting their attacks to law enforcement agencies;

Whereas ⅔ of sexual crimes are committed by persons who are not strangers to the victims;

Whereas sexual assault survivors suffer emotional scars long after the physical scars have healed;

Whereas prevention education programs carried out by rape crisis and women's health centers have the potential to reduce the prevalence of sexual assault in their communities;

Whereas, because of recent advances in DNA technology, law enforcement agencies now have the potential to identify the rapists in tens of thousands of unsolved rape cases;

Whereas aggressive prosecution can incarcerate rapists and therefore prevent them from committing further crimes;

Whereas free, confidential help is available to all survivors of sexual assault through the National Sexual Assault Hotline, more than 1,000 rape crisis centers across the United States, and other organizations that provide services to assist survivors of sexual assault; and

Whereas April is recognized as ''National Sexual Assault Awareness and Prevention Month'': Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) it is the sense of Congress that—

(A) National Sexual Assault Awareness and Prevention Month provides a special opportunity to educate the people of the United States about sexual violence and to encourage the prevention of sexual assault, the improved treatment of its survivors, and the prosecution of its perpetrators;

(B) it is appropriate to properly acknowledge the more than 20,000,000 men and women who have survived sexual assault in the United States and salute the efforts of survivors, volunteers, and professionals who combat sexual assault;

(C) national and community organizations and private sector supporters should be recognized and applauded for their work in promoting awareness about sexual assault, providing information and treatment to its survivors, and increasing the number of successful prosecutions of its perpetrators;

(D) public safety, law enforcement, and health professionals should be recognized and applauded for their hard work and innovative strategies to increase the percentage of sexual assault cases that result in the prosecution and incarceration of the offenders;

(2) Congress strongly recommends that national and community organizations, businesses in the private sector, colleges and universities, and the media promote, through National Sexual Assault Awareness and Prevention Month, awareness of sexual violence and strategies to decrease the incidence of sexual assault; and

(3) Congress supports the goals and ideals of National Sexual Assault Awareness and Prevention Month 2008.

Mr. CASEY. Mr. President, I rise today to speak about a resolution Senator SPECTER and I have introduced supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month, which occurs this month of April.

In the U.S. a person is sexually assaulted on average every two and a half minutes. One in six women and one in 33 men have been victims of rape or attempted rape. According to the Department of Justice, 191,670 people in the United States were sexually assaulted in 2005. These are disturbing statistics.

National Sexual Awareness and Prevention Month serves many valuable purposes. It provides a special opportunity to educate people about sexual violence and increase public awareness about the impact of this crime that changes many lives forever and sometimes irrevocably.

It pays tribute to the many survivors of sexual violence and honors their compassionate efforts to help others in the face of their own anguish. Many courageous individuals, themselves survivors of sexual assault, rise above their own suffering to help assuage the pain of others and assist in the prevention of sexual assault.

This resolution also recognizes and applauds the work of community organizations and other supporters who help survivors and promote prevention and awareness. These are important and vital services in the lives not only of those who have been assaulted but all of us. Increasing public awareness helps in the fight to prevent sexual assault and reduce the number of people who are sexually assaulted, saving those individuals from the nightmare others know all too well.

Sexual violence is a crime we must all work to eradicate. While women comprise the majority of victims, this crime is perpetrated against women, children, and men. It is my goal that this resolution helps us to understand our role in assisting these individuals and preventing this crime from happening in the future.

I ask all my colleagues to support this important resolution and encourage communities across our country to pay tribute to all those whose lives have been touched by sexual assault and those who have dedicated their lives to work to end it.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 20, 2008, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose is to formally receive the Territorial Energy Assessment as updated pursuant to EPACT 05.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150, or by e-mail to Rosemarie_Calabro @energy.senate.gov.

For further information, please contact Allen Stayman or Rosemarie Calabro.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, this is to advise you that a time change for the hearing scheduled before the Committee on Energy and Natural Resources, for Thursday, May 1, 2008, will begin at 2:15 p.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the military buildup on Guam: impact on the civilian community, planning, and response.

For further information, please contact Allen Stayman or Rosemarie Calabro.

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Chase Nordengren and Brittany Clement of my staff be granted the privileges of the floor for the duration of today's session.

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

Mr. KENNEDY. Mr. President, on behalf of Senator REID, I ask unanimous consent that Robert Bruce, a Marine Corps fellow in his office, be granted the privilege of the floor during consideration of S. 1315.

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

NATIONAL SHAKEN BABY SYNDROME AWARENESS WEEK

Mr. REID. I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 518.

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

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 518) designating the third week of April 2008, as ''National Shaken Baby Syndrome Awareness Week.''

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

Mr. REID. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table and that there be no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 518) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 518

Whereas the month of April has been designated ''National Child Abuse Prevention Month'' as an annual tradition initiated in 1979 by President Jimmy Carter;

Whereas the National Child Abuse and Neglect Data System figures reveal that more than 900,000 children were victims of abuse and neglect in the United States in 2006, causing unspeakable pain and suffering for our most vulnerable citizens;

Whereas more than 4 children die as a result of abuse or neglect in the United States each day;

Whereas children younger than 1 year old accounted for approximately 44 percent of all child abuse and neglect fatalities in 2006, and children younger than 3 years old accounted for approximately 78 percent of all child abuse and neglect fatalities in 2006;

Whereas abusive head trauma, including the trauma known as Shaken Baby Syndrome, is recognized as the leading cause of death among physically abused children;

Whereas Shaken Baby Syndrome can result in loss of vision, brain damage, paralysis, seizures, or death;

Whereas 20 States have enacted statutes related to preventing and increasing awareness of Shaken Baby Syndrome;

Whereas medical professionals believe that thousands of additional cases of Shaken Baby Syndrome and other forms of abusive head trauma are being misdiagnosed or are undetected;

Whereas Shaken Baby Syndrome often results in permanent, irreparable brain damage or death of an infant and may result in extraordinary costs for medical care in only the first few years of the life of the child;

Whereas the most effective solution for preventing Shaken Baby Syndrome is to prevent the abuse, and it is clear that the minimal costs of education and prevention programs may prevent enormous medical and disability costs and immeasurable amounts of grief for many families;

Whereas prevention programs have demonstrated that educating new parents about the danger of shaking young children and how to protect their children from injury can significantly reduce the number of cases of Shaken Baby Syndrome;

Whereas education programs raise awareness and provide critically important information about Shaken Baby Syndrome to parents, caregivers, childcare providers, child protection employees, law enforcement personnel, health care professionals, and legal representatives;

Whereas National Shaken Baby Syndrome Awareness Week and efforts to prevent child abuse, including Shaken Baby Syndrome, are supported by groups across the United States, including groups formed by parents and relatives of children who have been killed or injured by shaking, whose mission is to educate the general public and professionals about Shaken Baby Syndrome and to increase support for victims and the families of the victims in the health care and criminal justice systems;

Whereas the Senate previously designated the third week of April 2007 as ''National Shaken Baby Syndrome Awareness Week''; and

Whereas the Senate strongly supports efforts to protect children from abuse and neglect: Now, therefore, be it

Resolved, That the Senate—

(1) designates the third week of April 2008 as ''National Shaken Baby Syndrome Awareness Week'';

(2) commends hospitals, child care councils, schools, community groups, and other organizations that are—

(A) working to increase awareness of the danger of shaking young children;

(B) educating parents and caregivers on how they can help protect children from injuries caused by abusive shaking; and

(C) helping families cope effectively with the challenges of child-rearing and other stresses in their lives; and

(3) encourages the people of the United States—

(A) to remember the victims of Shaken Baby Syndrome; and

(B) to participate in educational programs to help prevent Shaken Baby Syndrome.

ORDERS FOR TUESDAY, APRIL 22, 2008

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until tomorrow morning at 10 a.m.; 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, and there be a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders, with the Republicans controlling the first half and the

majority controlling the second half; that following morning business, the Senate resume the motion to proceed to S. 1315, the Veterans Benefits Enhancement Act, under the previous order; that the Senate stand in recess from 12:30 to 2:15 for the weekly caucus luncheons and from 3:30 to 4:30 for the unveiling of former Senate majority leader Tom Daschle's portrait.

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

PROGRAM

Mr. REID. Under the previous order, the Senate will vote tomorrow at 12 noon on the motion to invoke cloture on the motion to proceed to S. 1315.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. Seeing no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 5:26 p.m., adjourned until Tuesday, April 22, 2008, at 10 a.m.